

SEVENTEENTH EDITION

BUSINESS LAW:

The Ethical, Global, and
E-Commerce Environment

ARLEN W. LANGVARDT

A. JAMES BARNES

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all of Indiana University





BUSINESS LAW: THE ETHICAL, GLOBAL, AND E-COMMERCE ENVIRONMENT, SEVENTEENTH EDITION

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The Authors

Arlen W. Langvardt, Professor of Business Law and the Graf Family Professor, joined the faculty of Indiana University's Kelley School of Business in 1985. He served as chair of the Department of Business Law and Ethics from 2000 to 2009 and resumed that role in 2016. Professor Langvardt also serves as Associate Dean of Academics at the Kelley School. He earned a B.A. (*summa cum laude*) from Hastings College and a J.D. (with distinction) from the University of Nebraska. While in private law practice before becoming a member of the Kelley School faculty, he tried cases in a variety of legal areas, including tort, contract, constitutional, and miscellaneous commercial cases.

Professor Langvardt has received numerous teaching awards at the graduate and undergraduate levels. His graduate teaching assignments have included legal environment, ethical leadership, and critical thinking courses, as well as specialized courses dealing with marketing law, intellectual property management, and legal issues for artists and arts organizations. He has also taught various undergraduate business law courses. Professor Langvardt's wide-ranging research interests are reflected in his articles on intellectual property, commercial speech, defamation, and health care-related subjects. The list of journals in which his articles have appeared includes the *American Business Law Journal*, the *Minnesota Law Review*, the *Harvard Journal of Sports & Entertainment Law*, the *University of Pennsylvania Journal of Business Law*, the *Minnesota Journal of Law, Science & Technology*, the *Fordham Intellectual Property, Media & Entertainment Law Journal*, and the *Journal of Marketing*. Professor Langvardt has won several research awards from professional associations, including the Holmes/Cardozo and Hoerber Awards from the Academy of Legal Studies in Business and the Ladas Memorial Award from the U.S. Trademark Association.

A. James Barnes, Professor of Public and Environmental Affairs and Professor of Law at Indiana University–Bloomington (IU), previously served as Dean of IU's School of Public and Environmental Affairs and has taught business law at IU and Georgetown University. His teaching interests include commercial law, environmental law, alternative dispute resolution, law and public policy, and ethics and the public official. He is the co-author of several leading books on business law.

From 1985 to 1988, Professor Barnes served as the deputy administrator of the U.S. Environmental Protection Agency (EPA). From 1983 to 1985, he was the EPA general counsel and in the early 1970s served as chief of staff to the first administrator of EPA. Professor Barnes also served as a trial attorney in the U.S. Department of Justice and as general counsel of the U.S. Department of Agriculture. From 1975 to 1981, he had a commercial and environmental law practice with the firm of Beveridge and Diamond in Washington, D.C.

Professor Barnes is a Fellow of the National Academy of Public Administration, and a Fellow in the American College of Environmental Lawyers. He served as chair of the Environmental Protection Agency's Environmental Finance Advisory Board and as a member of the U.S. Department of Energy's Environmental Management Advisory Board. From 1992 to 1998, he was a member of the Board of Directors of the Long Island Lighting Company (LILCO). Professor Barnes received his B.A. from Michigan State University and a J.D. (*cum laude*) from Harvard Law School.

Jamie Darin Prenkert, Professor of Business Law and the Charles M. Hewitt Professor, joined the faculty of Indiana University's Kelley School of Business in 2002. He served as chair of the Department of Business Law and Ethics from 2014 to 2016 and currently serves as an Associate Vice Provost for Faculty and Academic Affairs for the Indiana University–Bloomington campus. Professor Prenkert is a former editor in chief of the *American Business Law Journal* and a member of the executive committee of the Academy of Legal Studies in Business. His research focuses on issues of employment discrimination and the human rights

obligations of transnational corporations. He has published articles in the *American Business Law Journal*, the *North Carolina Law Review*, the *Berkeley Journal of Employment and Labor Law*, and the *University of Pennsylvania Journal of International Law*, among others. He also coedited a volume titled *Law, Business and Human Rights: Bridging the Gap*. Professor Prekert has taught undergraduate and graduate courses, both in-residence and online, focusing on the legal environment of business, employment law, law for entrepreneurs, business and human rights, and critical thinking. He is a recipient of the Harry C. Sauvain Undergraduate Teaching Award and the Kelley Innovative Teaching Award.

Professor Prekert earned a B.A. (*summa cum laude*) from Anderson University and a J.D. (*magna cum laude*) from Harvard Law School. Prior to joining the faculty of the Kelley School, he was a senior trial attorney for the U.S. Equal Employment Opportunity Commission.

Martin A. McCrory, Associate Professor of Business Law, joined the faculty in 1995. He is also the former Vice Provost for Educational Inclusion and Diversity at Indiana University's Bloomington campus. As such, he was the chief diversity officer for Indiana University–Bloomington. Additionally, he was the university's Associate Vice President of Academic Support and Diversity for all eight campuses. Prior to his academic career, he was a litigation attorney with the U.S. Department of Justice (the Environment and Natural Resources Division). During his tenure at the Department of Justice, he received the Department's Special Commendation Award for Outstanding Service. Professor McCrory was also a senior attorney with the Natural Resources Defense Council and later its Director of Public Health. He was a member of the Environmental Protection Agency's seven-member National

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Environmental Justice Task Force. He also sat on the Board of Directors for Friends of the Earth and chaired the organization's litigation committee. He has co-authored or edited several federal and state bills, has testified before Congress, and has worked with the White House on environmental legislation and regulations.

