



The Legal Environment *of Business*

13TH EDITION



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The Legal Environment of Business



The Legal Environment *of* Business

13TH EDITION

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**The Legal Environment of Business,
thirteenth edition**

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*Dedicated to Bruce and Don, fine scholars and colleagues,
who care deeply about their students.*

Roger Meiners

Brief Contents

Preface xxi

PART ONE	Elements of Law and the Judicial Process	1
CHAPTER 1	Today's Business Environment: Law and Ethics	2
CHAPTER 2	The Court Systems	22
CHAPTER 3	Trials and Resolving Disputes	44
CHAPTER 4	The Constitution: Focus on Application to Business	69
CHAPTER 5	Criminal Law and Business	94
PART TWO	Elements of Traditional Business Law	119
CHAPTER 6	Elements of Torts	120
CHAPTER 7	Business Torts and Product Liability	143
CHAPTER 8	Real and Personal Property	166
CHAPTER 9	Intellectual Property	191
CHAPTER 10	Contracts	212
CHAPTER 11	Domestic and International Sales	240
CHAPTER 12	Business Organizations	268
CHAPTER 13	Negotiable Instruments, Credit, and Bankruptcy	295
PART THREE	The Employment Relationship	327
CHAPTER 14	Agency and the Employment Relationship	328
CHAPTER 15	Employment and Labor Regulations	352
CHAPTER 16	Employment Discrimination	382
PART FOUR	The Regulatory Environment of Business	409
CHAPTER 17	The Regulatory Process	410
CHAPTER 18	Securities Regulation	430
CHAPTER 19	Consumer Protection	454
CHAPTER 20	Antitrust Law	481
CHAPTER 21	Environmental Law	504
CHAPTER 22	The International Legal Environment of Business	531

Appendix A	Legal Research and the Internet	557
Appendix B	Case Analysis and Legal Sources	560
Appendix C	The Constitution of the United States of America	567
Appendix D	The Uniform Commercial Code (Excerpts)	580
Appendix E	National Labor Relations Act (Excerpts)	598
Appendix F	Title VII of Civil Rights Act of 1964 (Excerpts)	603
Appendix G	Americans with Disabilities Act (Excerpts)	606
Appendix H	The Antitrust Statutes (Excerpts)	609
Appendix I	Securities Statutes (Excerpts)	613
	Glossary	617
	Index	649

Contents

Preface xxi

PART ONE Elements of Law and the Judicial Process 1

CHAPTER 1

Today's Business Environment: Law and Ethics.....2

Law and the Key Functions of the Legal System 3

International Perspective: Corrupt Nations and the Law 4

Sources of Law in the United States 5

Lighter? Side of the Law: Creative Claim 8

International Perspective: Civil Law Systems 12

Classifications of Law 12

Business Ethics and Social Responsibility 15

Issue Spotter: OK to Grease Palms? 16

Lighter? Side of the Law: Legal Ethics? 16

International Perspective: Does Regulation Improve Business Ethics? 17

Issue Spotter: Putting Ethics into Practice 18

CHAPTER 2

The Court Systems.....22

The Court Systems 23

The Federal Courts 25

The State Courts 28

International Perspective: The French Court System 29

Lighter? Side of the Law: In-the-Courtroom Training 30

Jurisdiction 30

Lighter? Side of the Law: Do as I Say, Not as I Do 31

International Perspective: London's Commercial Court 32

Relations between the Court Systems 35

Issue Spotter: Can Your Firm Be Reached? 36

Venue 40

Lighter? Side of the Law: The Law Applies to Me? 40

CHAPTER 3

Trials and Resolving Disputes44

Basic Trial Procedures 45

Lighter? Side of the Law: Come to the Judge's Party! 49

International Perspective: British Courtroom Procedure 52

Lighter? Side of the Law: The Dog Ate My Summons 53
Lighter? Side of the Law: You Got Me There, Counselor! 55
Lighter? Side of the Law: Wait a Minute—I Thought We Were in This Together! 60
International Perspective: German Trial Procedure 60

Alternate Dispute Resolution 61
Issue Spotter: Are There Limits on the Terms of Arbitration? 62
International Perspective: Arbitration and Cotton Contracts 65

CHAPTER 4
The Constitution: Focus on Application to Business.....69

The Commerce Clause 70
Lighter? Side of the Law: I Am My Own Sovereign 73

The Taxing Power 75
Issue Spotter: Unconstitutional Business Activity? 77

Business and Free Speech 77
International Perspective: Freedom of Speech 78
Lighter? Side of the Law: Freedom of Bark but Not Burn in Ohio 82

Other Key Parts of the Bill of Rights 82
International Perspective: The (Partially) Unwritten Constitution of the United Kingdom 83

Fourteenth Amendment 87
Lighter? Side of the Law: Drop That Fry! Hands over Your Head! 88

CHAPTER 5
Criminal Law and Business.....94

Crime 95

Crime Categories 95
Lighter? Side of the Law: They Think Big in Chicago 96

Crimes and Elements of Crime 96

Defenses 99

Prosecution Process 99

White-Collar Crime 102
Lighter? Side of the Law: That Wasn't Me! 103
Lighter? Side of the Law: Who Profits from Crime? 104
International Perspective: Multinational Employers and Criminal Charges Abroad 105
Issue Spotter: Internal Fraud 106
International Perspective: White-Collar Crime in France 111

Sentencing Guidelines and Compliance 112

PART TWO Elements of Traditional Business Law 119

CHAPTER 6
Elements of Torts.....120

Torts and the Legal System 121

Negligence-Based Torts 121

International Perspective: No Tort Litigation Jackpots in New Zealand 122
Lighter? Side of the Law: Extending the Concept of Negligence 124
Issue Spotter: Effective Liability Releases 127

Intentional Torts against Persons 129
Issue Spotter: Dealing with Drunks 133
Lighter? Side of the Law: Battered at the Show 133
Issue Spotter: Dealing with the Elderly and Their Heirs 136
Lighter? Side of the Law: How Dare You List My Phone Calls! 138
Issue Spotter: Say Good Things about a Good Employee? 138
International Perspective: Libel in Foreign Courts 139

CHAPTER 7
Business Torts and Product Liability143

Tort Law and Business 144
Issue Spotter: Hiring Employees from Competitors 148

Product Liability 148
International Perspective: Is Japan Really Different? 150
Lighter? Side of the Law: You Can't Be Too Careful 151
Issue Spotter: Understanding Product Problems 151
Lighter? Side of the Law: Hot Stuff 154
Lighter? Side of the Law: Reason #4 Why West Virginia Is Considered a Litigation Hellhole 159
Issue Spotter: Cheaper Can Be More Expensive 160
International Perspective: Asbestos Litigation in the United States and United Kingdom 161
Lighter? Side of the Law: Busted! 162

CHAPTER 8
Real and Personal Property.....166

Real Property 167
Lighter? Side of the Law: Is It Real Property or Personal Property? 168
International Perspective: Insecure Property Rights 171
Lighter? Side of the Law: The Tenants Who Would Not Go Away 175
International Perspective: Americans Crossing into Mexico for Land 176

Public Control of Real Property 178
Issue Spotter: Would Tighter Leases Help? 179

Torts against Property 180
Issue Spotter: Protecting Company Property 184
Lighter? Side of the Law: The FBI Negligent? No, Just Doing Law Enforcement 184

