

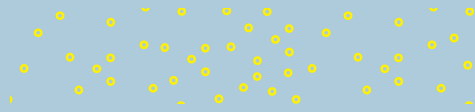
Dynamic Business Law

The Essentials

Fifth Edition

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Dynamic Business Law

THE ESSENTIALS

Fifth Edition

Nancy Kubasek
Bowling Green State University

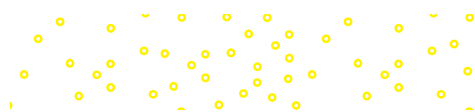
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DYNAMIC BUSINESS LAW: THE ESSENTIALS, FIFTH EDITION

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About the Authors

Nancy K. Kubasek received her JD from the University of Toledo College of Law in 1981 and her BA from Bowling Green State University in 1978. She joined the BGSU faculty in 1982 and became an associate professor in 1988 and a full professor in 1993.

During her tenure at Bowling Green State University, she has primarily taught courses in business law, legal environment of business, environmental law, health care law, and moral principles. She has published over 75 articles, primarily in law reviews and business journals. Most of her substantive articles focus on environmental questions, and she writes a quarterly column about environmental issues for the *Real Estate Law Journal*. She has helped get students involved in legal research, and a number of her articles are co-authored with students. She has also published a number of pedagogical articles in teaching journals, focusing primarily on teaching critical thinking and ethics.

She wrote the first environmental law text for undergraduate students, *Environmental Law*, and co-authored *The Legal Environment of Business: A Critical Thinking Approach*. She has written supplemental materials, such as study guides, test banks, and instructors' manuals.

Active in many professional organizations, she has served as president of the Academy of Legal Studies in Business, the national organization for professors of legal studies in colleges of business. She has also served as president of the Tri-State Academy of Legal Studies in Business, her regional professional association.

In her leisure time, she and her husband Neil Browne fish for halibut and salmon in Alaska and large-mouth bass in Florida. In addition, they are regular participants in polka, waltz, zydeco, and Cajun dance festivals in Europe and the United States. For almost 30 years, they have been successful tournament blackjack players as well. Both are avid exercisers—lifting weights, doing yoga, and running almost every day.

M. Neil Browne is senior lecturer and research associate and a distinguished teaching professor emeritus at Bowling Green State University. He received his BA in history and economics at the University of Houston, his PhD in economics at the University of Texas, and his JD from the University of Toledo. He has been a professor at Bowling Green for five decades.

Professor Browne teaches courses in jurisprudence, ethical reasoning, critical thinking, and economics at both the undergraduate and graduate levels. He has received recognition as the Silver Medalist National Professor of the Year,

the Ohio Professor of the Year, and Distinguished Teacher and Master Teacher at Bowling Green State University, as well as numerous research awards from his university and from professional organizations. His consulting activities with corporate, government, and educational institutions focus on improving the quality of critical thinking in those organizations. In addition, he serves as a Rule 26 expert with respect to the quality of the reasoning used by expert witnesses called by the party opponent in legal actions.

Professor Browne has published 20 books and more than 130 professional journal articles in law journals and economics, sociology, and higher education journals. His current research interests focus on the relationship between orthodox economic thinking and legal policy. In addition, he is in the midst of writing books about the power of questionable assumptions in economics, the usefulness of asking questions as a learning strategy, and the importance of critical thinking in environmental arguments.

Professor Browne tries to find time for a broad array of outside activities. He and his wife Nancy Kubasek fish for halibut and salmon in Alaska and large-mouth bass in Florida as frequently as possible. In addition, they are regular participants in polka, waltz, zydeco, and Cajun dance festivals in Europe and the United States. For almost 30 years, they have been successful tournament blackjack players as well. Both are avid exercisers—lifting weights, doing yoga, and running almost every day.

Daniel J. Herron has taught business Legal Studies for more than thirty-five years. He is currently retired from Miami University in Oxford, Ohio, but is a visiting professor at Western Carolina University in Cullowhee, North Carolina. He is the executive secretary of the Academy of Legal Studies in Business. He has been married for over forty years to Deborah, and they have two children and seven grandchildren. His publication record included over twenty-two scholarly articles and over forty scholarly presentations. He currently lives in Cullowhee, North Carolina.

Lucien J. Dhooge is the Sue and John Staton Professor of Law at the Georgia Institute of Technology. He teaches business law, international business law, and ethics. After completing an undergraduate degree in history at the University of Colorado in 1980, Professor Dhooge attended the University of Denver College of Law, where he received his J.D. in 1983. He received his LL.M. in 1995 from Georgetown University Law Center where he specialized in international and comparative law. Before

coming to Georgia Tech, Professor Dhooge spent 11 years in private law practice and 12 years serving on the faculty of the University of the Pacific in California. Professor Dhooge has authored more than 60 scholarly articles, co-authored fourteen books, and presented research papers and courses throughout the United States as well as in Asia, Australia, Europe, and South America. Professor Dhooge is the recipient of numerous research awards given by the Academy of Legal Studies in Business, including seven Ralph C. Hoerber Awards for excellence in research. He was designated the outstanding junior business law faculty member in the United States by the Academy in 2002 and received the Kay Duffy Award for outstanding service in 2005. Professor Dhooge received the Academy's Distinguished Career Faculty Award in 2019. Professor Dhooge was the program chair for the Academy's 2009 international conference in Denver and served as the Academy's president from 2009 to 2010. He is a past editor-in-chief of the *American Business Law Journal* and the *Journal of Legal Studies Education*.

A native of Chicago but raised in Denver, Professor Dhooge enjoys spending time with his family and following the fortunes of the Chicago Cubs and Colorado Rockies professional baseball teams.

Linda L. Barkacs received her JD from the University of San Diego in 1993. She also has a BA in political science from San Diego State University and an AA in accounting from Irvine Valley College.

