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TEXT & SUMMARIZED CASES

Diverse, Ethical, Online, and Global Environment

10th EDITION



Roger LeRoy Miller



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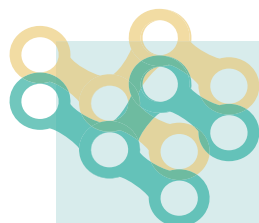
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Tenth Edition

Roger LeRoy Miller

Institute for University Studies
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Preface to the Instructor

Today's business and legal environment is changing at a pace never before experienced. In many instances, technology is both driving and facilitating this change. The expanded use of the Internet for both business and personal transactions has led to new ways of doing business in the twenty-first century. Other factors that have affected the legal environment include the recent economic recession and our nation's ongoing struggle to regain financial stability, combat joblessness, and reduce the national debt.

In the midst of this evolving environment, however, one thing remains certain: For those entering the business world, an awareness of business law and the legal environment is critical. *Business Law Today*, Tenth Edition, provides the information your students need in an interesting and contemporary way. The Tenth Edition of *Business Law Today* continues its established tradition of being the most up-to-date text on the market.

I have spent a great deal of effort incorporating the latest legal developments and giving this book a visual appeal that will encourage students to learn the law. The law presented in *Business Law Today* includes new statutes, regulations, and cases, as well as recent developments in cyberlaw.

What's New in the Tenth Edition

Instructors have come to rely on the coverage, accuracy, and applicability of *Business Law Today*. To make sure that the text engages your students' interest, solidifies their understanding of the legal concepts presented, and provides the best teaching tools available, the following items are now offered either in the text or in conjunction with the text.

New Spotlight Cases and Spotlight Case Problems

For the Tenth Edition of *Business Law Today*, certain cases and case problems have been carefully chosen to spotlight as good teaching cases. **Spotlight Cases and Spotlight Case Problems** are labeled either by the name of one of the parties or by the subject involved. Some examples include *Spotlight on Amazon*, *Spotlight on Apple*, *Spotlight on the Seattle Mariners*, *Spotlight on Commercial Speech*, and *Spotlight on Internet Porn*.

Instructors will find these *Spotlight Cases* useful to illustrate the legal concepts under discussion, and students will enjoy studying these cases because they involve interesting and memorable facts.

Suggested answers to all case-ending questions and case problems are included in both the *Instructor's Manual* and the *Answers Manual* for this text.

New Focus on Diversity

This Tenth Edition of *Business Law Today* recognizes the tremendous impact of diversity on the business world and legal environment today. Therefore, the text includes a special new feature entitled **Law, Diversity, and Business: Managerial Implications** that emphasizes diversity issues. These features address important topics such as marriage equality laws, appearance-discrimination legislation, and discriminatory mortgage lending. The new **Law, Diversity, and Business: Managerial Implications** features include the following:

- *Derogatory Trademarks* (Chapter 5)
- *Native Americans and Criminal Justice* (Chapter 6)
- *The Worldwide Lack of Women on Boards of Directors* (Chapter 31)
- *How Should Airlines Deal with "Customers of Size"?* (Chapter 33)

New Appendix to Chapter 14 Focuses on Reading and Analyzing Contracts

Because reading and analyzing contracts is such a crucial skill for businesspersons, a **special new Appendix to Chapter 14** has been added. This appendix follows the last contracts chapter and explains how to read and analyze a contract. Then, it presents an example of an employee noncompetition and nondisclosure agreement. The sample contract is annotated so that students can quickly see what each contract provision means.

New Debate This Feature

To encourage student participation and motivate students to think critically about the rationale underlying the law on a particular topic, a new feature has been created for the Tenth Edition. Entitled *Debate This*, it consists of a brief statement or question concerning the chapter material that can be used to spur lively classroom or small group discussions. It can also be used as a written assignment. This feature follows the *Reviewing* feature (discussed shortly) at the end of each chapter. **Suggested pro and con responses to the Debate This features can be found in both the Instructor's Manual and the Answers Manual for this text.**

New Cases and Case Problems

The Tenth Edition of *Business Law Today* is filled with new cases and case problems. Nearly every chapter features at least one new case and new case problem from 2011 and 2012. Many chapters include two recent case summaries and problems. That means more than 75 percent of the cases are new to this edition.

The new cases have been carefully selected based on these criteria: (1) they illustrate important points of law, (2) they are of high interest to students and instructors, and (3) they are simple enough factually for business law students to understand. I have made it a point to find recent cases that enhance learning. I have also eliminated cases that are too difficult procedurally or factually.

New Group Projects

For instructors who want to have their classes perform group projects, each chapter of the Tenth Edition includes a **new Business Law Critical Thinking Group Assignment**. Each project begins by describing a business scenario and then requires each group of students to answer a specific question pertaining to the scenario based on the information that they learned in the chapter. These projects may be used in class to spur discussion or as homework assignments.

I have also created a **new Group Project** for the end of every unit. These projects require students, as a group, to apply the concepts they learned in the previous chapters. These projects can be useful for reviewing materials in class prior to a test. **Suggested answers to all group assignments are included in both the Instructor's Manual and the Answers Manual for this text.**

A New Chapter on Mortgages and Foreclosures after the Recession

The Tenth Edition includes an entirely new chapter (Chapter 22) entitled ***Mortgages and Foreclosures after the Recession***. This chapter examines some of the mortgage-lending practices that contributed to the Great Recession that began in 2008 and discusses the legal reforms enacted in response to it.