Torts against Property Owners 184
Issue Spotter: Duties to Elderly Customers 185
Lighter? Side of the Law: Pesky Surveillance Cameras 186
Issue Spotter: Protecting Customers' Kids 188

CHAPTER 9
Intellectual Property191

Trademarks 192

Issue Spotter: Establishing Your Name 192
Lighter? Side of the Law: Discrimination against Men? 193
International Perspective: Costs of Counterfeiting 198
Issue Spotter: Knock Off the Knock-Offs? 199

Copyright 200
Lighter? Side of the Law: You Owe Us the World and More! 200
Issue Spotter: Fair Sharing of Educational Information? 201

Patents 203
Lighter? Side of the Law: Why Many Patents Are Overturned When Challenged 203

Trade Secrets 205
International Perspective: Patent Differences 205
Lighter? Side of the Law: It's Secret How We Spend Your Money 206
Issue Spotter: Protecting Valuable Information 208

CHAPTER 10
Contracts212

Contract Law 213

Elements of a Contract 213
Lighter? Side of the Law: No Extra Charge for the Smell 215
Lighter? Side of the Law: You Can't Trust Anyone These Days 221
International Perspective: Problems Enforcing Contracts 223
Issue Spotter: Liars' Contest? 225

Performance, Discharge, and Breach of Contracts 227
Issue Spotter: Do You Have to Eat the Loss? 230

Remedies 230
International Perspective: Contracting with the Japanese 233
Lighter? Side of the Law: Me, Read the Rules? 234

CHAPTER 11
Domestic and International Sales.....240

Introduction to the UCC 241

Forming a Sales Contract 244
Lighter? Side of the Law: Be Honest, Not Necessarily Kind 244
Issue Spotter: Gouge the Wholesaler 250

Performance and Obligations 251
International Perspective: How to Assure Foreign Buyers of Product Quality 251

Sales Warranties 252
Issue Spotter: How Much Advice Should Retailers Give? 254

Remedies and Damages 255
Lighter? Side of the Law: Suckers on a Global Scale 256

International Sales 259
International Perspective: Contracts in China 260
Issue Spotter: What Law Applies, and Where, to Your Contract? 262

CHAPTER 12
Business Organizations268

Sole Proprietorships 269

Partnerships 269

International Perspective: Small Is Not So Beautiful in Japan 272

Limited Partnership 272

Issue Spotter: Sisterly Love? 274

Corporations 275

Lighter? Side of the Law: Your Honor, I'll Turn Rocks into Gold 277

Limited Liability Companies 280

Lighter? Side of the Law: Mad at Each Other? Sue the Insurance Company 281

International Perspective: Offshore Businesses 282

Key Organizational Features 284

Issue Spotter: Keeping Things in Order 286

Lighter? Side of the Law: I Own the World! 287

Franchises 287

Issue Spotter: The Road to Riches? 290

CHAPTER 13
Negotiable Instruments, Credit, and Bankruptcy295

Negotiable Instruments 296

International Perspective: Mixing Religion and Finance 297

Lighter? Side of the Law: How to Enforce a Judgment 301

Credit 301

Credit with Security 303

Issue Spotter: Helping a Dream? 304

Lighter? Side of the Law: Don't You Know Who I Am? 305

Issue Spotter: Lean on a Lien? 310

Bankruptcy 312

Issue Spotter: Credit for the Bankrupt? 315

International Perspective: International Business Bankruptcy Complexities 316

Lighter? Side of the Law: Home Sweet Home 317

PART THREE The Employment Relationship 327

CHAPTER 14
Agency and the Employment Relationship328

Agency Relationships 329

Lighter? Side of the Law: Is Slavery an Employment Relationship? 331

The Essential Employment Relationship 338

Lighter? Side of the Law: The Ultimate Employment Gig 344

Issue Spotter: Can You Be Too Encouraging to Employees? 345

Lighter? Side of the Law: Who, Him? Must Be an Independent Contractor 346

Tort Liability for Employers and Principals 346

International Perspective: Workplace Data Privacy in the European Union 346

Issue Spotter: Use of Company Cars 347

CHAPTER 15

Employment and Labor Regulations352

Public Policy Limits to At-Will Employment 353

Lighter? Side of the Law: Grounds for Termination? 355

Substance Abuse 356

Issue Spotter: What Stance Should Be Taken toward Drinking and the Office? 357

Issue Spotter: How Does an Employer Handle an Employee Who Flunks a Drug Test? 358

Worker Health and Safety 359

Lighter? Side of the Law: I Just Wanted My Candy Bar! 361

Workers' Compensation 362

Lighter? Side of the Law: Rules Are Rules! 362

Issue Spotter: Reducing Risks and Improving Looks 363

Family and Medical Leave 365

General Regulation of Labor Markets 367

Issue Spotter: Adapting to Modern Ways of Working 368

International Perspective: Flexibility in Labor Markets 369

Issue Spotter: Hiring Documentation and Discrimination 370

Major Labor Relations Acts 370

Lighter? Side of the Law: Do What We Say, Not What We Do 371

The National Labor Relations Board 372

Unionization 373

International Perspective: Labor Law in China 375

Issue Spotter: Moves to Help Keep Unions Out 376

Collective Bargaining 376

CHAPTER 16

Employment Discrimination382

Origins of Discrimination Law 383

Title VII of the 1964 Civil Rights Act 383

International Perspective: EEOC Impact on Global Operations 385

Lighter? Side of the Law: A New Protected Class? 386

Bringing a Discrimination Charge 389

Lighter? Side of the Law: Love Only Goes So Far 391

Issue Spotter: Effective Sexual Harassment Policy 394

Issue Spotter: Inadvertent Discrimination? 397

Affirmative Action 398

Disability Discrimination 399

International Perspective: Employment Discrimination in Europe and Japan 400

Lighter? Side of the Law: Wicked Witch of the East? 401

Issue Spotter: Accommodating Disabilities 404

Lighter? Side of the Law: I Have the Right to Harass Women 405

PART FOUR The Regulatory Environment of Business 409

CHAPTER 17
The Regulatory Process410
 Administrative Agencies 411
 Lighter? Side of the Law: Keep Pumping Out the Red Tape 412
 Administrative Law 412
 Enforcing Rules 416
 Issue Spotter: Contest a Regulatory Order? 420
 Judicial Review 420
 International Perspective: Administrative Agencies in Japan 422
 Lighter? Side of the Law: Regulators Protecting Consumers? 422
 Controls on Agencies 426
 Lighter? Side of the Law: We Will Teach You Not to Ask Questions 427

CHAPTER 18
Securities Regulation430
 The Elements of Securities 431
 What Is a Security? 432
 Offering Securities to Investors 433
 Issue Spotter: What Are You Selling? 436
 Issue Spotter: Can New Start-Up Firms Issue Securities? 438
 Regulation of Securities Trading 438
 Lighter? Side of the Law: Never Too Old to Withdraw Large Sums 439
 Securities Fraud 439
 Lighter? Side of the Law: Try, Try Again 443
 Insider Trading 443
 International Perspective: London, New York, and the Sarbanes-Oxley Act 444
 Issue Spotter: Can You Exploit the Gossip? 446
 The Investment Company Act 446
 International Perspective: European Approaches to Insider Trading 447
 The Investment Advisers Act 447
 Lighter? Side of the Law: The Fall of a Blood Brother 448
 Stock Market Regulation 450