Upon graduating from law school and passing the California bar exam, Professor Barkacs became an associate at a downtown San Diego law firm. During her time with that firm, she was involved in a number of high-profile trials, including a sexual harassment case against the City of Oceanside that resulted in a \$1.2 million verdict. In

1997, Professor Barkacs and her husband Craig (also a professor at USD) started their own law firm specializing in business and civil litigation (in both federal and state courts), employment law cases, and appeals. They were also involved in numerous mediations and arbitrations.

Professor Barkacs began teaching at USD in 1997 and was tenured in 2011. As an educator, she has designed and taught numerous courses on law, ethics, and negotiation. She teaches in USD's undergraduate and graduate programs, including the Master of Science in Executive Leadership (a Ken Blanchard program), the Master of Science in Global Leadership, and the Master of Science in Supply Chain Management. Professor Barkacs often teaches in USD's study-abroad classes and has traveled extensively throughout Europe, Asia, and South America.

Professor Barkacs has received numerous awards for her teaching at USD, including USD's 2010 Professor Impact (MSCM Program); the 2008 USD School of Business Outstanding Undergraduate Business Educator of the Year; and the 2007 and 2008 Professor of the Year, USD Senior Class (university-wide).

She and her husband are principals in The Barkacs Group (www.TheBarkacsGroup.com), a consulting firm that provides negotiation, ethics, and team training for the private sector. Professor Barkacs has published numerous journal articles in the areas of law, ethics, and negotiation. She and her husband are co-authoring a book on negotiation. She has been the president, vice president, conference chair, and treasurer for the Pacific Southwest Academy of Legal Studies in Business (www.pswalsb.net).

Professor Barkacs currently spends her time teaching, publishing, consulting for The Barkacs Group, and doing volunteer work for various civic causes. She enjoys walking, weight-lifting, and spending her free time with her two cats, Violet and Vanessa.

Preface

We wrote this book because our primary sense of who we are as professionals is that we are teachers. We play various roles in our careers, but we are especially dedicated to our students. We want them to listen, read, create, and evaluate more effectively as a result of their experience in a business law class. Above all, we want them to sense the importance and excitement of the law.

We want them to be aware that business resides in an atmosphere of legal rights and responsibilities. The more they have an understanding of relevant law, the more their business activities will flourish.

We tried to construct a book that contains the basics of business law but does not get bogged down in the kind of details that would be more appropriate in an upper-level law class.

This 5th edition continues and advances the pedagogical strengths of earlier editions. As difficult as it is to recall what it is like to know almost nothing about business law, we tried repeatedly to force ourselves to remember that the text is for students, not for us to reveal our previous training. Toward that end, we have simplified and clarified as often as we could.

Our pedagogical features that provide the distinctive value of this book. Each feature stands by itself as an aid to the kind of learning we hope to encourage. Yet the features are also a cohesive unit, contributing both to the liberal education of the students who read it and to their skills as decision makers in a market economy.

Specifically, we provide what competing texts deliver, an examination of the basic questions, concepts, and legal rules of business law. But this edition advances our treatment of these basics. We are very sensitive to the feedback we receive that emphasizes that this text is used to train future business leaders, not lawyers. Consequently, for each chapter we asked ourselves: what are the brief take-aways that capture the essence of the chapter for our primary audience—people who need guidance for achieving success in business. Then we answered that question by placing a section at the end of each chapter entitled “Practical Tips for Business Managers.”

Decisions to trade and produce require trust—trust that consumers, firms, workers, financial institutions, and asset owners will do as they promise and that violations of such promises will be unacceptable in the marketplace. Without guarantees that promises will be kept, market exchanges would grind to a halt. Business law provides these guarantees and the boundaries within which certain promises can be made and enforced.

Market decisions are made in a context—a persistently changing context. The law, in turn, is dynamic in response. New technologies and business practices bring new disputes over rights and responsibilities in a business setting.

We knew that the 5th edition needed to be different from the 4th because law is evolving. Certain areas of business law experience recurring re-examination and revision. For example, we created new material for this edition emphasizing immigration law.

In addition, each author pledged to refresh our chapters with recent developments in business law.

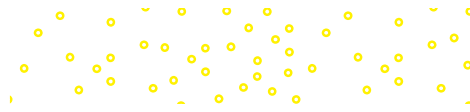
Future business leaders need knowledge of existing business law as well as a set of skills permitting them to adjust efficiently and effectively to new legal issues as they arise over the course of their careers.

We are excited about the contents of our features and want to explain the function of each of them in preparing students for leadership positions in business.

NEW Connect’s Business Law Application-Based Activities

New for the 5th edition are Application-Based Activities for Business Law. This digital feature provides students valuable practice using problem-solving skills to apply their knowledge to realistic scenarios. Students progress from understanding basic concepts to using their knowledge to analyze complex scenarios and solve problems. Application-Based Activities have been developed for the most often taught topics (as ranked by instructors) in the business law course. These unique activities are assignable and auto-gradable in Connect.

v



PRACTICAL TIPS for Business Managers

1. Remember that the meaning and implications of laws are a matter of interpretation. Therefore, it is wise, if possible, to consult with more than one lawyer when you are curious about the meaning of a law that is immensely important to your operations.
2. Try to stay current with your knowledge of law relevant to your industry and that of your suppliers. Law evolves, and yesterday's law may not be today's law.
3. When you engage in any international commercial activity, be sure to investigate the law of countries in which you are doing business.

NEW Practical Tips for Business Managers

This feature emphasizes that this book is a BUSINESS Law book, full of helpful ideas for modern business leaders. These are the practical takeaways highlighting the usefulness of what was learned in the chapter.

Case Openers and NEW Case Opener Wrap-ups

The Case Opener feature provides a vivid, practical introduction to the kinds of legal issues that arise in the new chapter. This approach is much more enticing than were we to simply launch immediately into the relevant legal principles.

The NEW Case Opener Wrap-ups conclude the chapters. They explain how courts resolve fact patterns such as those in the Case Openers.