Focusing on environmental law (and environmental justice), sustainable development, corporations (and business organizations), contracts, secured transactions, commercial paper, and negotiations, Professor McCrory has taught courses in the graduate and undergraduate programs. He also served as chair of the Kelley School's Undergraduate Honors Program and was the Arcelor-Mittal Faculty Fellow. He has won numerous teaching awards. Professor McCrory's articles have been published in journals such as the *American Business Law Journal*, the *Stanford Environmental Law Review*, the *UCLA Journal of Environmental Law and Policy*, the *Vermont Law Review*, and the *University of Colorado Law Review*.

Joshua E. Perry, Associate Professor of Business Law and Ethics and Glaubinger Chair for Undergraduate Leadership, joined the faculty of Indiana University's Kelley School of Business in 2009. He teaches graduate and undergraduate courses on business ethics, critical thinking, and the legal environment of business. Since 2016, he has served as faculty chair of the Undergraduate Program at Kelley. Professor Perry earned a B.A. (*summa cum laude*) from Lipscomb University, a Masters of Theological Studies from the Vanderbilt University Divinity School, and a J.D. from the Vanderbilt University Law School. Prior to joining Kelley, he was on faculty at the Center for Biomedical Ethics and Society at Vanderbilt University Medical Center. In that role, he taught medical ethics in the School of Medicine and professional responsibility in the Law School, and served as a clinical ethicist in both the adult and children's hospitals at Vanderbilt. Before entering academe, he practiced law as a civil litigator in Nashville, Tennessee.

Professor Perry's award-winning scholarship explores legal, ethical, and public policy issues in the life science, medical device, and health care industries, as well as in the business of medicine. His expertise has been featured in *The New York Times*, *USA Today*, *Wired*, *Huffington Post*, and *Salon*. In 2015, he was invited to join the editorial board for the *Journal of Business Ethics* as the Business Law Section Editor. His articles and essays have appeared in a variety of journals, including the *American Business Law Journal*, the *Notre Dame Journal of Law, Ethics, and Public Policy*, the *Journal of Law, Medicine and Ethics*, the *University of Pennsylvania Journal of Law and Social Change*, and the *Syracuse Law Review*. In 2013, Professor Perry received the Distinguished Junior Faculty Award from the Academy of Legal Studies in Business in recognition

of outstanding early career achievement. He has received numerous awards for teaching excellence and teaching innovation.

Preface

This is the 17th Edition (and the 23rd overall edition) of a business law text that first appeared in 1935. Throughout its more than 80 years of existence, this book has been a leader and an innovator in the fields of business law and the legal environment of business. One reason for the book's success is its clear and comprehensive treatment of the standard topics that form the traditional business law curriculum. Another reason is its responsiveness to changes in these traditional subjects and to new views about that curriculum. In 1976, this textbook was the first to inject regulatory materials into a business law textbook, defining the "legal environment" approach to business law. Over the years, this textbook has also pioneered by introducing materials on business ethics, corporate social responsibility, global legal issues, and e-commerce law. The 17th Edition continues to emphasize change by integrating these four areas into its pedagogy.

Appendix B: The Uniform Commercial Code

The Uniform Commercial Code, or UCC, was developed by the American Law Institute (ALI) and the National Conference of Commissioners on Uniform State Laws (NCCUSL) as a body of rules intended to make the application of law to commercial transactions consistent across fifty states. The UCC has been adopted in whole by all but one state legislature, Louisiana, which adopted only certain sections. Such widespread use of the UCC, even with the minor deviations some jurisdictions make from the official code, makes possible more efficient and more confident transactions across state lines. The UCC can be accessed here: <https://www.law.cornell.edu/ucc>.

Continuing Strengths

The 17th Edition continues the basic features that have made its predecessors successful. They include:

- *Comprehensive coverage.* We believe that the text continues to excel both in the number of topics it addresses and the depth of coverage within each topic. This is true not only of the basic business law subjects that form the core of the book, but also of the regulatory and other subjects that are said to constitute the "legal environment" curriculum.
- *Style and presentation.* This text is written in a style that is direct, lucid, and organized, yet also relatively relaxed and conversational. For this reason, we often have been able to cover certain topics by assigning them as reading without lecturing on them. As always, key points and terms are emphasized; examples, charts, figures, and concept summaries are used liberally; and elements of a claim and lists of defenses are stated in numbered paragraphs.
- *Case selection.* We try very hard to find cases that clearly illustrate important points made in the text, that should interest students, and that are fun to teach. Except when older decisions are landmarks or continue to provide the best illustrations of particular concepts, we also try to select recent cases. Our collective in-class teaching experience with recent editions has helped us determine which of those cases best meet these criteria.
- *AACSB curricular standards.* The AACSB's curriculum standards say that both undergraduate and MBA curricula should include ethical and global issues; should address the influence of political, social, legal and regulatory, environmental, and technological issues on business; and should address the impact of demographic diversity on organizations. In addition to its obvious emphasis on legal and regulatory issues, the book contains considerable material on business ethics, the legal environment for international business, and environmental law, as well as Ethics in Action boxes. By putting legal changes in their social, political, and economic context, several text chapters enhance students' understanding of how political and social changes influence business and the law. For instance, [Chapter 1](#) considers such influences on the development of the

common law; [Chapter 3](#) includes very recent, high-profile Supreme Court decisions on major constitutional issues; [Chapter 4](#) addresses ethical issues that are at once current and timeless; [Chapters 42, 43, and 45](#) explore such topics as the current controversy over corporate inversions (American corporations moving income to countries with more favorable tax rates), the current debate regarding amounts of compensation paid to corporate CEOs and directors, and the recent mortgage lending crisis; and [Chapter 51](#) explores the key subject of workplace diversity in its discussion of employment discrimination law. Finally, the 17th Edition examines many specific legal issues involving e-commerce and the Internet.