New Coverage of Current Significant Topics

To pique student interest from the outset, many chapters in the Tenth Edition open with the latest news related to important legal topics. For example:

- Chapter 2 covers the constitutional challenge to the Obama administration's Patient Protection and Affordable Care Act and the United States Supreme Court's 2012 decision in that matter.
- Chapter 5 discusses the patent infringement lawsuit that Apple, Inc., filed against Samsung for allegedly imitating the iPhone and iPad too closely.
- Chapter 24 mentions the United States Supreme Court's 2012 decision on the extent to which federal law preempts the states from enacting immigration legislation.

Coverage of the latest developments in the topics under discussion is a priority throughout the text.

Practical and Effective Learning Tools

Today's business leaders must often think "outside the box" when making business decisions. For this reason, I have included numerous critical-thinking elements in the Tenth Edition that are designed to challenge students' understanding of the materials beyond simple retention. I have also retained, improved, and streamlined the many practical features of this text to help students learn how the law applies to business.

Highlighted and Numbered Case Examples

One of the most appreciated features of *Business Law Today* has always been the highlighted numbered examples that appear throughout the book to illustrate the legal principles under discussion. Further, many instructors use cases to illustrate how the law applies to business. For this reason, the in-text numbered examples have been expanded to include **Case Examples**.

These *Case Examples* are integrated appropriately throughout the text and present the facts, issues, and rulings from actual court cases. These are especially useful to simplify difficult areas of law. Students can read through the case examples and quickly see how courts apply the legal principles under discussion in the real world.

Linking Business Law to . . . Feature

The Tenth Edition of *Business Law Today* also includes a **special feature entitled Linking Business Law to . . . [one of the six functional fields of business]**. As will be discussed in Chapter 1, the six functional fields of business are *corporate management, production and transportation, marketing, research and development, accounting and finance, and human resources management*.

This feature appears in selected chapters to underscore how the law relates to other fields of business. Some of the new *Linking Business Law to . . .* features include:

- *Linking Business Law to Marketing*—Trademarks and Service Marks (Chapter 5)
- *Linking Business Law to Corporate Management*—Quality Control (Chapter 17)
- *Linking Business Law to Corporate Management*—What Can You Do to Prepare for a Chapter 11 Reorganization? (Chapter 21)
- *Linking Business Law to Accounting and Finance*—Sources of Funds (Chapter 29)

Business Application

Many chapters end with a **Business Application feature** that focuses on practical considerations related to the chapter's contents. This feature concludes with a **checklist** of tips for the businessperson. For example, these topics include the following:

- *Protecting Your Company against Hacking of Your Bank Accounts* (Chapter 6)
- *How to Choose and Use a Lawyer* (Chapter 8)
- *What Can You Do When a Contract Is Breached?* (Chapter 16)
- *How to Develop a Policy on Employee Use of the Internet and Social Media* (Chapter 24)

Preventing Legal Disputes

The Tenth Edition of *Business Law Today* continues the emphasis on providing practical information in every chapter through a special feature entitled **Preventing Legal Disputes**. These brief, integrated sections offer sensible guidance on steps that businesspersons can take in their daily transactions to avoid legal disputes and litigation in a particular area.

Adapting the Law to the Online Environment

The Tenth Edition contains many new **Adapting the Law to the Online Environment** features, which examine cutting-edge cyberlaw issues coming before today's courts. Here are some examples of these features:

- *Vulgar Facebook Photos Receive First Amendment Protection* (Chapter 2)
- *The Validity of E-Signatures for Online Colleges and Universities* (Chapter 10)
- *The Supreme Court Takes a Stand on Warning Labels for Video Games* (Chapter 17)
- *Live Chatting with Your State's Bankruptcy Court* (Chapter 21)
- *Social Media in the Workplace Come of Age* (Chapter 24)
- *The New Era of Crowdfunding* (Chapter 29)
- *The Justice Department Goes after E-Book Pricing* (Chapter 32)

Each feature concludes with a *Critical Thinking* question that asks the student to analyze some facet of the issues discussed in the feature. **Suggested answers to these questions are included in both the Instructor's Manual and the Answers Manual for this text.**

Summarized Case Presentation

Each case is presented in a certain format, which begins with the case title and citation (including parallel citations). Whenever possible, a URL that can be used to access the case online appears just below the case citation (a footnote to the URL explains how to find the specific case at that Web site). I then briefly outline the facts of the dispute, the legal issue presented, and the court's decision.

To enhance student understanding, I paraphrase the reason for the court's decision and provide bracketed explanations for any unfamiliar terms. Each case concludes with a question, which may include a *Critical Thinking*, *What If the Facts Were Different?* or *Why Is This Case Important?* question. *Classic Cases* include a special section entitled *Impact of This Case on Today's Law* to clarify the relevance of the case to modern law. **Suggested answers to all case-ending questions are included in both the Instructor's Manual and the Answers Manual for this text.**

Critical-Thinking and Legal Reasoning Elements

The chapter-ending materials include a separate section of questions that focus on critical thinking and writing. This section includes the *Business Law Critical Thinking Group Assignment* (discussed previously) and may also include one or more of the following:

- **Critical Legal Thinking** questions require students to think critically about some aspect of the law discussed in the chapter.
- **Business Law Writing** questions require students to compose a written response to a business-oriented critical-thinking question.

- **Case Analysis Questions** are sometimes included to improve students' ability to analyze cases and perform legal reasoning. Students read through a case excerpt that is provided in *Appendix I* at the end of this text, brief the case, and then answer a series of questions relating to the case.

Reviewing . . . Features

Each chapter in this text ends with a **Reviewing . . . feature** that helps solidify students' understanding of the chapter materials. Each of these features presents a hypothetical scenario and then asks a series of questions that require students to identify the issues and apply the legal concepts discussed in the chapter. The questions are intended to help students review the chapter materials in a simple and interesting way.