CHAPTER 19
Consumer Protection.....454
 The FDA: Food and Drug Regulation 455
 Lighter? Side of the Law: Maybe Get a New Laptop 456
 International Perspective: Global Drug Controls 457
 Issue Spotter: How Much Can You Hype Health Supplements? 459
 The FTC and Consumer Protection 460
 Lighter? Side of the Law: Protect Me from Myself! 460
 Issue Spotter: How Aggressive Can You Be in Advertising? 466

Lighter? Side of the Law: Wild Claims about Water in Europe 467

Consumer Credit Protection 468

International Perspective: Credit around the World 473

Issue Spotter: Dealing with Customer Records 474

Lighter? Side of the Law: Watch Who You Nickel and Dime 475

Issue Spotter: How Should You Handle Unpaid Accounts? 477

CHAPTER 20

Antitrust Law481

Antitrust Statutes 482

Monopolization 486

Lighter? Side of the Law: Milk Monopoly 488

International Perspective: The European Union and Antitrust Law 489

Horizontal Restraints of Trade 489

Lighter? Side of the Law: We're Lawyers, and We're Here to Help You 492

Issue Spotter: Share and Share Alike 493

Vertical Restraint of Trade 493

Lighter? Side of the Law: I Am Going to Take My Bull and Go Home! 497

International Perspective: China's Anti-Monopoly Law 498

The Robinson-Patman Act 498

Issue Spotter: Who Do You Sell What to, and for How Much? 499

CHAPTER 21

Environmental Law504

Environmental Regulation 505

Pollution and the Common Law 505

Clean Air Act 507

Lighter? Side of the Law: Save the Environment: Burn Coal 509

Clean Water Act 512

International Perspective: Industrialization Brings Environmental Problems to China 513

Issue Spotter: Does Obeying EPA Regulations Eliminate Litigation? 516

Land Pollution 518

Lighter? Side of the Law: Thanks for the Housing 520

Species Protection 522

Lighter? Side of the Law: Protect Truly Rare Species 522

Global Environmental Issues 523

Issue Spotter: Picking a Sweet Spot 525

International Perspective: CITES: Global Species Concerns May Conflict with Local Interests 527

CHAPTER 22

The International Legal Environment of Business531

International Law and Business 532

U.S. Import Policy 534

Issue Spotter: Starting an Import Business 536
Lighter? Side of the Law: I’m a Diplomat, So I Can Do Anything! 537
Issue Spotter: Making the Deal Stick 538
Lighter? Side of the Law: I Make Sure *Other* People Obey the Law 539

Business Structures in Foreign Markets 539
International Perspective: Put the Shoe on the Other Foot 540

Foreign Corrupt Practices Act 541

International Contracts 543
Lighter? Side of the Law: All Corruption Is Not Created Equal 544
Issue Spotter: Where to Produce? 549

International Dispute Resolution 549
International Perspective: Migrating to Australia 552

Appendix A Legal Research and the Internet 557
Appendix B Case Analysis and Legal Sources 560
Appendix C The Constitution of the United States of America 567
Appendix D The Uniform Commercial Code (Excerpts) 580
Appendix E National Labor Relations Act (Excerpts) 598
Appendix F Title VII of Civil Rights Act of 1964 (Excerpts) 603
Appendix G Americans with Disabilities Act (Excerpts) 606
Appendix H The Antitrust Statutes (Excerpts) 609
Appendix I Securities Statutes (Excerpts) 613

Glossary 617
Index 649

Table of Cases

The principal cases are in bold type. Cases cited or discussed in the text are roman type. References are to pages. Cases cited in principal cases and within other quoted materials are not included.

A

ACAP Financial, Inc. v. United States Securities and Exchange Commission	449
Anderson v. Mandalay Corporation	348
Audi AG v. D'Amato	195

B

Ballalatak v. All Iowa Agriculture Association	354
Barabin v. AstenJohnson, Inc.	50
Bearden v. Wardley Corp.	335
Black Beauty Coal Company v. Federal Mine Safety and Health Review Commission	418
Blimka v. My Web Wholesalers, LLC	34
Bohnsack v. Varco, L.P.	206
Bowman v. Monsanto Co.	204
Bridge v. Phoenix Bond & Indemnity Co.	107
Burlington Industries v. Ellerth	393

C

Caley v. Gulfstream Aerospace Corp	219
Cash & Henderson Drugs, Inc. v. Johnson & Johnson	500
Central Hudson Gas and Electric Corporation v. Public Service Commission of New York	80

Chambers v. Travelers Companies, INC.	139
Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.	415
Chuway v. National Action Financial Service	476
City of Livonia Employees Retirement System v. Boeing Company	441
Consolidated Edison Company v. Public Service Commission of New York	78
Contractors Source, Inc. v. Amegy Bank National Association	299
Cove Management v. AFLAC, Inc.	332
Crest Ridge Construction v. Newcourt	245

D

Davis v. Baugh Industrial Contractors, Inc.	10
Decker v. Northwest Environmental Defense Center	515
DeRosier v. Utility Systems of America, Inc.	232
Deschamps v. Treasure State Trailer Court, Ltd.	226
Dunkin' Donuts Franchised Restaurants LLC v. Sandip, Inc.	291

E

Eagles Landing Development, L.L.C. v. Eagles Landing Apartments, L.P.	273
---	-----

Elonis v. United States	97	In re 1545 Ocean Avenue, LLC	283
Equal Employment Opportunity Comm. v. Dial Corporation	395	In the Matter of Kmart Corporation	318
Erichsen v. No-Frills Supermarkets of Omaha	187	K	
Erie Railroad Co. v. Tompkins	38	Katz v. Google Inc.	202
F		Katzenbach v. McClung	71
Federal Trade Commission v. Wyndham Worldwide Corp.	462	Keith v. County of Oakland	402
Fordyce Bank and Trust v. Bean Timberland	308	Kim v. Toyota Motor Corporation	158
France v. Southern Equipment Co.	339	L	
Fuerschbach v. Southwest Airlines	131	Labrayere v. Bohr Farms, LLC	89
G		Lamson v. Crater Lake Motors	18
Geczi v. Lifetime Fitness	128	Latta v. Rainey	434
General Electric Business Financial Services v. Silverman	305	Lawler v. Montblanc North America, LLC	135
Greenman v. Yuba Power Products	152	Lee v. R & K Marine	255
Griffith v. Clear Lakes Trout	249	Leegin Creative Leather Products v. PSKS	495
Group Against Smog and Pollution, Inc. v. Shenango Inc.	511	Lewis v. Heartland Inns of America, L.L.C.	391
Guz v. Bechtel National	342	Lone Mountain Processing, Inc. v. Secretary of Labor	425
H		Long v. Superior Senior Care, Inc.	363
Hamby v. Health Management Associates, Inc.	147	Lost Tree Village Corporation v. United States	517
Harder v. Edwards	134	M	
Harris v. Forklift Systems	387	Macpherson v. Buick Motor Company	149
Hartsoe v. Christopher	24	Massachusetts v. Environmental Protection Agency	526
Hasenwinkel v. Mosaic	366	Moran v. Sims	172
Hinson v. N&W Construction Company	220	Morrissey v. Krystopowicz	285
Horne v. Department of Agriculture	86	N	
Hughes v. Oklahoma	74	Naples v. Keystone Building and Development Corp.	57
I		Nielsen v. Gold's Gym	177
In Re Polar Bear Endangered Species Act Listing	524		