BUT WHAT IF . . .

Business law is a set of rules and regulations that modern managers must obey, but those rules and regulations apply in specific situations to particular facts. Those facts create a special setting, one not exactly like any other business decision. We added a But What If feature to highlight for readers the need to think about the implications of specific facts for the application of business laws.

In addition, this feature provides a reminder that applying the law is a complex activity, requiring a thorough knowledge of

BUT WHAT IF . . .

WHAT IF THE FACTS OF THE CASE OPENER WERE DIFFERENT?

In the opening case, the EPA believed it did not have enough power to make rules regarding global climate change. Let's say that a member of the EPA argued that only Congress has the power to make this type of regulation, which would directly affect the way many businesses operate. Would the EPA member be correct?

the law. An alert business manager needs to consider how each of the facts in the dilemma she or he faces may have legal implications that are not always clear when simply reading the law for the first time. The facts of a case guide the application.

Those who have formal legal training know that a common form of teaching law is to pose hypotheticals. The But What If feature mimics that approach.

In other words, at first glance the law seems to point in a certain direction, thereby giving business decision makers confidence that they know what is legally permissible or required, but changing a single fact can sometimes dramatically alter the eventual application of the law. An awareness of the significance of facts in the law can greatly enhance legal compliance and save firms huge expenses.

Global Boxes

This feature highlights the emerging, interconnected market. Where relevant, the chapters contain Global Context boxes. Because so many market decisions are made in an international

context, learners need to familiarize themselves with the likelihood that a particular legal principle essential to doing business in one country may not be appropriate in other countries. The Global Context boxes illustrate how unique the law in a certain country often is. After reading these stories of difference, readers will certainly understand better the need to discover relevant law in all jurisdictions where their market decisions have legal implications.



GLOBAL Context

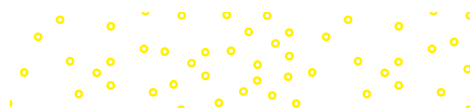
The Court Structure in England

©Digital Archive Japan/Alamy Even though we trace the roots of the U.S. legal system back to England, changes have occurred in both countries' court structures; as a result, the court structures in the United States and England share similarities but also have distinct features. The lowest criminal courts in England are the magistrates courts, which hear minor offenses. More serious cases are tried before a judge and jury in the crown court, which also hears cases appealed from the magistrates courts on factual points. The high court (in the Queen's Branch Division) hears appeals on points of law, and the

court of appeal in the Criminal Division hears appeals on sentences and convictions.

Civil cases are first heard in the county courts (for minor claims) or the high court, which is divided into three divisions: Queen's Bench, Family, and Chancery. Cases may be appealed to the court of appeal (Civil Division). Cases may also be appealed from the county court to the high court.

The House of Lords is the supreme court of appeal. Its cases are heard by up to 13 senior judges known as *law lords*. In addition to the courts, there are specialized tribunals, which hear appeals on decisions made by various public bodies and government departments in areas such as employment, immigration, social security, tax, and land.



We believe that students learn innumerable valuable lessons about American business law by contrasting the concepts of our business law system with those of our primary trading partners. We typically use Canada, Japan, China, Russia, Mexico, and the European Union for our comparisons because modern business managers will more likely be interacting with the law in those particular jurisdictions.

Critical Thinking

After each case in the book, we have provided critical-thinking questions to highlight the need to think critically about the reasoning the court used. In addition, we include in every chapter a Point/Counterpoint problem that encourages the reader to evaluate the conflicting reasoning surrounding a key issue in the chapter.

Critical Thinking and Business Law Appendix 1A

We do much more than just ask a lot of critical-thinking questions at particular locations throughout the chapters. We encourage the use of a step-by-step critical thinking approach that has been developed and used in classrooms in many countries. We do not just repeatedly urge students to think critically. Instead, we describe for them what is meant by that phrase in the context of business law.

We include this step-by-step approach in Appendix 1A at the end of Chapter 1. Instructors who wish to emphasize critical thinking can use that appendix as a structured approach for learning how to evaluate legal reasoning.

Ethical Reasoning

Our book emphasizes consideration of all stakeholder interests in every market decision. Business ethics should never be an afterthought or something firms consider only because they think they must. In response to requests from our users, we created a separate chapter, Chapter 2, devoted entirely to business ethics. We expanded the discussion of business ethics while simplifying the framework for applying ethical reasoning.

CASE 16-1

ALASKA PACIFIC TRADING CO. v. EAGON FOREST PRODUCTS INC.

Washington Appellate Division 1

933 P.2d 417 (1997)

FACTS: *Alaska Pacific Trading Company (ALPAC) and Eagon Forest Products Inc. contracted to buy and sell raw logs. ALPAC and Eagon engaged in months of communications about a shipment of 15,000 cubic meters of logs from Argentina to Korea between the end of July and the end of August 1993. The delivery date passed without ALPAC shipping the logs. Eagon canceled the contract, alleging that ALPAC had breached the agreement by failing to deliver. ALPAC alleged that its failure to deliver was not a material breach and that the parties had modified the delivery date. Alternatively, ALPAC argued that Eagon breached the contract by failing to provide adequate assurances or repudiating the contract. The miscommunication between the parties occurred after the market for logs began to soften, making the contract less attractive to Eagon. ALPAC was reluctant to ship the goods because it was concerned that Eagon might not accept the shipment. However, Eagon never stated that it would not accept the cargo.*

ISSUE: The question for the court is whether to apply the common law doctrine of material breach or the UCC doctrine of perfect tender.

REASONING: In the court's own words:

As a contract for the sale of goods, this contract is governed by the Uniform Commercial Code, Article II (UCC II) which replaced the common law of material breach, on which ALPAC relies, with the "perfect tender" rule. Under this rule, "If the goods or the tender of delivery fail in any respect to conform to the contract, the buyer may . . . reject the whole." . . . Both the plain language of the rule and the official comments clearly state that, if the tender of the goods differs from the terms of the contract in any way, the seller breaches the contract and the buyer is released from its duty to accept the goods.