An instructor can use this feature as the basis for a lively in-class discussion or can encourage students to use it for self-study and assessment prior to completing homework assignments.

ExamPrep Sections

Following the chapter summary in every chapter is an **ExamPrep section that includes two Issue Spotters related to the chapter's topics** that facilitate student learning and review of the chapter materials. For this edition, the answers to the *Issue Spotters* are provided in *Appendix E* at the end of this text.

Beyond Our Borders

The **Beyond Our Borders** feature gives students an awareness of the global legal environment by indicating how international laws or the laws of other nations deal with specific legal concepts or topics being discussed in the chapter. This feature always concludes with a *Critical Thinking* question. **Suggested answers to these questions are included in both the Instructor's Manual and the Answers Manual for this text.**

Landmark in the Law

The **Landmark in the Law** feature discusses a landmark case, statute, or other legal development that has had a significant effect on business law. Each of these features has a section titled **Application to Today's World**, which indicates how the law discussed in the feature affects the legal landscape of today's world.

Sample Answers

Each chapter includes a **Question with Sample Answer** that is answered in *Appendix G* and a **Case Problem with Sample Answer** that is based on an actual case and answered in *Appendix H*. Students can compare their own answers to the answers provided to determine whether they have applied the law correctly and to learn what needs to be included when answering the end-of-chapter *Business Scenarios and Case Problems*.

Ethical Issues

In addition to a full chapter on ethics, chapter-ending ethical questions, and the **Ethical Considerations** in many of the *Critical Thinking* questions in the cases, this text includes a feature called **Ethical Issues**. This feature, which is closely integrated with the text, opens with a question addressing an ethical dimension of the topic being discussed. The feature is designed to make sure that students understand that ethics is an integral part of a business law course.

Business Law Today on the Web

The Web site for the Tenth Edition of *Business Law Today* can be found by going to www.cengagebrain.com and entering ISBN 9781133273561. The Web site offers a broad array of teaching/learning resources, including the following:

- **Practice quizzes** for every chapter in this text.
- **Appendix A: How to Brief Cases and Analyze Case Problems**
- **Legal reference materials** including a “Statutes” page that offers links to the full text of selected statutes referenced in the text, a Spanish glossary, and other important legal resources.
- **CourseMate** access can also be purchased by the students, where they will find additional study tools, such as an e-Book, additional quizzes, flashcards, key terms, and PowerPoint slides.



Other Pedagogical Devices within Each Chapter

- **Learning Objectives** (a series of brief questions at the beginning of each chapter provide a framework for the student as he or she reads through the chapter). *For this edition, to facilitate learning, I repeat the Learning Objective question in the margin adjacent to where the question is answered in the text.*
- **Chapter Outline** (an outline of the chapter’s first-level headings).
- **Margin definitions.**
- **Margin Quotations.**
- **Exhibits.**
- **Photographs** (often with critical-thinking questions) and cartoons.

Chapter-Ending Pedagogy

- **Reviewing . . . feature** (in every chapter).
- **Debate This** (in every chapter).
- **Key Terms** (with appropriate page references).
- **Chapter Summary** (in table format with page references).
- **ExamPrep** (including two *Issue Spotters* for each chapter that are answered in *Appendix E*).
- **For Review** (the questions set forth in the chapter-opening *Learning Objectives* section are presented again to aid students in reviewing the chapter. For this edition, answers to the even-numbered questions for each chapter are provided in *Appendix E*).
- **Business Scenarios and Case Problems** (every chapter includes a *Question with Sample Answer* (answered in *Appendix G*), a *Case Problem with Sample Answer* (answered in *Appendix H*), A *Question of Ethics*, and a *Business Law Critical Thinking Group Assignment*. Selected chapters also include a *Spotlight Case Problem*.)

Unit-Ending Pedagogy

Each of the seven units in the Tenth Edition of *Business Law Today* concludes with the following features:

- **Business Case Study with Dissenting Opinion**—This feature focuses on a court case that relates to a topic covered in the unit. It opens with an introductory section, discusses the case background and significance, and then provides excerpts from the court’s majority opinion and from a dissenting opinion as well. The case study portion ends with *Questions for Analysis*—a series of questions that prompt the student to think critically about the legal, ethical, economic, international, or general business implications of the case.

- **Business Scenario**—This feature presents a hypothetical business situation and then asks a series of questions about how the law applies to various actions taken by the firm. To answer the questions, the student must apply the laws discussed throughout the unit.
- **Group Project**—The final portion of the unit-ending pedagogy is the new *Group Project* that was discussed earlier in this preface.

Suggested answers to all unit-ending questions are included in both the *Instructor's Manual* and the *Answers Manual* for this text.

Supplemental Teaching Materials

This edition of *Business Law Today* is accompanied by an expansive number of teaching and learning supplements, which are available on the *Instructor's Resource CD-ROM*, or IRCD, as well as on the password-protected portion of the companion Web site. Individually and in conjunction with a number of colleagues, I have developed supplementary teaching materials that I believe are the best available today. The many components of the supplements package are listed below.

Instructor's Resource CD-ROM (IRCD)

The IRCD includes the following supplements:

- **Instructor's Manual** (includes at least one **additional case on point** per chapter, answers to all *Critical Thinking* questions, *Reviewing* features, *Business Law Critical Thinking Group Assignments*, *Business Case Studies with Dissenting Opinions*, *Business Scenarios*, and *Group Projects*).
- **Answers Manual** (includes answers to all the *Business Scenarios and Case Problems*, *Critical Thinking* questions, and unit-ending questions in the text, and **Alternate Problem Sets with Answers**).
- A comprehensive **Test Bank**.
- **Case-Problem Cases**.
- **Case Printouts**.
- **ExamView**.
- **PowerPoint slides**.
- *Instructor's Manual* for the *Drama of the Law* video series.
- *Handbook of Landmark Cases and Statutes in Business Law and the Legal Environment*.
- *Handbook on Critical Thinking in Business Law and the Legal Environment*.
- *A Guide to Personal Law*.