O

OBB Personenverkehr AG v. Sachs	551
Orkal Industries, LLC v. Array Connector Corporation	247

P

Palsgraf v. Long Island Railroad Company	125
Parish v. Icon	156
Pena v. Fox	217
Perez v. Mortgage Bankers Association	413
POM Wonderful, LLC v. Federal Trade Commission	464

Q

QVC, Inc. v. MJC America, Ltd.	258
--------------------------------	-----

R

RDNT, LLC v. City of Bloomington	180
----------------------------------	-----

S

SBD Kitchens, LLC v. Jefferson	63
Scheerer v. Fisher	235
Schuchmann v. Air Services Heating and Air Conditioning	467
Seki v. Groupon, Inc.	136
Smith v. Kulig	181
Sowers v. Forest Hills Subdivision	182
Squish La Fish v. Thomco Specialty Products	123
Stark Excavating, Inc. v. Perez	359
Storetrax.com v. Gurland	278
Summers Group, Inc. v. Tempe Mechanical, LLC	311
Summers v. Earth Island Institute	423

T

Teamsters Local Union No. 523 v. National Labor Relations Board	377
Tetzlaff v. Educational Credit Management Corp.	314
Thayer v. Hollinger	173
Todd v. Exxon Corporation	491
Troupe v. Burlington Coat Factory Warehouse Corp.	185

U

United States v. Allmendinger	113
United States v. Apple, Inc.	485
United States v. Jin	207
United States v. King	543
United States v. Mead Corporation	535
United States v. Salman	444

V

Venable v. SunTrust Bank	243
VLM Food Trading International, Inc. v. Illinois Trading Company	262

W

Whalen v. Union Bag and Paper	506
Wyeth v. Levine	458

Y

Yazdianpour v. Safeblood Technologies, Inc.	145
Yim v. J's Fashion Accessories, Inc.	337

Z

Zambelli Fireworks Manufacturing Co. v. Wood	355
Zhou v. Bickley	270

Preface

Knowledge of the legal and regulatory environment of business provides practical background for students in many careers. There are legal, social, political, and ethical issues in every profession. Some situations require an understanding of the principles of law to help resolve an issue or know when legal counsel is needed.

This textbook presents the legal environment as relevant to professionals who are not lawyers. Only a few students who take this course will become lawyers, although some students will take additional classes that cover specific legal areas. This course provides the opportunity for people with various interests to learn key points of the law from the standpoint of a working professional.

Over the years, we have received excellent feedback from professors and students who have used the 12 previous editions of this book and have pointed out shortcomings and strong points and given good advice for improvements. We have taken these comments into account in preparing this edition to make the book even more helpful and practical as we study the complex legal environment that business professionals face.

Our reviewers agree that this text focuses on practical aspects of the law. As we constantly update the text, we try to keep to a minimum the legal minutia, such as uncommon exceptions or rules peculiar to only a few states. We focus on primary rules and issues that arise most often. We use business situations and examples to highlight legal principles in practice. In selecting cases that appear in the text, the focus is on practical situations in business that students can best relate to and are realistic in a business career. The holdings are straightforward applications of the law to the facts. However, some major cases are included so students can get a sense of how courts announce major rules and the evolution of law can be discussed.

Essential Organization

In the legal environment of business course, there is the problem of many possible topics to cover but not enough time. There is agreement that the key elements of the legal system must be covered. This is done in Part 1 of the book, Elements of Law and the Judicial Process. Part 2, Elements of Traditional Business Law, focuses on the major areas of the common law that apply to business and some statutory law oriented at business functions. Part 3, The Employment Relationship, addresses a part of the business environment that applies to everyone, the ever-growing area of employment law, ranging from traditional agency to discrimination and social media issues. Part 4, The Regulatory Environment of Business, covers the major regulatory laws that managers of a variety of firms may face and finishes with key points of international business law.

New to This Edition

MindTap

*MindTap*TM is a fully online, highly personalized learning experience combining readings, multimedia, activities, and assessments into a singular Learning Path. Instructors can personalize the Learning Path by customizing Cengage Learning resources and adding their own content via apps that integrate into the *MindTap* framework seamlessly with Learning Management Systems.

We have heard that business law instructors want to help students **Prepare** for class, **Engage** with the course concepts to reinforce learning, **Apply** these concepts in real-world scenarios, and use legal reasoning and critical thinking to **Analyze** business law content. Accordingly, our *MindTap* product provides a four-step Learning Path designed to meet these critical needs while also allowing instructors to measure skills and outcomes with ease.

- **Prepare: E-book and Worksheets**—Help students prepare for class with interactive guided reading and chapter review questions that can be completed prior to class so that class time can be spent applying the concepts.
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Every item in the Learning Path is assignable and gradable. This gives instructors the knowledge of class standings and concepts that may be difficult. Additionally, students gain knowledge about where they stand—both individually and compared to the highest performers in class.

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This exciting repository allows instructors to personalize their course and truly engage students, helping them to reach higher levels of critical thinking.

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Key Features

Edited Cases

A primary way to learn law is to read real cases that the courts had to resolve. Each major case presented in the text has the background facts and legal proceedings summarized by the authors under the heading **Case Background**. Then the court’s holding, legal reasoning, and explanation of the law as it applies to the facts at hand are presented from the published opinion in the words of the judge in the **Case Decision**. Since most decisions are long, we present only the key portions of the holding. When there is a long deletion of material from a holding, you see asterisks (***) . When there is a deletion of a smaller part of the logic in a decision there

are ellipses (. . .). Finally, **Questions for Analysis** are offered for the reader to consider or for class discussion. (Answers are provided in the *Instructor's Resource Guide*.)

International Perspective

These boxed features discuss how issues similar to those being reviewed in the text are handled in other countries. As globalization reaches more businesses, managers must know how to deal with different legal systems and cultures. This feature makes clear that the legal constraints are different in other nations. Managers must be prepared to resolve problems in different ways in different locales in today's complex legal environment.

Issue Spotter

Over 50 Issue Spotter features are scattered throughout the text. Each briefly presents a business situation that requires application of legal elements just covered in the text. These challenges are a way for students to self-test their retention and ability to reason as they apply newly learned principles to practice. They also remind readers that the material learned in this course is practical to everyday issues in business. (Discussion points to these features are provided in the *Instructor's Resource Guide*.)

Lighter Side of the Law

These highlights add a light touch to the topic at hand by discussing an unusual legal situation. While law and business are serious, odd things happen that remind us that trouble can come from unexpected places, that the results of the legal process can be surprising, that scoundrels are among us, and that truth can be stranger than fiction.

Summary

The text of each chapter is summarized in bullet format that provides a quick review of the major points of law and rules covered and serves as a self-test of points that will be covered in examinations.

Terms to Know

After the Summary, there is a list of key terms from the chapter. The reader should know what the terms mean because they are an important part of the vocabulary and substance of the concepts covered in the chapter. Besides being explained in the chapter, each term is also defined in the Glossary in the back of the book.

Discussion Question

Every chapter has a question for general discussion that picks up on major ideas from the chapter. The purpose is to make sure the student understands the concepts of the chapter well enough to be able to discuss a topic that was covered and should be expanded upon.