Important Changes in This Edition

For this edition, we welcome Joshua E. Perry, our Indiana University colleague, to the author team. He has made significant contributions to the creation of the 17th Edition and will continue to play a key authorship role in future editions.

For this edition, longtime co-author Arlen Langvardt has moved into the lead author role. This move continues the text's tradition of reliance on an author team with extensive teaching experience in a broad range of required and elective course. As always, the author team utilizes its experience to ensure that the text features comprehensive, up-to-date content, cases, and examples of current interest to students.

In this edition, there are many new cases, the text has been updated to include recent developments, and a significant number of problem cases have been replaced with new ones. The book continues to include both hypothetical examples and real-life cases so that we can target particular issues that deserve emphasis. Key additions for the 17th Edition include the following:

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Chapter 1

- New case with engaging facts flowing out of an injury to a patron by a flying hot dog at a Major League Baseball game, illustrating case law reasoning.
- Case that garnered significant mainstream and social media coverage in 2017 for illustrating the tremendous stakes that sometimes accompany the judicial interpretation of ambiguous legislative language (in this instance, the absence of an Oxford comma).

Chapter 2

- New chapter-opening problem dealing with jurisdiction, power of removal, discovery, and trial-related matters.
- Discussion of recent calls for legislative action to restrict the use of arbitration in certain settings.
- *Tyson Foods, Inc. v. Bouaphakeo*, an important class-action decision issued by the Supreme Court in 2016.

Chapter 3

- Discussion of *Reed v. Gilbert* and *Expressions Hair Design v. Schneiderman*, important First Amendment decisions handed down by the Supreme Court in 2015 and 2017, respectively.
- Discussion of the *government speech* doctrine.
- *Matal v. Tam*, the 2017 decision in which the Supreme Court struck down, for First Amendment reasons, the federal statutory provision that allowed the U.S. Patent & Trademark Office to bar a trademark from registered status if the trademark was disparaging to individuals or groups.
- *Obergefell v. Hodges*, the landmark 2015 decision in which the Supreme Court invoked due process and equal protection principles in holding that same-sex couples cannot be denied the fundamental right of marriage.
- Updated discussion of affirmative action issues in light of *Fisher v. University of Texas*, decided by the Supreme Court in 2016.

Chapter 4

- Revised discussion of all ethical theories, including addition of virtue theory and exploration of profit maximization in the context of shareholder theory.
- Revised discussion of what it means to “lead ethically.”

Chapter 5

- *Shaw v. United States*, a 2017 Supreme Court decision dealing with criminal intent and with the importance of focusing on the particular elements required by a criminal statute.
- Discussion of *Utah v. Strieff*, a 2016 Supreme Court decision illustrating the Court’s tendency to narrow the application of the exclusionary rule.
- *RJR Nabisco, Inc. v. European Community*, a 2016 decision in which the Supreme Court held that RICO’s substantive provisions have some extra-territorial application but that the statute’s civil damages remedy for private plaintiffs does not apply extra-territorially.

Chapter 6

- New chapter-opening problem that picks up on the facts in the chapter-opening problem in [Chapter 2](#) and goes on to address tort issues.
- Updated [Figure 2](#) that discusses the *O’Bannon* decision and the reactions of some colleges and universities.
- New case dealing with battery and with the application of a shopkeepers’ statute to protect a store against false imprisonment liability to a suspected shoplifter.
- 2016 Oregon Supreme Court decision dealing with whether statements in an online review were actionable false statements of supposed fact for purposes of a defamation claim or whether the statements were, instead, protected opinion.
- New case dealing with damages in nuisance cases.

Chapter 7

- New case dealing with whether employers whose employees are exposed to asbestos in their work have a duty to take reasonable steps to lessen that likelihood that members of those employees’ households are exposed to asbestos when the employees go home.
- New case dealing with whether negligence per se can apply when the defendant violated a local housing code rather than a state or federal statute.
- New case dealing with the bystander variety of claims for negligent infliction of emotional distress.
- New case dealing with whether an otherwise lawful fireworks display is an abnormally dangerous activity to which strict liability should attach.

Chapter 8

- *Impression Products, Inc. v. Lexmark International*, a 2017 Supreme Court decision dealing with whether the exhaustion doctrine applies when the first sale of an item covered by a patent occurred outside the United States.
- Discussion of other recent Supreme Court decisions on patent issues.
- *Star Athletica, LLC v. Varsity Brands, Inc.*, a 2017 decision in which the Supreme Court held that designs incorporated into items of clothing may be copyrightable pictorial or graphic works if the designs are separable from the non-copyrightable useful articles (the items of clothing).
- Discussion of *Matal v. Tam*, the 2017 Supreme Court decision in which the Supreme Court struck down, for First Amendment reasons, a statutory provision that allowed the U.S. Patent and Trademark Office to refuse to register—or cancel the registration of—a trademark was disparaging to individuals or groups. (The case is

included in [Chapter 3](#).)

- Discussion of *Matal v. Tam*'s apparently controlling legal effect regarding recent years' controversy over whether the Washington Redskins trademark should continue to hold registered status.
- Discussion of the Defend Trade Secrets Act, which Congress enacted in 2016.

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- *POM Wonderful LLC v. Coca-Cola Co.*, in which the Supreme Court held that the Food and Drug Administration's regulatory oversight over certain product labels did not preclude a private party's Lanham Act § 43(a) lawsuit regarding supposed false advertising on the label of the defendant's product.

[Chapter 9](#)

- New case to show how contracts can be based on the context of the interactions of the parties as much as their writings.
- Promissory estoppel case based on a literal life-and-death situation.

[Chapter 10](#)

- Case applying the modern common law standard of definiteness for offers.
- Arising in the context of the terms and conditions for a ride-sharing app, a case that explores which terms in an offer can ultimately bind an offeree.
- Replacing the District Court opinion in *Kolodziej v. Mason* with the opinion of the Circuit Court of Appeals, which more concisely discusses what constitutes a reward offer.