Software, Video, and Multimedia Supplements

- **Business Law Digital Video Library**—Provides access to ninety videos that spark class discussion and clarify core legal concepts. Access is available as an optional package with each new text at no additional cost. You can access the *Business Law Digital Video Library*, along with corresponding *Video Questions*, at login.cengage.com.
- **Westlaw®**—Ten free hours on Westlaw are available to qualified adopters.
- **CengageNOW** for *Business Law Today* (at an additional cost)—Arguably the most comprehensive online learning and assessment tool for business law and the legal environment on the market today. For more information, contact your South-Western/Cengage Learning Sales Representative. For a demo of this complete online learning system, go to www.cengage.com/now.
- **CourseMate**—Brings business law concepts to life with interactive learning, study, and exam preparation tools that support this printed textbook. Built-in engagement



tracking tools allow you to assess your students' study activities. Additionally, *CourseMate* includes an interactive e-Book, which contains the entire contents of this printed textbook enhanced by the many advantages of a digital environment.

For Users of the Ninth Edition

I thought that those of you who have been using *Business Law Today* would like to know some of the major changes that have been made for the Tenth Edition.

New Features and Special Pedagogy

I have added the following entirely new elements for the Tenth Edition:

- *Law, Diversity, and Business: Managerial Implications* feature in selected chapters.
- *Spotlight Cases* and *Spotlight Case Problems* in selected chapters.
- *An Appendix to Chapter 14* on reading and analyzing contracts.
- A *Debate This* feature in every chapter.
- A *Business Law Critical Thinking Group Assignment* in every chapter.
- A *Group Project* at the end of each unit.
- *Appendix E* (Answers to the *Issue Spotters*), *Appendix F* (Answers to Even-Numbered *For Review Questions*), and *Appendix H* (Sample Answers for *Case Problems with Sample Answer*).

Significantly Revised Chapters

Every chapter of the Tenth Edition has been revised as necessary to incorporate new developments in the law, and to simplify or streamline the presentations. Other major changes and additions made for this edition include the following:

- **Chapter 2 (Constitutional Law)**—This chapter has been thoroughly updated and revised. It opens with a discussion of the constitutional issue raised by the Obama administration's Patient Protection and Affordable Care Act and considers how the United States Supreme Court's decision in the matter will affect business. The privacy concerns raised by social networking Web sites are also discussed. A feature addresses First Amendment rights and postings on Facebook, and another feature examines the legal issues presented by same-sex marriage and marriage equality laws.
- **Chapter 5 (Intellectual Property and Internet Law)**—The materials on intellectual property rights have been thoroughly revised and updated. The chapter incorporates the major changes to patent law made by the America Invents Act, which make the first person to file for a patent application the holder. A new subsection addresses patent infringement lawsuits and high-tech companies, and the suit filed by Apple, Inc., against Samsung over iPhones, iPads, and Android software is discussed. Coverage of domain names and cybersquatting has been updated. Numerous updates and new examples have been added to illustrate how intellectual property laws apply in the digital world. A *Spotlight on Internet Porn* case covers trademark dilution by a porn site using a toymaker's domain name. There is also a discussion of the 2012 United States Supreme Court decision addressing Congress's authority to restore copyright protection to foreign works that were already in the public domain. A *Beyond Our Borders* feature outlines the provisions of a new international treaty to combat global counterfeiting and piracy.
- **Chapter 6 (Criminal Law and Cyber Crime)**—This chapter has been substantially revised to deal with the growing problem of cyber crime, including many types of Internet fraud, identity theft, phishing, and hacking. It also covers some of the difficulties involved in prosecuting cyber crime. The chapter incorporates recent United States Supreme Court decisions on whether police can attach a GPS tracking device to a suspect's vehicle and whether police

officers can be held personally liable for performing an illegal search. New features examine whether a person can be prosecuted for posting fake photos on Facebook and provide guidance on how businesspersons can prevent their bank accounts from being hacked.