Case Questions

Most problems are solved out of court, but some end up in court where judges decide the resolution based on legal principles. Real case problems are summarized in each case question. Using the knowledge from the chapter, and perhaps some instinct about how a court is likely to resolve a dispute, try to decide which party to a dispute is likely to prevail and why.

Ethics Question

Each chapter ends with an ethics question that poses a problem related to the legal area covered in the chapter. Remember that ethical issues are different than legal issues, so we go beyond legal reasoning in considering the problem.

Pulling It Together

At the end of the major sections of the text, several case questions are posed that bring together more than one legal issue covered in more than one chapter. Many situations involve more than one legal issue, so the cases here serve as a refresher to go back to earlier chapters and pull in the concepts and legal principles covered in these chapters.

Glossary

At the back of the book is a list of about a thousand key terms covered in the text. While they are covered in the text when they first appeared in substantive use, the terms are defined here too to help give a clear understanding of a legal concept that has a specific application in law.

Appendices

Appendix A, *Legal Research and the Internet*, gives readers a guide to quality legal research sources. It reviews major sources of code law and secondary sources as well as premier sites that provide many resources including cases. Increasingly, students have access to Lexis or West-Law, which greatly simplifies search assignments. Appendix B covers *Case Analysis and Legal Sources*. It explains the structure of court opinions and how they are often briefed by law students and lawyers to give a short summary of a complex matter. The case reporter system and other major legal resources are also reviewed. Appendix C is the full text of the United States Constitution. Appendices that follow give key portions of major statutes, including the Uniform Commercial Code, the National Labor Relations Act, Title VII of the Civil Right Act of 1964, the Americans with Disabilities Act, the Antitrust Statutes, and Securities Statutes.

Instructor's Supplements

For more information about any of these ancillaries, contact your Cengage Learning Consultant for more details, or visit the website for *The Legal Environment of Business*, 13th edition, at www.cengagebrain.com.

Instructor's Resource Guide

An electronic *Instructor's Resource Guide* has been revised. As before, it answers all questions in the book. It also provides a detailed outline of each chapter, summarizing the content of the text, including all cases. The instructor can refer quickly to this guide to remember the points that students have covered in the text. The guide also provides numerous additional summarized cases that the instructor can use to illustrate key points of law. Additional material, such as more discussion of certain points and examples of the law in practice, is provided as lecture and discussion enhancements.

Test Bank

The updated electronic *Test Bank* contains true-false questions and more than 6,000 multiple choice questions. Many questions based on fact have been added to test critical thinking ability. The Test Bank questions vary in levels of difficulty and meet a full range of tagging requirements, so instructors can tailor their testing to meet their specific needs. The Test Bank is available online in **Cognero**. Cengage Learning Testing Powered by Cognero is a flexible, online system that allows you to:

- Author, edit, and manage test bank content from multiple Cengage Learning solutions
- Create multiple test versions in an instant
- Deliver tests from your LMS, your classroom, or wherever you want

PowerPoint Lecture Review Slides

PowerPoint slides are available for instructors to use with their lectures. Download these slides online.

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Finally, we thank the editors and staff of Cengage Learning. In particular, we thank the sales representatives who continually give us valuable information on the day-to-day perceptions of the textbook—information provided by the instructors and students who are using it.

We welcome and encourage comments from the users of this textbook—both students and instructors. By incorporating your comments and suggestions, we can make this text an even better one in the future.

Roger E. Meiners

Al H. Ringleb

Frances L. Edwards



Overview

Part One reviews the major components of the legal system. It provides the framework for understanding the material presented in the rest of the book. People in business should understand the elements of accounting, economics, finance, management, and marketing. It is also important they know how the legal environment plays a critical role in the way business functions. Law changes as the structure of business evolves. As social pressures and ethical expectations change, how businesses operate must adjust. As economies become more interwoven in international operations, managers need to know more about different legal rules in other parts of the world.

The chapters in Part One review the major components of the legal system: the origins of law, constitutional law, the role of law in society and business, the structure and functioning of the court system, the use of alternative forms of dispute resolution, and the key elements of criminal law as it applies to business. These chapters serve as the structural background for the text as later chapters review areas of substantive laws that impact business.

PART ONE

Elements of Law and the Judicial Process

1 Today's Business Environment: Law and Ethics

The legal, social, and ethical pressures that people in business face today in a complex, international political economy are discussed in the context of the origins of our legal system. The focus is on the purposes, sources, and structure of law and the legal system in the context of the modern economy.

2 The Court Systems

The structure and authority of our federal and state court systems are reviewed, followed by a discussion of how a case gets to a court and what powers the courts have over the parties to a case and its resolution.

3 Trials and Resolving Disputes

The steps in litigation are discussed. It begins when a party files a complaint, when they go through the stages of litigation, the forms of relief possible, and the appeals process.

Many business disputes do not go to court but to alternate dispute resolution. The key aspects of arbitration and mediation are reviewed.

4 The Constitution: Focus on Application to Business

This chapter covers the constitutional limits on government actions, especially with respect to business matters. Congress has nearly unlimited power to regulate and tax, but some protections are provided for civil liberties against an over-reaching state.

5 Criminal Law and Business

Many statutes, increasingly at the federal level, provide the possibility of criminal penalties being imposed for violations that may involve persons in business capacities. The criminal processes are reviewed as are key statutes that specifically target certain actions in business.

Today's Business Environment: Law and Ethics

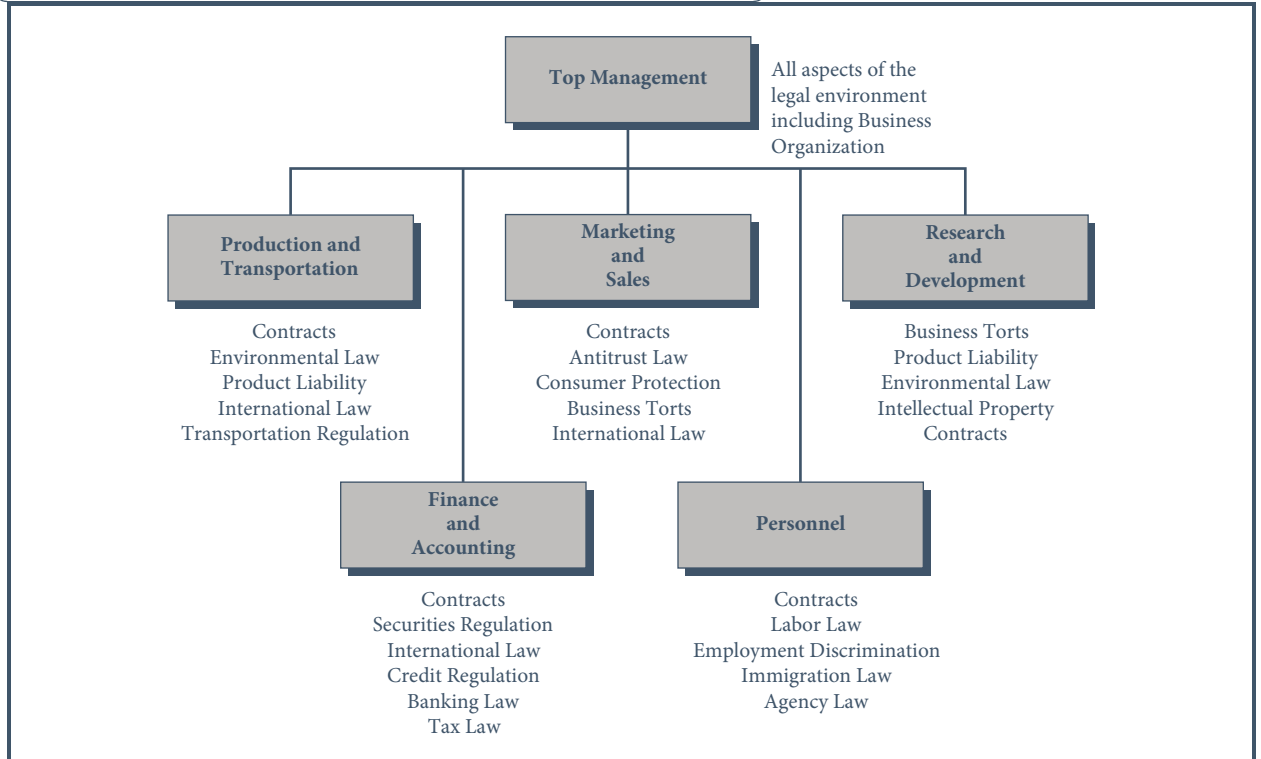
Job recruiters may puff up the qualities of a position. A job billed as “character-building” may be one of unending stress. One claiming to have a “teamwork environment” may just mean people jammed in cubicles. One person reported that, when being recruited, she was shown a nice office and introduced to a supervisor she liked. When she started work two weeks later, she was stuck in a tiny back room, the likeable supervisor was replaced by someone less agreeable, and worst of all, the assignments she was given were not of the quality discussed.