[Chapter 11](#)

- Case on the objective standard of intent to accept in the context of an Internet commerce dispute.
- Case to illustrate that the traditional mirror image rule still is applied in common law settings.
- A revised UCC § 2–207 flowchart, which accounts for the majority rules in situations not explicitly covered in the language of the Code.

[Chapter 12](#)

- *Franchise Holding II LLC v. Huntington Restaurants Group, Inc.*, an earlier version of which was included in the 16th Edition to illustrate the typical judicial approach to concerns about adequacy of consideration, is updated with a subsequent opinion from the proceedings, a clearer statement of the facts, and a more concise treatment of the adequacy issue.
- New cases to illustrate bargained-for exchange and the common law approach to contract modification.

[Chapter 13](#)

- New cases dealing with unilateral mistake and duress.

[Chapter 14](#)

- New case dealing with whether a parent can bind a minor child to a pre-injury liability waiver.

[Chapter 15](#)

- New case exploring substantive unconscionability in the context of an Uber driver agreement.

[Chapter 16](#)

- New case analyzing the statute of frauds in the context of a winning lottery ticket, promises to share the

proceeds, and love gone wrong.

- New case exploring the parol evidence rule's application to verbal promises to fund an international student's three-year scholarship.

Chapter 17

- New case dealing with anti-assignment clauses under the UCC.
- New case dealing with limitations on third-party-beneficiary status for members of the public.

Chapter 18

- New case illustrating the creation and effect of a condition precedent.
- New case starring famous boxing promoter Don King and featuring an unsuccessful claim of impossibility.

Chapter 19

- New case dealing with whether a merchant could transfer voidable title to a subsequent buyer in the ordinary course of business.

Chapter 20

- New case dealing with the alternative tests used by courts in breach of implied warranty of merchantability cases involving food.
- New case dealing with negligent design issues in litigation involving motor vehicles and with the disagreement among courts over whether to recognize the crashworthiness doctrine in such cases.
- New case dealing with whether a limited remedy that called for repair or replacement failed of its essential purpose, thus entitling the plaintiff to obtain damages from the defendant in a breach of express warranty case.

Chapter 21

- New case dealing with considerations involved in determining whether a buyer acted reasonably to revoke acceptance.

Chapter 22

- New case regarding the enforceability of an attempted limitation of remedies.

Chapter 23

- New case in which the court concluded that money secreted in the wall of a home belonged to the estate of the person who had placed the money there, rather than to the current owner of the home.

Chapter 24

- New case illustrating partition issues involved in a joint tenancy.
- New case dealing with an easement by necessity.

Chapter 25

- New case exploring what constitutes a disfavored exculpatory clause in a lease.
- New case dealing with abandonment of a lease and its effect on the duty to mitigate damages.

Chapter 26

- New case illustrating the rule regarding testamentary capacity.

Chapter 27

- Updated [Figure 1](#) and updated Ethics in Action box, with each addressing issues regarding the fate of the Affordable Care Act.
- New cases dealing with the scope and effect of exclusion clauses in property insurance and liability insurance policies.

Chapter 28

- New case in which a lienholder was held liable for damages to the owner of a vehicle sold at auction to satisfy the lien, where the lien was unlawful because the lienholder sought to include, within the lien, charges that a controlling statute did not authorize for inclusion.

Chapter 29

- New case dealing with whether information that appeared on a sales ticket met the requirements for a security agreement.

Chapter 31

- New case in which the court held that a promissory note that evidenced a revolving line of credit extended to the borrower was not a negotiable instrument.

Chapter 32

- New case in which the court held that one who took a postdated check did so in good faith and could qualify as a holder in due course.

Chapter 33

- New case dealing with the obligation of a party who signs a note as an accommodation maker.
- New case in which an individual deposited checks containing false endorsements to a corporate account and was held liable for breach of the transfer warranties he made in depositing the checks.

Chapter 34

- New case in which a bank was held liable for cashing eight checks that contained forged drawer's signatures and then charged them against the customer's account.
- New case in which the court concluded that a "void after 90 days" notation on a check was not the legal equivalent of a stop-payment order.
- New case in which a dozen NFL players failed in their attempt to recover losses sustained when their agent diverted funds from checking accounts maintained in their names because the players failed to provide timely notice to the bank where the accounts were held.
- Revised text material on electronic transfers.

Chapter 35

- Updated discussion of fiduciary duty to help emphasize the extent of commitment associated with being a fiduciary.
- Updated discussion clarifying and delimiting an agent's apparent authority.
- New case discussing how the duty of nondisclosure and confidentiality continues after the agency ends.

- New case discussing whether a principal is liable under actual and apparent authority for an assault upon a third party by a terminated employee.

Chapter 36

- New case discussing the breach of an implied warranty of authority by a corporate president.
- New case involving *respondeat superior* and direct liability.

Chapter 37

- New case in which the court found that a business involved in a large broadband infrastructure construction project was not a purported partner with another company despite federal documentation and a website where the companies referred to themselves as partners.

Chapter 38

- New case involving an interpretation of a partnership agreement to determine whether active partners were entitled to compensation absent the agreement of the passive partners.

Chapter 39

- New case involving dissociation of partner and dissolution of partnership without the benefit of a partnership agreement.

Chapter 40

- New case demonstrating the importance of an LLC operating agreement in determining whether the majority of the company's members could continue the business after dissolution.

Chapter 41

- New case dealing with a corporation's discussion of "doing business" in a state and the prohibition of a lawsuit prior to acquisition of a certificate of authority.

Chapter 42

- New case in which the court discusses the definition of *promoter* and discusses promoter liability relative to the adoption of preincorporation contracts.