- **Chapters 9 through 14 (the Contracts unit)**—The discussion of online contracting and electronic signatures has been merged with the coverage of traditional contracts. More examples, case examples, updates throughout, and streamlined coverage have been added. Numerous *Spotlight Cases* have been added to this unit, including *Spotlight on Amazon*, *Spotlight on Columbia Pictures*, *Spotlight on the Improv*, and *Spotlight on PC Magazine*.
- **Chapters 15 through 22 (the Commercial Transactions unit)**—This entire unit deals with commercial transactions and aspects of the Uniform Commercial Code, including sales and lease law, negotiable instruments, banking, secured transactions, and bankruptcy. This edition includes an entirely new chapter on Mortgages and Foreclosures after the Recession (Chapter 22). Chapter 22 provides a timely look at the mortgage crisis, predatory lending practices, and the laws enacted to address some of the problems that became evident during the recession.
- **Chapter 24 (Employment, Immigration, and Labor Law)**—This chapter has been thoroughly revised and updated to include discussions of legal issues facing employers today. A feature covers the use of social media in the workplace, and another feature explains how to develop policies on social media and Internet use. The chapter includes a section on immigration law, a topic of increasing importance to employers, and discusses the United States Supreme Court's decision on whether federal law preempts state immigration laws. The chapter also includes an updated discussion of the Family and Medical Leave Act, employee privacy rights and electronic monitoring of employees—including social media communications—drug testing, rights of union workers, strikes, and lockouts (such as the recent NFL and NBA lockouts).
- **Chapter 25 (Employment Discrimination and Diversity)**—The chapter covering employment discrimination has been significantly updated and now emphasizes diversity. A feature was added on combating appearance-based discrimination. The materials on sexual harassment and retaliation have been revised to incorporate recent case law.
- **Chapters 26 through 31 (the Business Organizations unit)**—This unit has been reworked to simplify and streamline the presentation of the materials and to focus on diversity. Features address whether a person who is not a member of a protected class can sue for discrimination (Chapter 28) and why so few women are included on corporate boards of directors (Chapter 31). Chapter 29 includes a new feature on crowdfunding and a *new Landmark in the Law* feature on the *Citizens United* case. Chapter 30 features cover shareholder access rules and software designed to help corporate officers spot potential embezzlers. Chapter 31 has been substantially reworked to simplify complex materials into basic concepts. The materials on insider trading, Ponzi schemes, and fraud have been updated, new examples have been added, and a new *Spotlight Case* focuses on securities fraud.
- **Chapter 32 (Antitrust Law and Promoting Competition)**—The materials in this chapter have been reworked to focus on overriding principles of antitrust law and provide concrete information. The chapter includes updated figures on interlocking directorates and an updated discussion of global antitrust law. Features cover the Justice Department's concern about pricing of e-books for Kindles and iPads, and whether cable and other TV programmers violate the Sherman Act by bundling services. A *Spotlight Case on the Weyerhaeuser Company* was added.
- **Chapter 33 (Consumer and Environmental Law)**—The chapter has been thoroughly updated and incorporates recent changes to menu labeling requirements, the recent health-care reforms, and new federal credit-card rules. New features have been added on how airlines deal with “customers of size,” the new Consumer Privacy Bill of Rights, and the proper way to use credit reporting services.

- **Chapters 35 through 37 (the Property and Its Protection unit)**—These three chapters have been updated to deal with issues surrounding virtual and digital property and social media estate planning. A *Spotlight on Haunted Houses* case appears in Chapter 36.

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Numerous careful and conscientious users of *Business Law Today* were kind enough to help me revise the book. In addition, the staff at South-Western/Cengage Learning went out of their way to make sure that this edition came out early and in accurate form. In particular, I wish to thank Rob Dewey and Vicky True-Baker for their countless new ideas, many of which have been incorporated into the Tenth Edition. I also extend special thanks to Jan Lamar, my longtime developmental editor, for her many useful suggestions and for her efforts in coordinating reviews and ensuring the timely and accurate publication of all supplemental materials. I am particularly indebted to Lisa Lysne for her support and excellent marketing advice.

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I know that I am not perfect. If you or your students find something you don't like or want me to change, use the "Contact Us" button on this text's Web site. In the alternative, pass along your thoughts to your South-Western/Cengage Learning sales representative. Your comments will help us make *Business Law Today* an even better book in the future.

Roger LeRoy Miller

Dedication

To Debbie and Gary,
Great friends and partners are rare.

R.L.M.

UNIT 1



(BackyardProduction/iStockphoto.com)

The Legal Environment of Business

UNIT CONTENTS

1. The Legal Environment
2. Constitutional Law
3. Courts and Alternative Dispute Resolution
4. Torts and Cyber Torts
5. Intellectual Property and Internet Law
6. Criminal Law and Cyber Crime
7. Ethics and Business Decision Making
8. International Law in a Global Economy

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The Legal Environment

CHAPTER OUTLINE

- Business Activities and the Legal Environment
- Sources of American Law
- The Common Law Tradition
- Classifications of Law

LEARNING OBJECTIVES

The five learning objectives below are designed to help improve your understanding of the chapter. After reading this chapter, you should be able to answer the following questions:

- 1 What are four primary sources of law in the United States?
- 2 What is the common law tradition?
- 3 What is a precedent? When might a court depart from precedent?
- 4 What is the difference between remedies at law and remedies in equity?
- 5 What are some important differences between civil law and criminal law?



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**“Laws should be like clothes.
They should be made to fit the people they are meant to serve.”**
—Clarence Darrow, 1857–1938 (American lawyer)

Law A body of enforceable rules governing relationships among individuals and between individuals and their society.

In the chapter-opening quotation, Clarence Darrow asserts that law should be created to serve the public. As you are part of that public, the law is important to you. Those entering the world of business will find themselves subject to numerous laws and government regulations. A basic knowledge of these laws and regulations is beneficial—if not essential—to anyone contemplating a successful career in today’s business environment.

Although the law has various definitions, they all are based on the general observation that **law** consists of *enforceable rules governing relationships among individuals and between individuals and their society*. In some societies, these enforceable rules consist of unwritten principles of behavior, while in other societies they are set forth in ancient or contemporary law codes. In the United States, our rules consist of written laws and court decisions created by modern legislative and judicial bodies. Regardless of how such rules are created, they all have one feature in common: *they establish rights, duties, and privileges that are consistent with the values and beliefs of a society or its ruling group*.

In this introductory chapter, we look first at an important question for any student reading this text: How do business law and the legal environment affect business decision making? Next, we describe the basic sources of American law, the common law tradition, and some schools of legal thought. We conclude the chapter with a discussion of some general classifications of law.

Business Activities and the Legal Environment

As those entering the business world will learn, laws and government regulations affect all business activities—hiring and firing decisions, workplace safety, the manufacturing and marketing of products, and business financing, to name just a few. To make good business decisions, a basic understanding of the laws and regulations governing these activities is essential. Moreover, in today's setting, simply being aware of what conduct can lead to legal liability is not enough. Businesspersons must develop critical thinking and legal reasoning skills so that they can evaluate how various laws might apply to a given situation and determine the potential result of their course of action. Businesspersons are also under increasing pressure to make ethical decisions and to consider the consequences of their decisions for stockholders and employees (as will be discussed in Chapter 7).