DECISION AND REMEDY: The court applied the literal language of the UCC, holding that the perfect tender rule applied and that ALPAC's failure to deliver was a breach of contract.

SIGNIFICANCE OF THE CASE: Though difficult to measure at times, the perfect tender rule is a departure from the common law rule of substantial performance. Any deviation from the contract may indeed constitute a breach of the perfect tender rule, materiality notwithstanding.

CRITICAL THINKING

Here, Eagon got lucky. The company got out of a contract that was unfavorable to it, given the softening market for logs. In what way did the judge simplify the case? Is it fair to say the judge oversimplified the case?

ETHICAL DECISION MAKING

What ethical norm or value underlies the judge's decision? Explain.

BUSINESS Ethics Flashpoint 2.5

The Dofasco Steel Company's Approach to Workers

Dofasco is the second-largest steel producer in Canada and sells a wide range of steel products. In the 1980s, Dofasco experienced shrinking profits and decided to change its approach to business.

One of the ways that Dofasco changed was in its approach to its workers. Specifically, Dofasco attempted to implement a philosophy taking into account the whole person at work. In other words, this approach sought to include wellness as an important characteristic of the employee experience.

In line with this new philosophy, the Dofasco management claimed it would abide by the following policy statement issued in its 1996 guides of the company's health, safety, and lifestyle activities: "At Dofasco, there is nothing more important than the health and safety of our people."

Consistent with this policy statement, Dofasco provided training for employees in problem solving, manufacturing processes, and customer service. Dofasco also built on its tradition of providing its workers with ergonomic and fitness resources as well as preventive medical services.

Yet another way that Dofasco sought to focus its energies on employee needs was by encouraging healthy lifestyle practices at work. A healthy lifestyle at work would be achieved by preventing workplace accidents and maintaining a safe environment. In addition, Dofasco assessed employee needs in response to worker suggestions.

Dofasco believes that its focus on a safe and healthy workplace has improved its business. Specifically, the company claims that its policies have reduced lost time associated with work injuries and minimized Workers Safety Insurance Board payments.

In addition to focusing on worker safety and well-being, Dofasco also has a history of being environmentally responsible. For example, Dofasco was the first corporation in Canada voluntarily to sign an Environmental Management Agreement with Environment Canada and Ontario's Ministry of the Environment. In this agreement, Dofasco made commitments to abide by specific air and water quality standards and sustainable energy use and waste management. Through this agreement, Dofasco expressed its commitment to the community.

In addition, Dofasco created a Sustainable Development Strategy Team and is a founding sponsor of the Sustainable Enterprise Academy at York University's Schulich School of Business. The mission of this academy is to provide executives with training in how to manage businesses with an eye for sustainability.

Dofasco's organizational practices resulted in being named one of the world's most sustainable companies in the Dow Jones Sustainability Group Index.

Sources: Dan Corbett, "Excellence in Canada: Healthy Organizations—Achieve Results by Acting Responsibly," *Journal of Business Ethics* 55, no. 2 (December 2004), pp. 124, 130; Joan Enric Ricart, et al. "The Sustainable Enterprise: Learning from DJSI Leaders", *Fundacion BBVA* (2005).

Instead, business ethics is what provides the social legitimacy for markets, what distinguishes markets from the life of the jungle. Although market decisions are calculating and purposeful, they must at the same time reflect awareness that the good and the right provide social borders that elevate those decisions above simple greed and egoism.

Ethical discussion focuses on the basic observation that we are socially and globally interdependent as entrepreneurs, asset owners, workers, businesspeople, and consumers. Our inescapable contact with one another requires our aspirations to be defined, at least in part, by their impact on others.

Our text has several ethical reasoning possibilities in each chapter. But for the reader to use this emphasis requires a practical step-by-step approach. In other words, students need more than just a discussion about values or ethics.

They need to have some sense that the discussion is headed somewhere. They want to know, “How will my behavior be any more ethical after I have read the chapter and participated in the class discussions?” Our text answers their question.

Chapter 2 provides a clear explanation of our approach—an approach that students can use on a regular basis. The language and organization of our model of ethical reasoning leans implicitly on standard ethical theories, but it meets the challenge of a fast-paced business world. It pushes stakeholders to the forefront of market decisions, where they belong, and does so in a manner that

is both powerful and doable without becoming tedious.

Business ethics serve as the guidelines we use to shape the world we wish to create. As such, they provide guidance for the kind of business behavior we want to reinforce. After each case discussion, we pause to think about the ethics of business law by asking a question derived from the practical approach to business ethics developed in Chapter 2.

E-Commerce Boxes

A central feature of modern business decisions is new technology, specifically the rapid spread of electronic commerce. This development has created new challenges and opportunities that were unforeseeable until very recently. By including boxes that call attention to these challenges, we think we can convince students most effectively of the pervasive influence of this new, complicating aspect of business decisions.

E-COMMERCE and the Law

E-Government: Changing the Relationship between the Government and Citizens

According to the United Nations, *e-government*, which is defined as the delivery of government services through digital information technologies, including the Internet, is important because it reduces the cost of government while significantly improving the quality of services and citizen access. According to the latest UN report about this topic, e-government makes public administration more proactive, efficient, transparent, and service-oriented. Annual surveys by the UN indicate that nations throughout the world have made significant progress in e-government development, with the United States and Europe being among the leaders in this development.

The UN has characterized the development of e-government into the following stages:

Stage I—Emerging: A government’s online presence mainly consists of a web page and/or an official website; links to ministries or departments of education, health, social welfare, labor, and finance may or may not exist. Much of the information is static, and there is little interaction with citizens.

Stage II—Enhanced: Governments provide more information on public policy and governance. They have created links that enable citizens to access archived information such as documents, forms, reports, laws and regulations, and newsletters easily.