Chapter 43

- New case dealing with the business judgment rule relative to a merger, as well as voting rights, good faith, and fiduciary duty.

Chapter 44

- New case describing the limits of a shareholder's right of inspection vis-à-vis the intended use of the information once gathered.
- New case in which the federal circuit court discusses the right of minority shareholders to sue majority shareholders in regard to a "freeze-out" merger.

Chapter 45

- New federal circuit case involving the application of the family resemblance test to determine whether a promissory note is a security within the meaning of federal securities law.

Chapter 46

- New case discussing the elements of negligence as they apply to a financial audit.
- New federal circuit case discussing the primary intent rule and the liability of a major accounting firm to third parties.

Chapter 47

- Discussion of uses of the Congressional Review Act in the early months of the Trump administration to undo certain recently promulgated administrative agency regulations.
- Discussion of *Michigan v. Environmental Protection Agency*, a 2015 decision in which the Supreme Court struck down certain EPA regulations as unreasonable interpretations of the Clean Air Act.

Chapter 48

- *POM Wonderful, LLC v. Federal Trade Commission*, a recent D.C. Circuit decision dealing with the FTC's approach to allegedly deceptive health-related claims, the types of substantiation that may be required to support such claims, and the remedial orders that may be issued by the FTC in deceptive advertising cases.

Chapter 49

- Updated Global Business Environment box that discusses the apparent tendency of European Union regulators to be more aggressive than U.S. regulators with regard to firms with especially dominant market shares.
- Discussion of the trend toward treating more tying arrangements under the rule of reason.
- *Suture Express, Inc. v. Owens & Minor Distribution, Inc.*, a 2017 Tenth Circuit decision dealing with the market power element of tying arrangement cases and offering a reminder that the claimed harm must be to competition, not merely to a competitor.

Chapter 50

- *North Carolina State Board of Dental Examiners v. FTC*, a 2015 decision in which the Supreme Court outlined what is necessary for the state-action exemption to apply.

Chapter 51

- Expanded and updated discussion of the developments in Title VII jurisprudence related to whether sexual orientation and gender identity discrimination are sex discrimination.
- New case dealing with the bona fide occupational qualification defense under Title VII.
- Case exploring the parties' duty to engage in the interactive process in good faith when determining the possibility of accommodation under the Americans with Disabilities Act as amended by the ADA Amendments Act of 2008.
- Two new cases to separately illustrate the objective standard of offensiveness and the affirmative defense to a supervisory hostile environment in supervisory sexual harassment claims under Title VII.
- New case exploring common law exceptions to the employment-at-will rule.

Chapter 52

- Revised material regarding climate change.
- Discussions of recent developments in the environmental area, such as the Clean Power Plan and the new rule on Waters of the United States.

- Related discussions of the extent to which such developments' ultimate status is uncertain as a result of efforts by the Trump administration to undo them.

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A Guided Tour

A New Kind of Business Law

The 17th Edition of *Business Law* continues to focus on global, ethical, and e-commerce issues affecting legal aspects of business. The new edition contains a number of new features as well as an exciting new supplements package. Please take a few moments to page through some of the highlights of this new edition.

OPENING VIGNETTES

Each chapter begins with an opening vignette that presents students with a mix of real-life and hypothetical situations and discussion questions. These stories provide a preview of issues addressed in the chapter and help to stimulate students' interest in the chapter content.

CHAPTER 2

THE RESOLUTION OF PRIVATE DISPUTES

Allnews Publishing Inc., a firm whose principal offices are located in Orlando, Florida, owns and publishes 33 newspapers. These newspapers are published in 21 different states of the United States. Among the Allnews newspapers is the *Snakebite Kattler*, the lone newspaper in the city of Snakebite, New Mexico. The *Kattler* is sold in print form only in New Mexico. However, many of the articles in the newspaper can be viewed by anyone with Internet access, regardless of his or her geographic location, by going to the Allnews website.

In a recent *Kattler* edition, an article appeared beneath the headline: "Local Business Executive Sued for Sexual Harassment." The accompanying article, written by a *Kattler* reporter (an Allnews employee), stated that a person named Phil Anderson was the defendant in the sexual harassment case. Besides being married, Anderson was a well-known homespun in the Snakebite area. He was active in his church and in community affairs in both Snakebite (his city of primary home) and Ptolemy, Michigan (where he and his wife have a summer home). A stock photo of Anderson, which had been used in connection with previous *Kattler* stories mentioning him, appeared alongside the story about the sexual harassment case. Anderson, however, was not the defendant in that case. He was named in the *Kattler* story because of an error by the *Kattler* reporter. The actual defendant in the sexual harassment case was a local business executive with a similar name: Phil Anderson.

Anderson plans to file a defamation lawsuit against Allnews because of the above-described falsehood in the *Kattler* story. He expects to seek \$500,000 in damages for harm to his reputation and for other related harms. In Chapter 6, you will learn about the substantive legal issues that will arise in Anderson's defamation case. For now, however, the focus is on important legal matters of a procedural nature.

Consider the following questions regarding Anderson's case as you read this chapter:

- Where, in a geographic sense, may Anderson properly file and pursue his lawsuit against Allnews?
- Must Anderson pursue his case in a state court, or does he have the option of litigating it in federal court?
- Assuming that Anderson files his case in a state court, what strategic option may Allnews exercise if it acts promptly?
- In the run-up to a possible trial in the case, what legal mechanisms may Anderson utilize in order to find out, on a partial basis, what the *Kattler* reporter and other Allnews employees would say in possible testimony at trial? Is Allnews entitled to do the same with regard to Anderson?
- If Anderson's case goes to trial, what types of trials are possible?
- Through what legal mechanisms might a court decide the case without a trial?
- Today, many legal disputes are decided through arbitration rather than through proceedings in court. Given the prevalence of arbitration these days, why isn't Anderson's case a candidate for arbitration?