Suppose that happens to you. Can you sue the recruiter who brought you to the employer? Can you sue the company that hired you? Do you have the right to demand a better office? What is your legal status? We will explore some of these legal issues.

In the situation just posed, the new employee probably has little choice but to take the job as is or leave. The employer is unlikely to have violated any legal obligation. What about the ethical obligation to be honest with potential employees? Overstating the quality of a position may be unethical but not a violation of the law. This is an aspect of the modern business environment.

Business is complex. Ethical, legal, social, political, and international issues can impact company operations. As Exhibit 1.1 indicates, whether your field is human resources, sales, banking, advertising, or software development, you must be familiar with a wide range of subjects to have the skills needed to be aware of possible problems and opportunities that someone with a limited view may miss. The topics covered in this book help to fit one large piece into the complicated puzzle called the business world.

The study of the legal environment of business begins with an overview of the nature of law and the legal system. Composed of law that comes from different sources, the legal environment is influenced by the needs and demands of the business community, consumers, and government. This chapter helps us understand the functions of law in society, the sources of U.S. law, and the classifications of law. It then considers some major ethical issues that play a role in the business environment.

EXHIBIT 1.1 OVERVIEW OF A BUSINESS'S LEGAL ENVIRONMENT

1-1 Law and the Key Functions of the Legal System

There is no generally accepted best definition of **law**. It refers to the rules, standards, and principles that define the behavioral boundaries for people and business activities. Law can also be thought of in abstract terms. According to *Justinian's Institutes*, a summary of Roman law published in 533 in Constantinople, "The commandments of the law are these: live honorably; harm nobody; give everyone his due."

A bit more specific, a century ago Oliver Wendell Holmes, a legal scholar and Supreme Court justice, offered the following definition:

"Law is a statement of the circumstances, in which the public force is brought to bear ... through the courts."

In his 1934 book, *Growth of Law*, the famed jurist Benjamin N. Cardozo defined law this way:

A principle or rule of conduct so established as to justify a prediction with reasonable certainty that it will be enforced by the courts if its authority is challenged.

Also consider these two modern definitions from *Black's Law Dictionary*, the authoritative legal dictionary:

1. Law, in its generic sense, is a body of rules of action or conduct prescribed by [the] controlling authority and having binding legal force.
2. That which must be obeyed and followed by [members of a society] subject to sanctions or legal consequences is a law.

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In summary, law may be viewed as a collection of rules or principles intended to limit and direct human behavior. Enforcement of the rules provides greater predictability and uniformity

to the boundaries of acceptable conduct in a society. Nations have both formal rules, that is, what are commonly called laws, and have informal rules that come from a society's history, customs, commercial practices, and ethics.

Law and the legal system serve several key roles in society. The most important functions include the following: (1) influencing the behavior of the members of a society, (2) resolving disputes within society, (3) maintaining important social values, and (4) providing a method for assisting social change. The experience of Haiti, Nepal, and other nations, as discussed in the *International Perspective* box, reminds us of how difficult it is to function in a country with a corrupt government that does not provide a workable legal system.

1-1a Improving Social Stability by Influencing Behavior

The legal system helps to define acceptable social behavior. The law limits activities that damage the public interest. It restricts business practices believed to be outside the ethical and social norms of a society. The law also requires or encourages business practices that further social or political goals.

The laws in different jurisdictions reflect social norms. The business of raising and selling marijuana in Amsterdam (Holland) is legal because the government decided that legalizing marijuana would reduce crime in the drug trade and make it less likely that people would use more harmful drugs, such as heroin. In the United States, growing and selling marijuana is illegal under federal law and can be punished by long prison terms. Several states have moved to legalize marijuana production and use, but that conflicts with federal law.

Similarly, the production and sale of alcoholic beverages to adults is legal in most of the country although it was illegal nationwide from 1919 to 1933. In Saudi Arabia, people are executed for being involved in the alcohol business, as alcohol violates Sharia law. Other countries also make alcohol a criminal matter, but some countries have few restrictions on its sale, even to minors. This illustrates how the law reflects different social norms.

INTERNATIONAL PERSPECTIVE



Corrupt Nations and the Law

Haiti was devastated by an earthquake in 2010 that killed hundreds of thousands of people. During coverage of the event, many Americans were shocked to see profound poverty so close to the United States. Haiti's poverty contrasts to the Dominican Republic that is the other half of the island of Hispaniola. Average income in the Dominican Republic is four times higher than in Haiti. What makes Haiti so poor?

The earthquake sparked discussion about how to encourage economic development, ensure the aid was used effectively, and prevent corruption. The aid did little good. Haiti, like many poor countries, still suffers under a corrupt government and a legal system that provides no meaningful law to protect people's lives and property.

One businessman with operations in several Caribbean nations said that doing business in Haiti was nearly impossible because the demands for

bribes are endless. This comment is backed up by surveys of Haiti's residents. Transparency International, the Berlin-based organization that studies corruption, ranked Haiti the 168th most corrupt country in the world; only nine countries were worse.

Similarly, when an earthquake in 2015 killed thousands in Nepal, the 126th most corrupt country in the world, donors were distressed to find that government officials demanded bribes to let life-saving supplies into the country to get to the people.

The least corrupt countries—New Zealand and Denmark—are high-income countries. Studies find a strong relationship between less corruption, a well-functioning legal system, and the economic development. Finding the answer to reducing government corruption is key to helping develop business opportunities that benefit ordinary citizens.

1-1b Conflict Resolution

A critical function of the law is dispute resolution. Disagreements are inevitable because societies are made up of people with differing desires and values. Karl Llewellyn, a famous legal theorist, stated the following:

What, then, is this law business about? It is about the fact that our society is honeycombed with disputes. Disputes actual and potential, disputes to be settled and disputes to be prevented; both appealing to law, both making up the business of law.... This doing of something about disputes, this doing of it reasonably, is the business of law.