Stage III—Interactive: Governments deliver online services such as downloadable forms for tax payments and applications for license renewals. In addition, the beginnings of an interactive portal or website with services to enhance the convenience of citizens are evident.

Stage IV—Transactional: Governments begin to transform themselves by introducing two-way interactions between citizen and government (C to G). This includes

options for paying taxes and applying for ID cards, birth certificates, passports, and license renewals as well as similar C-to-G interactions, and it allows the citizen to access these services online 24/7.

Stage V—Connected: Governments transform themselves into a connected entity that responds to the needs of its citizens by developing an integrated back office infrastructure. This is the most sophisticated level of online e-government initiatives, and it is characterized by:

1. Horizontal connections (among government agencies).
2. Vertical connections (central and local government agencies).
3. Infrastructure connections (interoperability issues).
4. Connections between governments and citizens.
5. Connections among stakeholders (government, private sector, academic institutions, NGOs, and civil society).

In addition, governments support and encourage e-participation and citizen engagement in the decision-making process.⁹

The most recent ranking of nations in terms of their progress toward development of effective e-government was as follows: (1) Sweden, (2) Denmark, (3) Norway, (4) United States, (5) Netherlands, (6) Republic of Korea, (7) Canada, (8) Australia, (9) France, and (10) United Kingdom.¹⁰ Sadly, the United States was at the top of the list in 2001, but because the Bush administration failed to make a serious commitment to transforming the federal government through information technology and failed to develop an overall e-government plan detailing where the government wants to go and how it wants to get there, other nations have made much more rapid progress in this area than has the United States.¹¹

Online Assignments and Resources

We have designed our features around the things we do in our classes to encourage excitement about business law. We believe they provide Business Law Plus. We also have a variety of supplementary material available for instructors, to aid in course development, and for students, to provide additional study.

NEW Connect's Business Law Application-Based Activities (ABAs)

Application-Based Activities for Business Law provide students valuable practice using problem-solving skills to apply their knowledge to realistic scenarios. Students progress from understanding basic concepts to using their knowledge to analyze complex scenarios and solve problems. Application-Based Activities have been developed for the most often taught topics (as ranked by instructors) in the business law course. These unique activities are assignable and auto-gradable in Connect.

SmartBook 2.0 Available within Connect, SmartBook 2.0 is an adaptive learning solution that provides personalized learning to individual student needs, continually adapting to pinpoint knowledge gaps and focus learning on concepts requiring additional study. SmartBook 2.0 fosters more productive learning, taking the guesswork out of what to study, and helps students better prepare for class. With the ReadAnywhere mobile app, students can now read and complete SmartBook 2.0 assignments both online and off-line. For instructors, SmartBook 2.0 provides more granular control over assignments with content selection now available at the concept level. SmartBook 2.0 also includes advanced reporting features that enable instructors to track student progress with actionable insights that guide teaching strategies and advanced instruction, for a more dynamic class experience.

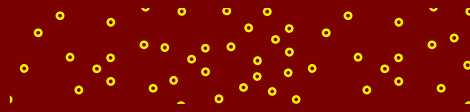


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Interactive Applications McGraw-Hill Connect's Interactive Applications offer a variety of automatically graded exercises that require students to apply key concepts. Whether the assignment includes a *click and drag*, *video case*, or *decision generator*, these applications provide instant feedback and progress tracking for students and detailed results for the instructor.

Instructor's Manual Written by our co-author Neil Browne, this resource includes lecture notes, case briefs, answers to all questions in each chapter, assignment ideas, teaching assistance (emphasizing practical tips that new or part-time teachers can try right away), and suggested handouts.





Test Bank and Quizzes Our test bank and quizzes contain a variety of true/false, multiple-choice, and essay questions as well as scenario-based questions, which are application-based and use a situation described in a narrative, with three to five multiple-choice test questions based on the situation.

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

You Be the Judge Online This interactive product features case videos that showcase courtroom arguments of business law cases. These case videos give students the opportunity to watch profile interviews of the plaintiff and defendant; read background information; hear each case; review the evidence; make their decisions; and then access an actual, unscripted judge's decision and reasoning.

Videos Links to brief videos for classroom use are provided.

Business Law Newsletter McGraw-Hill Education's monthly Business Law newsletter, *Proceedings*, is designed specifically with the Business Law educator in mind. *Proceedings* incorporates "hot topics" in business law, video suggestions, an ethical dilemma, teaching tips, and a "chapter key" cross-referencing newsletter topics with the various McGraw-Hill Education business law textbooks. *Proceedings* is delivered via email to business law instructors each month and can be found here: <http://successinhighered.com/businesslaw/newsletter>.

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Important Changes in This Edition

Following are the updates that were made to the 5th edition. Note that we have multiple chapters and cases where we integrated two new themes: privacy law and small business.

Overall Updates Incorporated into Almost Every Chapter in the 5th Edition

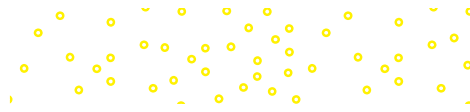
- **NEW Practical Tips for Business Managers** is a feature which emphasizes that this book is a BUSINESS Law book, full of helpful ideas for modern business leaders. These are the practical takeaways highlighting the usefulness of what was learned in the chapter.
- **A new major case** is an inclusion signifying our recognition that students want fresh cases.
- **A new Case Opener Wrap-up** feature which explains how courts handle the issues introduced in the Case Opener.
- **Three new case problems** are included in the Questions & Problems section in recognition of our pledge to include fresh materials throughout.
- **NEW Application-Based Activities** for Business Law provide students valuable practice using problem-solving skills to apply their knowledge to realistic scenarios. Students progress from understanding basic concepts to using their knowledge to analyze complex scenarios and solve problems. Application-Based Activities have been developed for the most often taught topics (as ranked by instructors) in the business law course. These unique activities are assignable and auto-gradable in Connect.