10 LEARNING OBJECTIVES

After studying this chapter, you should be able to:

- | | |
|---|---|
| <p>2.1 Describe the basic structures of state court systems and the federal court system.</p> <p>2.2 Explain the difference between subject matter jurisdiction and in personam jurisdiction.</p> <p>2.3 Identify the major legal issues courts must resolve when deciding whether in personam jurisdiction exists with regard to a defendant in a civil case.</p> <p>2.4 Explain what is necessary in order for a federal court to have subject-matter jurisdiction over a civil case.</p> | <p>2.5 Identify the major steps in a civil lawsuit's progression from beginning to end.</p> <p>2.6 Describe the different forms of discovery available to parties in civil cases.</p> <p>2.7 Explain the differences among the major forms of alternative dispute resolution.</p> |
|---|---|

LEARNING OBJECTIVES

Active Learning Objectives open each chapter and are tied to AACSB standards. LOs inform you of specific outcomes you should have after finishing the chapter. Icons reference each LO's reference within the chapter.

CYBERLAW IN ACTION

In recent years, the widespread uses of e-mail and information presented and stored in electronic form have raised questions about whether, in civil litigation, an opposing party's e-mails and electronic information are discoverable to the same extent as conventional written or printed documents. With the Federal Rules of Civil Procedure and comparable discovery rules applicable in state courts having been revised prior to the explosion in e-mail use and online activities, the rules' references to "documents" contemplated traditional on-paper forms. Courts, however, frequently interpreted "documents" broadly so as to include e-mails and certain electronic communications within the scope of discoverable forms.

Even so, greater clarity regarding discoverability seemed warranted—especially as to electronic material that might be less readily identifiable than e-mails as "documents." Various states responded by updating their discovery rules to include electronic communications within the list of discoverable forms. So did the Federal Judicial Conference, in Federal Rules of Civil Procedure amendments proposed by the Judicial Conference and ratified by Congress in 2006, "electronically stored information" became a separate category of discoverable material. The electronically stored information (ESI) category is broad enough to include e-mails and similar communications as well as electronic business records, web pages, dynamic databases, and a host of other material.

selection is made in light of the particular facts and circumstances. For instance, if requested e-mails appear only on backup tapes and searching those tapes would require the expenditures of significant time, money, and effort, are the requested e-mails "not reasonably accessible because of undue burden or costs?" Perhaps, but perhaps not. The court will rule, based on the relevant situation. The court may deny the discovery request, uphold it, or condition the granting of it on the requesting party's covering part or all of the costs incurred by the other party in retrieving the ESI and making it available. When a party fails or refuses to comply with a legitimate discovery request and the party seeking discovery of ESI has to secure a court order compelling the release of it, the court may order the noncompliant party to pay the attorney's fees incurred by the requesting party in causing the court order. If a noncompliant party disregards a court order compelling discovery, the court may assess attorney's fees against that party and/or impose ordinary or procedural sanctions such as barring that party from using certain evidence or from raising certain claims or defenses at trial.

The discussion suggests that discovery requests regarding ESI may be extensive and broad-ranging, with logistical issues often attending those requests. In recognition of those realities, the Federal Rules seek to head off disputes by requiring the parties to civil litigation to meet, at least through their attorneys, soon after the case is filed, the meeting's goal is development of a discovery plan that outlines the parties' intentions regarding ESI discovery and

CYBERLAW IN ACTION BOXES

In keeping with today's technological world, these boxes describe and discuss actual instances of how e-commerce and the Internet are affecting business law today.

ETHICS IN ACTION BOXES

These boxes appear throughout the chapters and offer critical thinking questions and situations that relate to ethical/public policy concerns.

Ethics In Action

The broad scope of discovery rights in a civil case will often enable a party to seek and obtain copies of e-mails, records, memos, and other documents and electronically stored information from the opposing party's files. In many cases, some of the most favorable evidence for the plaintiff will have come from the defendant's files, and vice versa. If your firm is, or is likely to be, a party in civil litigation and you know that the firm's files contain materials that may be damaging to the firm in the litigation, you may be faced with the temptation to alter or destroy the potentially damaging items. This temptation poses serious ethical dilemmas. Is it morally defensible to change the content of records or documents on an after-the-fact basis, in order to lessen the adverse effect on your firm in pending or probable litigation? Is document destruction or e-mail deletion ethically justifiable when you seek to protect your firm's interests in a lawsuit?

If the ethical concerns are not sufficient by themselves to make you keenly of involvement in document alteration or destruction, consider the potential legal consequences for yourself and your firm. The much publicized collapse of the Enron Corporation in 2001 led to considerable scrutiny of the actions of the Arthur Andersen firm, which had provided auditing and consulting services to Enron. An Andersen partner, David Duncan, pleaded guilty to a criminal obstruction of justice charge that accused him of having destroyed, or having instructed Andersen employees to destroy, certain Enron-related records in order to limit the Securities and Exchange Commission (SEC) investigation of Andersen. The U.S. Justice Department also launched an obstruction of justice prosecution against Andersen to impose appropriate sanctions on the document-destroying party. These sanctions may include such remedies as court orders prohibiting the document-destroyer from raising certain claims or defenses in the lawsuit, instructions to the jury regarding the wrongful destruction of the documents, and court orders that the document-destroyer pay certain attorney's fees to the opposing party.

