

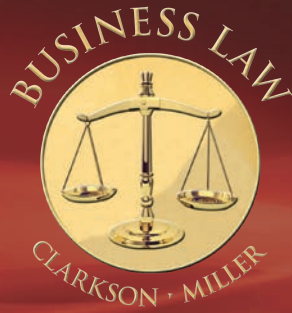
CLARKSON • MILLER

BUSINESS LAW

TEXT AND CASES



FIFTEENTH EDITION



BUSINESS LAW

TEXT AND CASES

Fifteenth Edition

Kenneth W. Clarkson

University of Miami

Roger LeRoy Miller

*Institute for University Studies
Arlington, Texas*



Australia • Brazil • Mexico • Singapore • United Kingdom • United States

Copyright 2021 Cengage Learning. All Rights Reserved. May not be copied, scanned, or duplicated, in whole or in part. WCN 02-200-203

Copyright 2021 Cengage Learning. All Rights Reserved. May not be copied, scanned, or duplicated, in whole or in part. Due to electronic rights, some third party content may be suppressed from the eBook and/or eChapter(s). Editorial review has deemed that any suppressed content does not materially affect the overall learning experience. Cengage Learning reserves the right to remove additional content at any time if subsequent rights restrictions require it.

This is an electronic version of the print textbook. Due to electronic rights restrictions, some third party content may be suppressed. Editorial review has deemed that any suppressed content does not materially affect the overall learning experience. The publisher reserves the right to remove content from this title at any time if subsequent rights restrictions require it. For valuable information on pricing, previous editions, changes to current editions, and alternate formats, please visit www.cengage.com/highered to search by ISBN#, author, title, or keyword for materials in your areas of interest.

Important Notice: Media content referenced within the product description or the product text may not be available in the eBook version.

Business Law: Text and Cases,
Fifteenth Edition
Kenneth W. Clarkson
Roger LeRoy Miller

Senior Vice President, Higher Education
Product Management: Erin Joyner

Vice President, Product Management:
Mike Schenk

Senior Product Team Manager:
Joe Sabatino

Senior Product Managers:
Vicky True-Baker, Michael Giffen

Senior Content Managers: Martha
Conway, Julia Chase

Learning Designers: Sarah Huber,
Courtney Wolstoncroft

Subject Matter Expert: Lisa Elliott

Digital Delivery Leads: Jennifer Chinn,
Stephen McMillian

Product Assistants: Christian Wood,
Nick Perez

Marketing Director: Kimberly Kanakes

Marketing Manager: Andrew Stock

Marketing Coordinator: Rachel Treinen

Project Manager: Phil Scott

Manufacturing Planner: Kevin Kluck

Inventory Analyst: Alister Santos

Senior IP Director: Julie Geagan-Chavez

IP Analyst: Ashley Maynard

IP Project Manager: Carly Belcher

Art Director: Creative Studio

Cover Designer: Chris Doughman

Interior Designer: Harasymczuk Design

Design Elements: Linen texture:
Lisa-Blue/iStockphoto; justice scales:
imagedb.com/Shutterstock

© 2021, 2018 Cengage Learning, Inc.

Unless otherwise noted, all content is © Cengage.

ALL RIGHTS RESERVED. No part of this work covered by the copyright herein may be reproduced or distributed in any form or by any means, except as permitted by U.S. copyright law, without the prior written permission of the copyright owner.

For product information and technology assistance, contact us at
Cengage Customer & Sales Support, 1-800-354-9706
or **support.cengage.com**.

For permission to use material from this text or product, submit all
requests online at **www.cengage.com/permissions**.

Library of Congress Control Number: 2019940996

Hard-cover Edition:
ISBN: 978-0-357-12963-0

Loose-leaf Edition:
ISBN: 978-0-357-12971-5

Cengage
200 Pier 4 Boulevard
Boston, MA 02210
USA

Cengage is a leading provider of customized learning solutions with employees residing in nearly 40 different countries and sales in more than 125 countries around the world. Find your local representative at:
www.cengage.com.

Cengage products are represented in Canada by Nelson Education, Ltd.

To learn more about Cengage platforms and services, register or access your online learning solution, or purchase materials for your course, visit **www.cengage.com**.

Printed in the United States of America
Print Number: 01 Print Year: 2019

Brief Contents

Unit One The Legal Environment of Business 1

| | |
|------------------|---|
| Chapter 1 | Law and Legal Reasoning 2 |
| Chapter 2 | Business and the Constitution 26 |
| Chapter 3 | Ethics in Business 44 |
| Chapter 4 | Courts and Alternative Dispute Resolution 65 |
| Chapter 5 | Court Procedures 86 |

Unit Two Torts and Crimes 111

| | |
|-------------------|--|
| Chapter 6 | Tort Law 112 |
| Chapter 7 | Strict Liability and Product Liability 134 |
| Chapter 8 | Intellectual Property Rights 150 |
| Chapter 9 | Internet Law, Social Media, and Privacy 170 |
| Chapter 10 | Criminal Law and Cyber Crime 187 |

Unit Three Contracts and E-Contracts 215

| | |
|-------------------|---|
| Chapter 11 | Nature and Terminology 216 |
| Chapter 12 | Agreement 231 |
| Chapter 13 | Consideration 250 |
| Chapter 14 | Capacity and Legality 263 |
| Chapter 15 | Mistakes, Fraud, and Voluntary Consent 280 |
| Chapter 16 | The Writing Requirement 294 |
| Chapter 17 | Third Party Rights 309 |
| Chapter 18 | Performance and Discharge 324 |
| Chapter 19 | Breach of Contract and Remedies 339 |