CHAPTER 1: An Introduction to the Fundamentals of Dynamic Business Law

- Clarified the meaning of “commercial” and “supreme law of the land” because reviewers said their students were not familiar with the terms.
- Broadened the treatment of the boundaries of “criminal law” in response to reviewer’s concern that the previous discussion of criminal law had focused too much on insider trading.
- Revised the discussion of the importance of comparative law by replacing the outdated material based on Google’s conflicts with China by discussing the restrictions on American firms resulting from the new 2017 cybersecurity law. This addition contributes to our expanded treatment of cyberlaw.
- Explained in the description of critical thinking the significance of the “But What If” feature in DBL5 for being alert to the impact of single facts on success or failure in a legal dispute.

CHAPTER 2: Business Ethics and Social Responsibility

- Added a discussion of Core Values because so many businesses tie their mission statements and discussions about new directions to their core values. Then the core values of CVS and Adidas are contrasted with those of American Express.
- Included a chart of well-known instances of ethical and unethical business behavior featuring CVS, Starbucks, Wells Fargo, Bernie Madoff, and Microsoft in response to reviewers’ desire for more visuals in the text.
- Made explicit the open-ended nature of ethical decisions. In other words, we should never expect universal agreement about how to answer ethical questions. But by learning the various ways that thoughtful people have learned to talk about ethical dilemmas, businesspeople can play a leadership role in sustaining an ethical market system.
- Emphasized the practicality of the WH approach to Business Ethics in response to reviewers’ requests.



CHAPTER 3: The U.S. Legal System and Alternative Dispute Resolution

- Removed discussion of quasi in rem jurisdiction at the suggestion of a reviewer who felt that this concept was complicated and beyond the needs of the typical business student.
- Deleted the older case 3-1 about in personam jurisdiction based on the internet and replaced it with a more current Case Nugget, Minimum Contacts Via the Internet, that illustrates the same point. Before the Nugget some additional commentary was added about minimum contacts related to a case involving a university, which should be of interest to students.
- Added a sentence to the E-Commerce Box making it clear to students why they should be concerned about the subject matter of the Box, the sliding scale for internet transactions.
- At the suggestion of a reviewer, added two new exhibits: a sample forum selection clause and choice of law clause. While these clauses may seem self-explanatory, it will be helpful for the students to see what they actually look like.
- Updated Exhibit 3-6 to include the newest Supreme Court Justice's name and photo.
- Added a sentence clarifying that the map of the Circuit Courts of Appeal did not include the DC Circuit in response to a reviewer's concern about a potential conflict between the text, which correctly specifies that there are 12 Circuit Courts of Appeal, and the map, that showed only 11 circuits.
- Added the potential defendant's option of filing a motion to dismiss in lieu of an answer.
- Replaced the 1996 J.E.B. case with a 2016 case to provide a more current illustration of the concept of the Bateson challenge

CHAPTER 4: Administrative Law

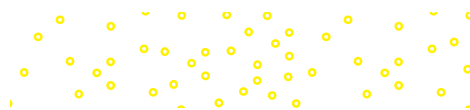
- Added *NASA v. Nelson*, focusing on agency background checks of employees and informational privacy, including the nondisclosure requirement of the Privacy Act of 1974.
- Included new Case Nugget, *Open Communities Alliance v. Carson*.
- Retitled section previously called "How Are Agencies Run?" to "How Do Agencies Operate?" The new title, suggested by a reviewer, better reflects the content of that section.
- Changed Point/Counterpoint to "Is Administrative Regulation of Business a Good Thing?"

CHAPTER 5: Constitutional Law

- Inserted a new Case Nugget, "Can States Require On-line Sellers Without a Physical Presence in a State to Collect State Sales Tax?", based on the 2018 Supreme Court case *South Dakota v. Wayfair*. This case is extremely important because it changes the conditions under which states can tax internet sales transaction.
- Replaced old case 5-3, *Riley v. California*, with a newer case that shows the continuing evolutions of Fourth Amendment protections related to cell phone usage. In *Riley*, which we now just discuss briefly in the chapter, the high court ruled that warrantless searches from a cell phone taken from an arrestee at the time of his arrest constitute a violation of the Fourth Amendment. In the new case 5-3, *Carpenter v. United States*, the high court now holds that authorities must now seek a warrant for cell tower location information.

CHAPTER 6: Criminal Law and Business

- Created examples of the different states of mind a defendant could have when committing a crime. These illustrations will help the students more clearly see the differences among the states of mind.
- Included a new case, *Salmon v. US*, that clarifies when the U.S. Supreme Court will find an insider liable of being a tippee. A new example of embezzlement of money from a Girl Scout troop, demonstrating how even nonprofit corporations can be victims of embezzlement.



- Created Case Nugget, “Can Corporate Executives be Charged with Murder or Manslaughter?”, highlighting the case recently filed against those responsible for the decapitation of a ten-year-old boy at a waterpark. Not only is this a current case that the students will find interesting, but it also raises an interesting and controversial issue that may lead to good classroom discussion.
- Changed the Point/Counterpoint to ask the question of whether insider trading should be legal. Insider trading is in the news a lot, and so students may be able to relate the discussion to situations they may have read about but which aren’t in their text.

CHAPTER 7: Tort Law

- Added new Case Nugget, *Jacobus v. Trump*, in response to a reviewer suggestion that we expand discussion of the distinction between fact and opinion. The case involves actions taken on Twitter, and thus is in line with our increased emphasis on cyber law.
- Provided a new case 7-1, *Mazda Motor Corporation v. Hurst*, providing a more updated scenario that shows the application of the *Gore* guideposts. a discussion about the innovative attempt by five California cities to use the tort of public nuisance to sue the Big 5 oil companies for damages caused by climate change, arguing that these firms created a public nuisance by misleading the public as to the effects of using fossil fuels.