What about the temptation to refuse to cooperate regarding an opposing party's lawful request for discovery regarding material in one's possession? Although a refusal to cooperate seems less blameworthy than destruction or alteration of documents, extreme instances of recalcitrance during the discovery process may cause a party to experience adverse consequences similar to those imposed on parties who destroy or alter documents. Litigation involving Ronald Perleman and the Morgan Stanley firm provides an illustration. Perleman had sued Morgan Stanley on the theory that the investment bank participated with Sunbeam Corp. in a fraudulent scheme that supposedly induced him to sell Sunbeam his stake in another firm in return for Sunbeam shares whose value plummeted when Sunbeam collapsed. During the discovery phase of the case, Perleman had sought certain potentially incriminating e-mails from Morgan Stanley's files. Morgan Stanley repeatedly failed and refused to provide this discoverable material and, in the process, ignored court orders to provide the e-mails.

Eventually, a fed-up trial judge decided to impose sanctions for Morgan Stanley's wrongful conduct during the discovery process. The judge ordered that Perleman's con-

The Global Business Environment

The Golden Rule in the World's Religions and Cultures

Immanuel Kant's categorical imperative, which is one formulation of rights theory, has its foundations in the Golden Rule. Note that the Golden Rule exists in all cultures and in all countries of the world. Here is a sampling.

BUDDHISM: Hurt not others in ways that you would find hurtful.

CHRISTIANITY: Do to others as you would have others do to you.

CONFUCIANISM: Do not to others what you would not like yourself.

ISRAELI: Do not do that to a neighbor which you shall take ill from him.

HINDUISM: This is the sum of duty: do nothing to others which if done to you would cause you pain.

HUMANISM: Individual and social problems can only be resolved by means of human reason, assistance effort, and

ISLAM: No one of you is a believer until he desires for his brother that which he desires for himself.

JAINISM: In happiness and suffering, in joy and grief, we should regard all creatures as we regard our own self.

JUDAISM: Whatever is hateful to you, do not do to another.

NATIVE AMERICAN SPIRITUALITY: Respect for all life in the foundation.

PERSIAN: Do as you would be done by.

ROMAN: Treat your interests as you would be treated by your neighbor.

SHINTOISM: The heart of the person before you is a mirror. See there your own form.

SIKHISM: As you deem yourself, so deem others.

TACISM: Regard your neighbor's gain as your own gain, and your neighbor's loss as your own loss.

YORUBAN: One going to take a pointed stick to punch a baby head should first try it on himself to feel how it hurts.

THE GLOBAL BUSINESS ENVIRONMENT BOXES

Because global issues affect people in many different aspects of business, this material appears throughout the text instead of in a separate chapter on international issues. This feature brings to life global issues that are affecting business law.

LOG ON BOXES

These appear throughout the chapters and direct students, where appropriate, to relevant websites that will give them more information about each featured topic. Many of these are key legal sites that may be used repeatedly by business law students and business professionals alike.



LOG ON

U.S. government websites contain a wealth of information on patent, copyright, and trademark law and procedures. For information on patents and trademarks, visit the site of the U.S. Patent and Trademark Office, at www.uspto.gov. Information on copyrights may be found at www.loc.gov/copyright, the site of the U.S. Copyright Office.

CONCEPT REVIEW

Misrepresentation and Fraud

	Innocent Misrepresentation	Fraud
Remedy	Rescission	Rescission and/or tort action for damages
Elements	<ol style="list-style-type: none"> 1. Untrue assertion of fact (or equivalent) 2. A superior relation to material fact 3. Actual reliance 4. Justifiable reliance 	<ol style="list-style-type: none"> 1. Untrue assertion of fact (or equivalent) 2. Assertion made with knowledge of falsity (scienter) and intent to deceive 3. Justifiable reliance 4. Economic loss (in a tort action for damages)

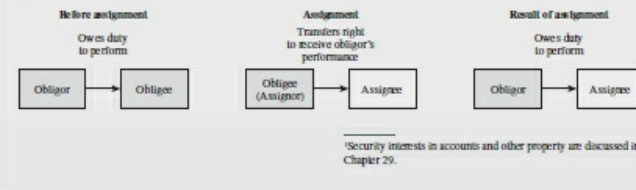
CONCEPT REVIEWS

These boxes visually represent important concepts presented in the text to help summarize key ideas at a glance and simplify students' conceptualization of complicated issues.

FIGURES

The figures appear occasionally in certain chapters. These features typically furnish further detail on special issues introduced more generally elsewhere in the text.

Figure 2 Assignment



Price v. High Pointe Oil Company, Inc. 828 N.W.2d 660 (Mich. 2013)

In 2006, *Madie Price* replaced the oil furnace in her house with a propane furnace. The oil furnace was removed, but the pipe that had been used to fill the furnace with oil remained in place. After the furnace was replaced, *Price* contacted her contractor for oil refills with the predecessor of High Pointe Oil Company, the defendant. Sometime through, in November 2007, High Pointe mistakenly placed *Price's* address back on its "keep full list." Subsequently, a High Pointe oil delivery pumped around 400 gallons of fuel oil into *Price's* basement through the old oil pipe before realizing the mistake. *Price's* house and her belongings were destroyed. The house was eventually torn down, the fire was extinguished, and a new house was built on a different part of *Price's* property. *Price's* personal property was all cleaned or replaced. All of her costs related to her temporary accommodations were reimbursed to her, as well. Thus, she was fully compensated for all of her economic losses resulting from High Pointe's error.

Nevertheless, *Price* sued High Pointe alleging a number of claims. The only two claims in our view that was one focused on her non-economic losses—for example, pain and suffering, humiliation, embarrassment, and emotional distress. A jury found in *Price's* favor and awarded her \$100,000 in damages.

High Pointe filed an appeal to the intermediate appellate court, to no avail. High Pointe then appealed to the Michigan Supreme Court, except of whose opinion is below.

Michigan, J.

III. A. Analysis

The question in this case is whether non-economic damages are recoverable for the negligent destruction of real property. Almost any relevant statute, the answer to that question is a matter of common law.