Many Different Laws May Affect a Single Business Transaction

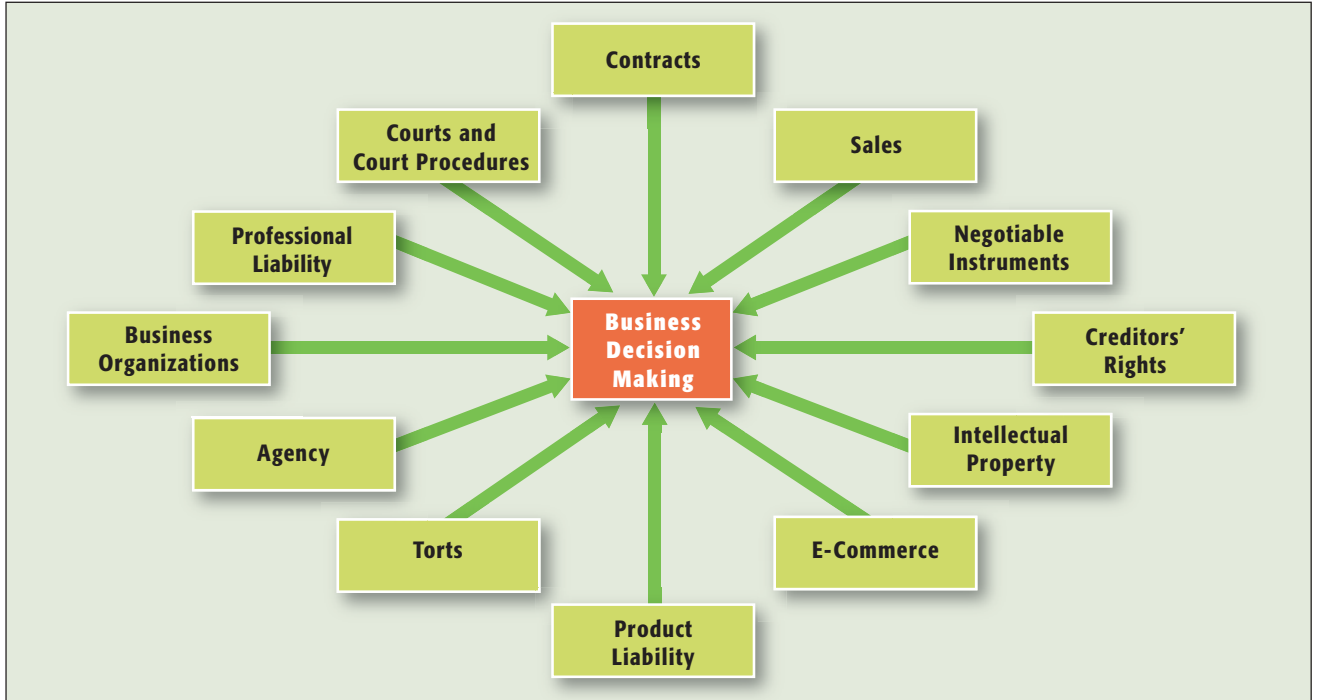
As you will note, each chapter in this text covers a specific area of the law and shows how the legal rules in that area affect business activities. Although compartmentalizing the law in this fashion facilitates learning, it does not indicate the extent to which many different laws may apply to just one transaction. This is where the critical thinking skills that you will learn throughout this book become important. You need to be able to identify the various legal issues, apply the laws that you learn about, and arrive at a conclusion on the best course of action.

EXAMPLE 1.1 Suppose that you are the president of NetSys, Inc., a company that creates and maintains computer network systems for other business firms. NetSys also markets software for internal computer networks. One day, Janet Hernandez, an operations officer for Southwest Distribution Corporation (SDC), contacts you by e-mail about a possible contract involving SDC's computer network. In deciding whether to enter into a contract with SDC, you need to consider, among other things, the legal requirements for an enforceable contract. Are the requirements different for a contract for services and a contract for products? What are your options if SDC **breaches** (breaks, or fails to perform) the contract? The answers to these questions are part of contract law and sales law.

Other questions might concern payment under the contract. How can you guarantee that NetSys will be paid? For example, if SDC pays with a check that is returned for insufficient funds, what are your options? Answers to these questions can be found in the laws that relate to negotiable instruments (such as checks) and creditors' rights. Also, a dispute may arise over the rights to NetSys's software, or there may be a question of liability if the software is defective. There may even be an issue as to whether you and Hernandez had the authority to make the deal in the first place. Resolutions of these questions may be found in the laws that relate to intellectual property, e-commerce, torts, product liability, agency, business organizations, or professional liability. ●

Finally, if any dispute cannot be resolved amicably, then the laws and the rules concerning courts and court procedures spell out the steps of a lawsuit. Exhibit 1.1 on the facing page illustrates the various areas of the law that may influence business decision making.

Breach The failure to perform a legal obligation.

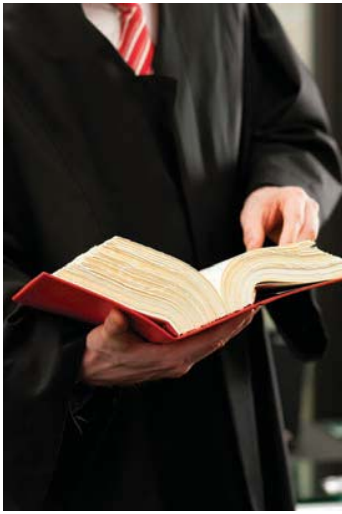
Exhibit 1.1 Areas of the Law That May Affect Business Decision Making**PREVENTING LEGAL DISPUTES**

To avoid potential legal disputes, be aware of the many different laws that may apply to a single business transaction. Become familiar with the laws that affect your business operations, but always consult an expert. Attorneys must keep up with the myriad rules and regulations that govern the conduct of business in the United States. When you need to choose an attorney, obtain recommendations from friends, relatives, or business associates who have had long-standing relationships with their attorneys. If that fails, contact your local or state bar association, or check FindLaw's online directory (at lawyers.findlaw.com).