CHAPTER 8: Real, Personal, and Intellectual Property

- Added new Exhibit 8-1 to illustrate types of property.
- Replaced the appellate decision with the new U.S. Supreme Court decision to have the latest holding in the case.
- Added an update after case 8-2 explaining how that Supreme Court case had affected a pending appeal by the Washington Redskins as to the legitimacy of their trademark, showing how U.S. Supreme Court cases not only affect the parties before the high court but may also affect other pending cases.
- Created new Exhibit 8-5, illustrating a few common trademarks.
- Added new Exhibit 8-6, which gives students some common ways to identify trademark and copyright protected materials.
- Designed new Global Box discussing liability in Japan of online providers for copyright violation. This addition is in keeping with our attempts to integrate more references to online activity.

CHAPTER 9: Introduction to Contracts and Agreement

- Replaced case 9-2 with a more current case, *Tripiani v. Elliott*, demonstrating the elements of an implied contract. Offers and Acceptances in Saudi Arabia.
- Added a new Global Context box, “Offers and Acceptances in Saudi Arabia,” which illustrates a slightly different way of forming an agreement.
- Changed the Point/Counterpoint to, Should the Business World Embrace Smart Contracts? This issue introduces students to the smart contracts, which is a new development in contract law.

CHAPTER 10: Consideration

- Included new Case Nugget in “Promissory Estoppel” section: *Ruzicka v. Conde Nast Publishing*.
- Added Case in “Preexisting Duty” section: Case 15-4: *Margeson v. Artis*.

CHAPTER 11: Capacity and Legality

- Replaced Case 11-3 with *Riley v. Iron Gate*, a more recent case that illustrates how the courts determine whether an exculpatory clause violates public policy and therefore is illegal.

- Added a cartoon to the section about Legality, focusing on a severed contract. This image may help students remember the meaning of “severed contract.”
- Added a new Point/Counterpoint, “Should Minors Have Full Capacity to Enter into Binding Legal Contracts at the Age of 15?”

CHAPTER 12: Reality of Assent

- Added a cartoon to the Mistake section to get students thinking about what a mistake means.
- Expanded the discussion of undue influence and included four clarifying questions that can be used to determine whether undue influence exists.
- Replaced old case 12-3 with a new case, *Garage Solutions, LLC v. Monty J. Pearson*.

CHAPTER 13: Contracts in Writing and Third-Party Contracts

- Revised the Discussion of the Equal Dignities Rule in the Contracts Falling Within the Statute of Frauds Section. A reviewer thought the original version was somewhat confusing, and the revision is much clearer and contains an example to make the rule much more easily understandable.
- Added new Case Nugget, *Aurigemma v. New Castle Care, LLC*, to illustrate the difficulty of knowing when a writing is needed.
- Deleted section “integrated contracts” and moved the information from that section into the parole evidence rule section where it fit better.
- Added a new case, *Barker v. Price*, to illustrate how making a slight error in terms of what you include in your contract can make a difference in whether the parole evidence rule applies to your written contract.

CHAPTER 14: Discharge and Remedies

- Inserted a new case 14-3, *Hemlock Semiconductor Operations, LLC v. Solarworld Industries Sachsen GmbH*, which provides a more recent illustration of the discharge of a contract due to commercial impracticability.
- Added Exhibit 14-1, a new graphic, to highlight differences among types of conditions.
- Included new Global Context Box, “Damages for Breach of Contract: Not the Preferred Remedy in Latvia,” at the start of the remedies section. This box is an important addition because the preference in Latvia for equitable relief is the exact opposite of the preference in the United States for legal (non-equitable) relief.

CHAPTER 15: Formation and Performance of Sales and Lease Contracts

- Wrote new Chapter opener based on *Baker v. Zicron*.
- Created Case Nugget “Risk of Loss—Seller Breach” based on *Chicago Prime Packers, Inc. v. Northam Food Trading Co.*

CHAPTER 16: Sales and Lease Contracts: Performance, Warranties, and Remedies

- Created new Chapter opener based on *Accettura v. Vacationland, Inc.*
- Designed new Case Nugget about customary and usual practices.
- Included new case about direct v consequential damages.

CHAPTER 17: Negotiable Instruments: Negotiability and Transferability

- Added case 17-1, *Amplify Federal Credit Union v. Garcia*. This case examines the elements determining whether a contract is a negotiable instrument.
- Created a Global Box explaining the unique understanding of negotiable instruments in India. A concurrent traditional form of negotiable instruments governs particular kinds of instruments, side by side with a system of negotiable instruments similar to those in the United States.

CHAPTER 18: Holder in Due Course, Liability, and Defenses

- Included case 18-1, *Walker v. Probandt and Raynor*. This case shows how defenses are affected by the transfer of a note, and how defenses come into play when deciding liability. It also discusses how holder in due course status affects defenses.
- Added a new graphic to visualize the requirements to acquire holder-in-due-course status to supplement the prose description.
- Included a new graphic describing the requirements that must be met for there to be notice of such a defect. To say that a negotiable instrument was accepted without notice of defects is to say that a party was not knowledgeable of any defects in the instrument at the time of acceptance.

CHAPTER 19: Secured Transactions and Bankruptcy

- Replaced Case Nugget with a case addressing the definition of the terms “intangibles” and “proceeds” in a financing statement and their effect upon a debtor’s subsequent award of damages (*Bayer Cropscience, LLC v. Stearns Bank Nat’l Ass’n*).
- Replaced case 19-2 with a case addressing the status of student loans in bankruptcy and maintenance of a “minimal standard of living” (*In re Murray*).
- Updated bankruptcy exemptions in Exhibit 19-4 and Chapters 13 and 12 filing requirements for individual repayment plans, family-farmer petitions, and family-fisherman petitions.

CHAPTER 20: Agency and Liability to Third Parties

- Added case 20-2, *Doe v. Uber Technologies, Inc.* This case provides a good illustration of how a court might determine whether a worker is an employee or independent contractor as well as whether an employer may be liable under *respondeat superior*.