Though most disputes are settled informally, a formal mechanism for dispute resolution is the court system that invokes generally settled rules of law. It is used for private disputes between members of society and for public disputes between individuals and the government. Our court system is intended to provide a fair mechanism for resolving these disputes. As we will see in Chapter 3, businesses are increasingly turning to formal private settlement techniques by alternate dispute resolution outside of the courts, often because the courts are expensive and slow.

1-1c Social Stability and Change

Every society is shaped in part by its values and customs. Law, not surprisingly, plays a role in maintaining the social environment. Integrity is reflected in the enforceability of contracts, respect for other people and their property is reflected in tort and property law, and some measures of acceptable behavior are reflected in criminal laws.

Over time, social attitudes change. Not many years ago, gay partners could be subject to criminal prosecution for a personal, voluntary relationship. Now, traditional marriage is available for gay partners, a change that seemed impossible a couple decades ago.

The legal system provides a way to bring about changes in “acceptable” behavior. For example, in the past, some states required businesses to discriminate against black employees and customers. Attitudes changed, and those laws gradually disappeared in favor of laws requiring the opposite. Grossly discriminatory behavior that was the social norm is no longer acceptable. Next, we turn to the sources of law and how law is created.

1-2 Sources of Law in the United States

The U.S. Constitution and state constitutions created three branches of government—each of which has the ability to make law. Congress—the legislative branch of government—passes statutes. The executive branch—the President and administrative agencies—issues regulations under those statutes. The courts also create legal precedents through their decisions and by ruling on the constitutionality of actions of Congress or the Executive branch.

1-2a Constitutions

A **constitution** is the fundamental law of a nation. It establishes and limits the powers of government. Other laws are created through a constitution. The U.S. Constitution (see Appendix C) allocates the powers of government between the states and the federal government. Powers not granted to the federal government are retained by states or are left to the people. A constitution need not be a written document—the United Kingdom’s is not—but it is in most nations. In some countries, the constitution is just for show. A document that looks much like the U.S. Constitution may exist but means little in practice under a dictatorship.

The U.S. Constitution The U.S. Constitution is the oldest written constitution in force in the world. Although it contains some clear rules, such as the President must be at least age 35, it also has many general principles. It sets forth the organizational framework, powers, and

limits of the federal government. Specifically, the Constitution creates the legislative, executive, and judicial branches as the primary framework of the U.S. government.

This division of governmental power is referred to as the separation of powers. It arose out of the founders' fear that too much power concentrated in one governmental branch would reproduce the tyranny experienced under King George III. The separation of powers means that each branch of government has functions to perform that can be checked by the other branches. The government structure that has developed is illustrated in Exhibit 1.2.

As the highest legal authority, the U.S. Constitution overrides any state or federal laws that go beyond what the Constitution permits, as in Article VI:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

State Constitutions The powers and structures of all state governments are also based on written constitutions. Like the federal government, state governments are divided into legislative, judicial, and executive branches. Their constitutions specify how state officials are chosen and removed, how laws are passed, how the court systems run, and, in general terms, how finances and revenues are paid and collected.

On matters of state law, each state's constitution is the highest form of law for that state although the federal Constitution can override the state constitutions. Some state constitutions, unlike the U.S. Constitution, are long and detailed because amending state constitutions is often easier than changing the U.S. Constitution.

1-2b Legislatures and Statutes

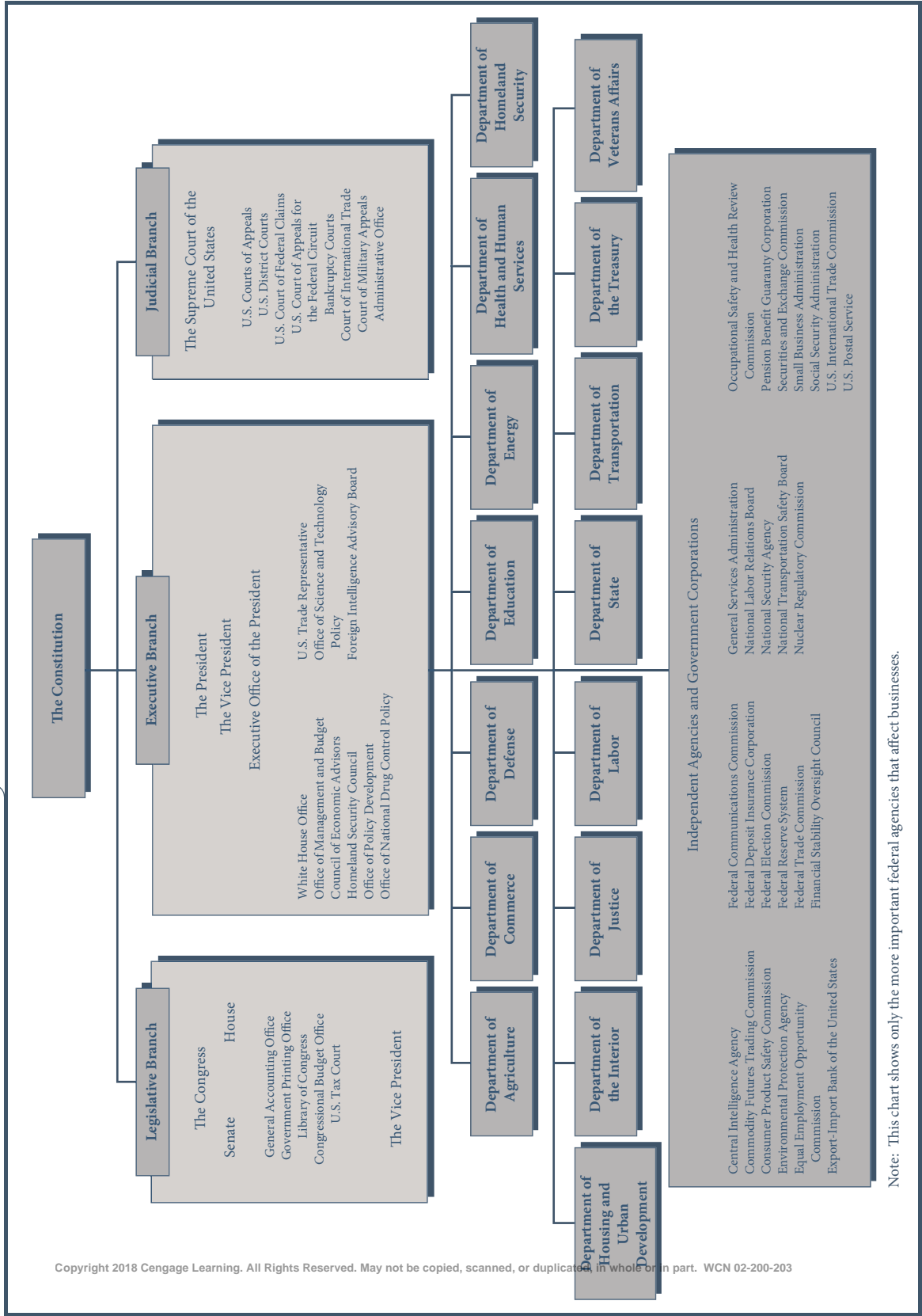
Congress and state legislatures are the sources of statutory law. Statutes created by legislation make up much of the law that significantly affects business behavior. For example, Congress enacted the Clean Water Act in 1972. It sets standards for water quality for the nation and grants the Environmental Protection Agency (EPA) the authority to adopt regulations that make the goals of the statute effective. Similarly, at the state level, every state legislature has passed statutes to regulate the insurance industry. The intent of the legislation is fulfilled, in part, through state insurance commissions created for that role.