Linking Business Law to the Six Functional Fields of Business

In all likelihood, you are taking a business law or legal environment course because you intend to enter the business world, though some of you may also plan to become full-time practicing attorneys. Many of you are taking other business school courses and may therefore be familiar with the functional fields of business listed below:

1. Corporate management.
2. Production and transportation.
3. Marketing.
4. Research and development.
5. Accounting and finance.
6. Human resource management.



(iKenon/Shutterstock.com)

Why is a basic understanding of the law important?

LEARNING OBJECTIVE 1

What are four primary sources of law in the United States?

Primary Source of Law A document that establishes the law on a particular issue, such as a constitution, a statute, an administrative rule, or a court decision.

Secondary Source of Law A publication that summarizes or interprets the law, such as a legal encyclopedia, a legal treatise, or an article in a law review.

Constitutional Law The body of law derived from the U.S. Constitution and the constitutions of the various states.

One of our goals in this text is to show how legal concepts can be useful for managers and businesspersons, whether their activities focus on management, marketing, accounting, or some other field. To that end, numerous chapters, including this chapter, conclude with a special feature called “*Linking Business Law to* [one of the six functional fields of business].” The link between the law and accounting is so significant that it is treated in an entire chapter (Chapter 34).

The Role of the Law in a Small Business

Some of you may end up working in a small business or even owning and running one yourselves. The small business owner/operator is the most general of managers. When you seek additional financing, you become a finance manager. When you “go over the books” with your bookkeeper, you become an accountant. When you decide on a new advertising campaign, you are suddenly the marketing manager. When you hire employees and determine their salaries and benefits, you become a human resources manager.

Just as the functional fields of business are linked to the law, so too are all of these different managerial roles that a small-business owner/operator must perform. Exhibit 1.2 on the facing page shows some of the legal issues that may arise as part of the management of a small business. Large businesses face most of these issues, too.

Sources of American Law

There are numerous sources of American law. **Primary sources of law**, or sources that establish the law, include the following:

- The U.S. Constitution and the constitutions of the various states.
- Statutes, or laws, passed by Congress and by state legislatures.
- Regulations created by administrative agencies, such as the federal Food and Drug Administration.
- Case law (court decisions).

We describe each of these important primary sources of law in the following pages. (See the appendix at the end of this chapter for a discussion of how to find statutes, regulations, and case law.)

Secondary sources of law are books and articles that summarize and clarify the primary sources of law. Legal encyclopedias, compilations (such as *Restatements of the Law*, which summarize court decisions on a particular topic), official comments to statutes, treatises, articles in law reviews published by law schools, and articles in other legal journals are examples of secondary sources of law. Courts often refer to secondary sources of law for guidance in interpreting and applying the primary sources of law discussed here.

Constitutional Law

The federal government and the states have separate written constitutions that set forth the general organization, powers, and limits of their respective governments. **Constitutional law** is the law as expressed in these constitutions.

The U.S. Constitution is the supreme law of the land. As such, it is the basis of all law in the United States. A law in violation of the U.S. Constitution, if challenged, will be declared unconstitutional and will not be enforced, no matter what its source. Because of its paramount importance in the American legal system, we discuss the U.S. Constitution at length in Chapter 2 and present the complete text of the U.S. Constitution in Appendix B.

Exhibit 1.2 Linking Business Law to the Management of a Small Business



The Tenth Amendment to the U.S. Constitution reserves to the states all powers not granted to the federal government. Each state in the union has its own constitution. Unless it conflicts with the U.S. Constitution or a federal law, a state constitution is supreme within that state's borders.

Statutory Law

Statutory Law The body of law enacted by legislative bodies (as opposed to constitutional law, administrative law, or case law).

Laws enacted by legislative bodies at any level of government, such as the statutes passed by Congress or by state legislatures, make up the body of law generally referred to as **statutory law**. When a legislature passes a statute, that statute ultimately is included in

Citation A reference to a publication in which a legal authority—such as a statute or a court decision—or other source can be found.

Ordinance A regulation enacted by a city or county legislative body that becomes part of that state’s statutory law.

Uniform Law A model law developed by the National Conference of Commissioners on Uniform State Laws for the states to consider enacting into statute.

Administrative Law The body of law created by administrative agencies in order to carry out their duties and responsibilities.

Administrative Agency A federal or state government agency created by the legislature to perform a specific function, such as to make and enforce rules pertaining to the environment.

the federal code of laws or the relevant state code of laws. Whenever a particular statute is mentioned in this text, we usually provide a footnote showing its **citation** (a reference to a publication in which a legal authority—such as a statute or a court decision—or other source can be found). In the appendix following this chapter, we explain how you can use these citations to find statutory law.

Statutory law also includes local **ordinances**—statutes (laws, rules, or orders) passed by municipal or county governing units to administer matters not covered by federal or state law. Ordinances commonly have to do with city or county land use (zoning ordinances), building and safety codes, and other matters affecting only the local governing unit.

A federal statute, of course, applies to all states. A state statute, in contrast, applies only within the state’s borders. State laws thus may vary from state to state. No federal statute may violate the U.S. Constitution, and no state statute or local ordinance may violate the U.S. Constitution or the relevant state constitution.