CHAPTER 21: Forms of Business Organization

- Added new Point/Counterpoint: Should Aspiring Business Owners Form an LLC Instead of a Corporation?
- Included new case 21-2, *Patterson v. Domino’s Pizza*.

CHAPTER 22: Corporations: Formation and Organization

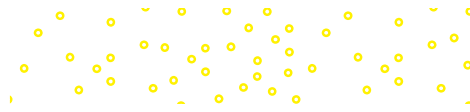
- Clarified that *ultra vires* is uncommon, but important, in response to a reviewer’s suggestion.
- Clarified the extent of the requirements of the Uniform Partnership Act in response to a reviewer’s suggestion.
- Added clarification as to why LLCs are now such a popular form of business in response to a reviewer’s suggestion.
- Inserted an additional description regarding franchises in response to a reviewer’s suggestion.
- Added new case 22-2, *KDW Restructuring & Liquidation v. Greenfield*, which represents a clear statement of the contemporary application of the business judgment rule.

CHAPTER 23: Securities Regulation

- Added new case 23-2, *Levista, Inc. v. Ranbaxy Pharmaceuticals, Inc.*
- Added new Point/Counterpoint: Should Previous Dealings of the Parties Control the Contractual Relationship?

CHAPTER 24: Employment and Discrimination Law

- Added two new learning objectives and sections.
- Included the question in 24-7: “May employers use social media in employment decisions?” The issue of the use of social media by employers in hiring and firing decisions is a hot topic and one that is fraught with potential pitfalls. Savvy employers must be informed as to



when and how using social media for such purposes is wise and when it should be avoided (privacy issue).

- Added the question in 24-8: What are the rights and responsibilities of employers when hiring foreign workers? The recent executive orders related to immigration have made this a hot topic. United States' employers want to be able to access the best talent worldwide but also avoid legal entanglements.
- Added two major developments in the law regarding sexual orientation discrimination – an agency case and a federal circuit court case extending the definition of “sex” discrimination under Title VII to include discrimination based on sexual orientation.
- Added new case 24-2, *Donald Baldwin, Complainant v. Anthony Foxx, Secretary, Dept. Of Transportation (FAA), Agency*, First time the EEOC (as an agency) interprets “sex” discrimination under Title VII as including discrimination based on sexual orientation.
- Included a new section re: U.S. Supreme Court’s 2015 decision granting marriage equality.
- Provided a new case 24-3, *Nickel v. Staples Contract and Commercial*, an age discrimination case in which “substantial evidence” of discrimination prevailed over allegations of employee theft, resulting in \$16M verdict.
- Added new Case Nugget: *Roe v. Teletech Customer Care Mgmt. (Colo.) LLC* on whether an employee may be fired for using medical marijuana.
- Added new Point/Counterpoint: Should Employers Be Permitted to Use Social Media in Hiring and/or Firing Decisions?

CHAPTER 25: Consumer Law

- Clarified the rulemaking authority of the FTC in response to a reviewer’s comment that the concept had not been introduced at the time it first appeared in the chapter.
- Added a section about data mining and privacy.
- Designed a discussion of the reduced regulations placed on data mining by legislation during President Trump’s first hundred days.
- Included a new Point/Counterpoint: Should Prescription Drugs be Advertised Directly to Consumers?
- Added new case 25-2, *Crawford v. LVNV Funding*.

Acknowledgments

This final component of the Preface contains a palpable tone of gratitude and humility. Any project the scope of *Dynamic Business Law: The Essentials*, Fifth Edition, is a collective activity; the authors are but the visible component of a remarkably large joint effort. We want to thank several contributors by name, but there are doubtlessly many other students, colleagues, and friends who made essential contributions to these pages.

Our largest gratitude goes to the dozens of business law colleagues who saved us from many embarrassing errors while tolerating our stubborn reluctance to adhere to certain of their suggestions. In addition, the book could not have been written without the competent and dedicated research assistance we received from Arata-Enrique Kaku, Alex Jacobs, and Caitlyn Reeder. Their desire to improve our book is a compliment to their character.

We’d like to thank the following people for helping us with their comments and feedback on various stages of our manuscript:

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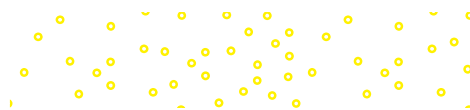
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Finally, this content was but a raw, unsold manuscript until the skilled publishing team refined it. Our manuscript benefited immeasurably from the guidance of the multiple levels of skill provided to us by McGraw Hill. We respect and honor our Managing Director, Tim Vertovec; our Product Developers, Jaroslaw Szymanski and Michael McCormick; Executive Portfolio Manager, Kathleen Klehr; Marketing Director, Natalie King; Marketing Manager, Claire McLemore; and Content Project Manager, Pat Frederickson and Angela Norris.



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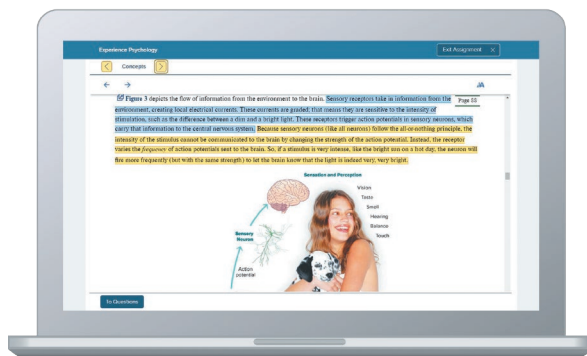
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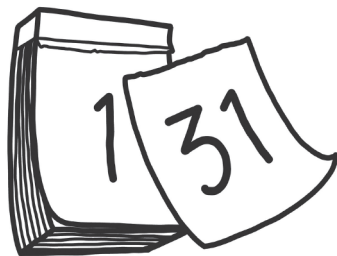
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