Federal courts may review statutes passed by Congress to ensure they do not violate the U.S. Constitution. State courts may review statutes passed by their legislatures to ensure they do not violate the constitution of the state or of the United States. If a state legislature enacts a statute that violates the U.S. Constitution and a state court does not strike down the statute, it may be stricken by a federal court.

United States Congress Article I, Section 1, of the U.S. Constitution provides that all power to make laws for the federal government is given to Congress, a legislature consisting of the Senate and the House of Representatives. Of the thousands of pieces of legislation proposed in each session of Congress, only about 200 to 300 (many of which are minor) pass the House and Senate and go to the President for his signature.

State Legislatures Every state has lawmaking bodies similar to Congress in their functions and procedures. With the exception of Nebraska, all states have a two-part legislature containing a House of Representatives (sometimes called a House of Delegates or an Assembly) and a Senate. Dividing power between two houses is intended to serve as an added check on government power. The lawmaking process in state legislatures is similar to the procedure followed by the Congress. However, in some states voters may directly enact legislation through the voting process in referendums or initiatives.

EXHIBIT 1.2 THE GOVERNMENT OF THE UNITED STATES



Note: This chart shows only the more important federal agencies that affect businesses.

The National Conference of Commissioners on Uniform State Laws works with lawyers, law professors, the business community, and judges. For over a century, it has drafted proposed laws for consideration by state legislatures. Some are ignored, but others have been widely adopted, such as the Uniform Commercial Code (UCC). The UCC, discussed in Chapters 11 and 13, is designed to ease the legal relationship among parties in commercial transactions by making laws uniform among the states. Another important uniform law adopted by most state legislatures is the Uniform Partnership Act, covered in Chapter 12.

1-2c Administrative Agencies and Regulations

An administrative agency is created by a delegation of legislative power to the executive branch. Congress or the state legislature enacts a law that directs the agency to issue regulations, bring lawsuits, and otherwise act to fulfill the law's goals. For example, after President Nixon created the EPA by executive order, Congress gave the EPA authority to enact regulations to implement the goals of environmental statutes and to be the primary enforcer of those laws. Similarly, all states have created state environmental agencies to design and enforce state environmental regulation.

Within the boundaries set by the legislature, administrative agencies exercise their powers to enact regulations, supervise compliance with those regulations, and adjudicate violations of regulations. Regulations issued by administrative agencies are among the important sources of law affecting the legal environment of business today. Agency procedures are discussed in Chapter 17.

1-2d The Judiciary and Common Law

The **common law**—a law made and applied by judges as they resolve disputes among private parties—is a major part of the legal environment of business as it is the foundation of agency (employment), contract, property, and tort law. In addition to applying the common law, the judiciary interprets and enforces laws enacted by legislatures. As we will see, some statutes, such as the antitrust laws, are written in broad terms and require significant court interpretation to be understood. The judiciary also reviews actions taken by the executive branch and administrative agencies to make sure they comply with the Constitution.

The oldest source of law in the United States, the common law, dates to colonial times when English common law governed most internal legal matters. Starting in the eleventh century, judges created a common law by drawing on customs across the country. As Matt Ridley, a member of the House of Lords, explains, the common law is a code of ethics written by nobody and everybody. It evolves through precedent and adversarial argument. To maintain social order and to encourage commerce, the colonists retained English common law when the United States became an independent nation.



Lighter? Side of the Law

Creative Claim

An 18-year-old high school student in California “earned” over \$1 million in a stock scam. When the federal authorities busted his operation, charged him with securities fraud and made him repay his earnings, he was also booted off his high school baseball team.

He then sued his high school for \$50 million. The basis of his suit was that he had planned to be a major league baseball player but, now that he could not play on his high school team, he could not perform in front of baseball scouts who would draft him into the pros. He lost.

Source: True Stella Awards

Case Law Under the common law, a dispute comes to court in the form of a **case**. A case is a dispute between two or more parties resolved through the legal process. In common law cases, the judge follows the rules of civil procedure, (covered in Chapter 2 and 3) and, to determine the outcome of a particular case, follows earlier judicial decisions that resolved similar disputes. For hundreds of years now, the decisions written by judges, often in the courts of appeals, to explain the rulings in important cases, and many not-so-newsworthy cases, have been published in books called **case reporters**. The reporters are the official publication of case decisions and are public information (unofficial case reporters are frequently also used). To settle cases similar to past disputes, judges look for guidance by studying decisions from earlier recorded cases. This is referred to as **precedent** that is applied to the facts of the new cases under consideration and helps to guide the decision.

To settle unique or novel disputes, judges create new common law. Even in such cases, their rulings are based on the principles suggested by previously reported decisions. Because common law is state law, some differences exist across the states in the interpretation of common law principles, but the judges in a state can look to cases from other states to help resolve disputes if no decisions come from their own state. Sometimes judges even look to decisions of courts in other common law countries.

Doctrine of Stare Decisis The deciding of new cases by referencing previous decisions is the foundation of the Anglo-American judicial process used in varying degrees in Australia, Britain, Canada, New Zealand, India, South Africa, and other former British colonies, including the United States. The use of precedent in deciding current cases is a doctrine called **stare decisis**, meaning “to stand on decided cases.” Under this doctrine, judges are expected to stand by established rules of law. According to Judge Richard Posner:

Judge-made rules are the outcome of the practice of decision according to precedent (stare decisis). When a case is decided, the decision is thereafter a precedent, i.e., a reason for deciding a similar case the same way. While a single precedent is a fragile thing ... an accumulation of precedents dealing with the same question will create a rule of law having virtually the force of an explicit statutory rule.

Value of Precedent *Stare decisis* has several benefits. First, consistency in the legal system improves the ability to plan business decisions. Second, as a rule is applied in many disputes involving similar facts, people become increasingly confident the rule will be followed in the resolution of future disputes and order business and personal affairs given the rules of law. Third, the doctrine creates a legal system that neutralizes the prejudices of individual judges. If judges use precedent as the basis for decisions, they are less likely to make decisions based on their personal biases.

Changes in Law and Society An advantage of dispute resolution through the common law is its ability to adapt. Although most cases are decided on the basis of precedent, judges are not prohibited from modifying legal principles if conditions justify a new rule. As changes occur in technology or in social values, the common law evolves and provides new rules that better fit the new environment. A court may modify or reverse an existing legal principle. If that decision is appealed to a higher court for review, the higher court may accept the new rule as the one to be followed or retain the existing rule. In the case *Davis v. Baugh Industrial Contractors, Inc.* that follows, we see a state high court deciding to change a common law rule.

Reporting Court Cases Like all cases presented in this book, the *Davis v. Baugh Industrial Contractors, Inc.* case begins with its legal citation. There were several parties to the case on both sides, but the citation only refers to the lead plaintiff (Davis), who brought the suit, and the first defendant (Baugh) named in the suit.