Uniform Laws During the 1800s, the differences among state laws frequently created difficulties for businesspersons conducting trade and commerce among the states. To counter these problems, a group of legal scholars and lawyers formed the National Conference of Commissioners on Uniform State Laws (NCCUSL, online at www.nccusl.org) in 1892 to draft **uniform laws** (“model statutes”) for the states to consider adopting. The NCCUSL still exists today and continues to issue uniform laws: it has issued more than two hundred uniform acts since its inception.

Each state has the option of adopting or rejecting a uniform law. *Only if a state legislature adopts a uniform law does that law become part of the statutory law of that state.* Furthermore, a state legislature may choose to adopt only part of a uniform law or to rewrite the sections that are adopted. Hence, even though many states may have adopted a uniform law, those laws may not be entirely “uniform.”

The Uniform Commercial Code (UCC) One of the most important uniform acts is the Uniform Commercial Code (UCC), which was created through the joint efforts of the NCCUSL and the American Law Institute.¹ The UCC was first issued in 1952 and has been adopted in all fifty states,² the District of Columbia, and the Virgin Islands. The UCC facilitates commerce among the states by providing a uniform, yet flexible, set of rules governing commercial transactions. Because of its importance in the area of commercial law, we cite the UCC frequently in this text. We also present excerpts of the UCC in Appendix C. (For a discussion of the creation of the UCC, see the *Landmark in the Law* feature on page 385 in Chapter 15.)

Administrative Law

Another important source of American law is **administrative law**, which consists of the rules, orders, and decisions of administrative agencies. An **administrative agency** is a federal, state, or local government agency established to perform a specific function. Rules issued by various administrative agencies now affect almost every aspect of a business’s operations, including the firm’s capital structure and financing, its hiring and firing procedures, its relations with employees and unions, and the way it manufactures and markets its products. (See this chapter’s *Linking Business Law to Management* feature on page 20.)

1. This institute was formed in the 1920s and consists of practicing attorneys, legal scholars, and judges.
2. Louisiana has adopted only Articles 1, 3, 4, 5, 7, 8, and 9.

“Laws and institutions, like clocks, must occasionally be cleaned, wound up, and set to true time.”

Henry Ward Beecher, 1813–1887
(American clergyman
and abolitionist)

Enabling Legislation A statute enacted by Congress that authorizes the creation of an administrative agency and specifies the name, composition, purpose, and powers of the agency being created.

Adjudicate To render a judicial decision. Adjudication is the trial-like proceeding in which an administrative law judge hears and resolves disputes involving an administrative agency’s regulations.

Administrative Process The procedure used by administrative agencies in administering the law.

Rulemaking The process by which an administrative agency formally adopts a new regulation or amends an old one.

Legislative Rule An administrative agency’s rule that carries the same weight as a congressionally enacted statute.

Federal Agencies At the national level, numerous *executive agencies* exist within the cabinet departments of the executive branch. For example, the Food and Drug Administration is within the U.S. Department of Health and Human Services. Executive agencies are subject to the authority of the president, who has the power to appoint and remove their officers.

There are also major *independent regulatory agencies* at the federal level, including the Federal Trade Commission, the Securities and Exchange Commission, and the Federal Communications Commission. The president’s power is less pronounced in regard to independent agencies, whose officers serve for fixed terms and cannot be removed without just cause.

State and Local Agencies There are administrative agencies at the state and local levels as well. Commonly, a state agency (such as a state pollution-control agency) is created as a parallel to a federal agency (such as the Environmental Protection Agency). Just as federal statutes take precedence over conflicting state statutes, so do federal agency regulations take precedence over conflicting state regulations. Because the rules of state and local agencies vary widely, we focus here exclusively on federal administrative law.

Agency Creation Because Congress cannot possibly oversee the actual implementation of all the laws it enacts, it must delegate such tasks to others, especially when the legislation involves highly technical matters, such as air and water pollution. Congress creates an administrative agency by enacting **enabling legislation**, which specifies the name, composition, purpose, and powers of the agency being created.

EXAMPLE 1.2 The Federal Trade Commission (FTC) was created in 1914 by the Federal Trade Commission Act.³ This act prohibits unfair and deceptive trade practices. It also describes the procedures the agency must follow to charge persons or organizations with violations of the act, and it provides for judicial review (review by the courts) of agency orders. Other portions of the act grant the agency powers to “make rules and regulations for the purpose of carrying out the Act,” conduct investigations of business practices, obtain reports from interstate corporations concerning their business practices, investigate possible violations of the act, publish findings of its investigations, and recommend new legislation. The act also empowers the FTC to hold trial-like hearings and to **adjudicate** (resolve judicially) certain kinds of disputes involving its regulations. ●

Note that the powers granted to the FTC incorporate functions associated with the legislative branch of government (rulemaking), the executive branch (investigation and enforcement), and the judicial branch (adjudication). Taken together, these functions constitute **administrative process**, which is the administration of law by administrative agencies.

Rulemaking A major function of an administrative agency is **rulemaking**—formulating new regulations. When Congress enacts an agency’s enabling legislation, it confers the power to make **legislative rules**, or substantive rules, which are legally binding on all businesses. The Administrative Procedure Act of 1946 (APA)⁴ imposes strict procedural requirements that agencies must follow in legislative rulemaking and other functions. **EXAMPLE 1.3** The Occupational Safety and Health Act of 1970 authorized the Occupational Safety and Health Administration (OSHA) to develop and issue rules governing safety in the workplace. When OSHA wants to formulate rules regarding safety in the steel industry, it has to follow specific procedures outlined by the APA. ●

3. 15 U.S.C. Sections 45–58.

4. 5 U.S.C. Sections 551–706.