A. Common Law

As this Court explained in (a prior case), the common law "is but the accumulated expressions of the various judicial tribu-

The common-law rule with respect to the damages recoverable in an action alleging the negligent destruction of property was set forth in (a 1937 case):

"If injury to property caused by negligence is permanent or irreparable, the measure of damages is the difference in its market value before and after said injury, but if the injury is repairable, and the expense of making repairs is less than the value of the property, the measure of damages is the cost of making repairs.

Michigan common law has continually followed (that rule). . . . Accordingly, the long-held common-law rule in Michigan is that the

CASES

The cases in each chapter help to provide concrete examples of the rules stated in the text. A list of cases appears at the front of the text.

PROBLEMS AND PROBLEM CASES

Problem cases appear at the end of each chapter for student review and discussion.

Problems and Problem Cases

1. Victoria Wilson, a resident of Illinois, wishes to bring an invasion of privacy lawsuit against XYZ Co. because XYZ used a photograph of her, without her consent, in an advertisement for one of the company's products. Wilson will seek money damages of \$150,000 from XYZ, whose principal offices are located in New Jersey. A New Jersey newspaper was the only print media outlet in which the advertisement was published. However, XYZ also placed the advertisement on the firm's website. This website may be viewed by anyone with Internet access, regardless of the viewer's geographic location. When, in a geographic sense, may Wilson properly file and pursue her lawsuit against XYZ? Must Wilson pursue her case in a state court, or does she have the option of litigating in federal court? Assuming that Wilson files her case in state court, what strategic option may XYZ exercise if it acts promptly?
2. Alex Ferrer, a former judge who appeared as "Judge Alex" on a television program, entered into a contract with Arnold Preston, a California attorney who rendered services to persons in the entertainment industry. Seeking fees allegedly due under the contract, Preston invoked the clause setting forth the parties' agreement to arbitrate "any dispute . . . relating to the terms of [the contract] or the breach, validity, or legality thereof . . . in accordance with the rules [of the American Arbitration Association]." Ferrer countered Preston's demand for arbitration by filing, with the California Labor Commissioner, a petition in which he contended that the contract was unenforceable under

residents Anne and Jim Cornelien. When Anne Cornelien telephoned the Bombblisses and said she was ready to sell two litters of Tibetan mastiff puppies, Ron Bombbliss expressed interest in purchasing two females of breeding quality. The Corneliens had a website that allowed communications regarding dogs available for purchase but did not permit actual sales via the website. The Bombblisses traveled to Oklahoma to see the Corneliens' puppies and ended up purchasing two of them. The Corneliens provided a guarantee that the puppies were suitable for breeding purposes. Following the sale, the Corneliens mailed, to the Bombblisses' home in Illinois, American Kennel Club registration papers for the puppies. Around this same time, Anne Cornelien posted comments in an Internet chat room frequented by persons interested in Tibetan mastiffs. These comments suggested that the mother of certain Tibetan mastiff puppies (including one the Bombblisses had purchased) may have had a genetic disorder. The comments were made in the context of an apparent dispute between the Corneliens and Richard Eichhorn, who owned the mother mastiff and had made it available to the Corneliens for breeding purposes. The Bombblisses believed that the comments would have been seen by other persons in Illinois and elsewhere and would have impaired the Bombblisses' ability to sell their puppies even though, when tested, their puppies were healthy. The Bombblisses therefore sued the Corneliens in an Illinois court on various legal theories. The Corneliens asked the Illinois court to dismiss the case on the ground that the court lacked in personam jurisdiction over them. Did the Illinois court lack in personam jurisdiction?

KEY TERMS

Key terms are bolded throughout the text and defined in the Glossary at the end of the text for better comprehension of important terminology.

Supplements

ROGER CPA



McGraw-Hill Education has partnered with Roger CPA Review, a global leader in CPA Exam preparation, to provide students a smooth transition from the accounting classroom to successful completion of the CPA Exam. While many aspiring accountants wait until they have completed their academic studies to begin preparing for the CPA Exam, research shows that those who become familiar with exam content earlier in the process have a stronger chance of successfully passing the CPA Exam. Accordingly, students using these McGraw-Hill materials will have access to sample CPA Exam Multiple-Choice questions and Task-Based Simulations from Roger CPA Review, with expert-written explanations and solutions. All questions are either directly from the AICPA or are modeled on AICPA questions that appear in the exam. Instructors may assign the auto-gradable Roger CPA Review Multiple-choice Questions in *Connect*, and Task-Based Simulations are delivered via the Roger CPA Review platform, which mirrors the look, feel, and functionality of the actual exam. McGraw-Hill Education and Roger CPA Review are dedicated to supporting every accounting student along their journey, ultimately helping them achieve career success in the accounting profession. For more information about the full Roger CPA Review program, exam requirements and exam content, visit www.rogercpareview.com.

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The PowerPoint presentations provide lecture outline material, important concepts and figures in the text, and summaries of the cases in the book. Notes are also provided within the PowerPoint presentations to augment information and class discussion.

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The test bank consists of true-false, multiple choice, and short essay questions in each chapter. Questions adapted from previous CPA exams are also included and highlighted to help Accounting students review for the exam. Instructors can test students using the quiz questions divided by chapter.

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Available in *Connect*, the Case Repository is a collection of cases from current and previous editions.

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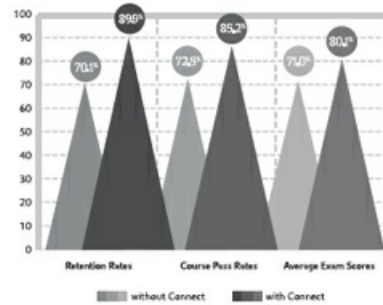


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