Unit Four Domestic and International Sales and Lease Contracts 359

| | |
|-------------------|--|
| Chapter 20 | Sales and Lease Contracts 360 |
| Chapter 21 | Title, Risk, and Insurable Interest 386 |
| Chapter 22 | Performance and Breach of Sales and Lease Contracts 403 |
| Chapter 23 | Warranties 424 |
| Chapter 24 | International and Space Law 437 |

Unit Five Negotiable Instruments 461

| | |
|-------------------|---|
| Chapter 25 | Negotiable Instruments 462 |
| Chapter 26 | Transferability and Holder in Due Course 478 |
| Chapter 27 | Liability, Defenses, and Discharge 496 |
| Chapter 28 | Banking 514 |

Unit Six **Creditors' Rights and Bankruptcy 537**

| | |
|------------|---------------------------------------|
| Chapter 29 | Creditors' Rights and Remedies 538 |
| Chapter 30 | Secured Transactions 554 |
| Chapter 31 | Bankruptcy Law 577 |

Unit Seven **Agency and Employment 603**

| | |
|------------|---|
| Chapter 32 | Agency Formation and Duties 604 |
| Chapter 33 | Agency Liability and Termination 620 |
| Chapter 34 | Employment, Immigration, and Labor Law 639 |
| Chapter 35 | Employment Discrimination 662 |

Unit Eight **Business Organizations 687**

| | |
|------------|---|
| Chapter 36 | Small Businesses and Franchises 688 |
| Chapter 37 | All Forms of Partnerships 703 |
| Chapter 38 | Limited Liability Companies and Special Business Forms 723 |
| Chapter 39 | Corporate Formation and Financing 739 |
| Chapter 40 | Corporate Directors, Officers, and Shareholders 759 |
| Chapter 41 | Mergers and Takeovers 778 |
| Chapter 42 | Investor Protection, Insider Trading, and Corporate Governance 794 |

Unit Nine **Government Regulation 821**

| | |
|------------|--|
| Chapter 43 | Administrative Agencies 822 |
| Chapter 44 | Consumer Law 839 |
| Chapter 45 | Environmental Protection 856 |
| Chapter 46 | Antitrust Law 871 |
| Chapter 47 | Professional Liability and Accountability 890 |

Unit Ten **Property and Its Protection 915**

| | |
|------------|--|
| Chapter 48 | Personal Property and Bailments 916 |
| Chapter 49 | Real Property and Landlord-Tenant Law 935 |
| Chapter 50 | Insurance 957 |
| Chapter 51 | Wills and Trusts 973 |

Appendices

| | |
|---|--|
| A | How to Brief Cases and Analyze Case Problems A-1 |
| B | Answers to the <i>Issue Spotters</i> A-4 |
| C | Sample Answers for <i>Business Case Problems with Sample Answer</i> A-13 |

Glossary G-1

Table of Cases TC-1

Index I-1

Contents

Unit One

The Legal Environment of Business 1

Chapter 1

Law and Legal Reasoning 2

- Business Activities and the Legal Environment 2
- Sources of American Law 3
- The Common Law Tradition 6
- Ethics Today: *Stare Decisis* versus Spider-Man 9
- Schools of Legal Thought 11
- Classifications of Law 12
- How to Find Primary Sources of Law 13
- How to Read and Understand Case Law 16

Chapter 2

Business and the Constitution 26

- The Constitutional Powers of Government 26
- Classic Case 2.1** *Heart of Atlanta Motel v. United States* 28
- Business and the Bill of Rights 30
- Digital Update: Does Everyone Have a Constitutional Right to Use Social Media? 32
- Case 2.2** *Animal Legal Defense Fund v. Wasden* 33
- Spotlight on Beer Labels**
- Case 2.3** *Bad Frog Brewery, Inc. v. New York State Liquor Authority* 35
- Due Process and Equal Protection 39
- Privacy Rights 40

Chapter 3

Ethics in Business 44

- Ethics and the Role of Business 44
- Digital Update: Should Employees Have a “Right of Disconnecting”? 47
- Case 3.1** *Al-Dabagh v. Case Western Reserve University* 48
- Ethical Principles and Philosophies 49
- Sources of Ethical Issues in Business Decisions 52
- Case 3.2** *Watson Laboratories, Inc. v. State of Mississippi* 53
- Making Ethical Business Decisions 55
- Business Ethics on a Global Level 58
- Ethics Today: Applying the IDDR Framework 59
- Appendix to Chapter 3:** *The Costco Code of Ethics* 64

Chapter 4

Courts and Alternative Dispute Resolution 65

- The Judiciary’s Role in American Government 65
- Basic Judicial Requirements 66
- Case Analysis 4.1** *Mala v. Crown Bay Marina, Inc.* 68
- Spotlight on Gucci**
- Case 4.2** *Gucci America, Inc. v. Wang Huoqing* 70
- The State and Federal Court Systems 73
- Case 4.3** *Johnson v. Oxy USA, Inc.* 74
- Managerial Strategy: Should You Consent to Have Your Business Case Decided by a U.S. Magistrate Judge? 76
- Alternative Dispute Resolution 79
- International Dispute Resolution 82

Chapter 5

Court Procedures 86

- Procedural Rules 86
- Pretrial Procedures 88
- Digital Update: Using Social Media for Service of Process 90
- Case Analysis 5.1** *Espresso Disposition Corp. 1 v. Santana Sales & Marketing Group, Inc.* 91
- Case 5.2** *Lewis v. Twenty-First Century Bean Processing* 93
- Case 5.3** *Klipsch Group, Inc. v. ePRO E-Commerce Limited* 96
- The Trial 99
- Posttrial Motions 101
- The Appeal 102
- Enforcing the Judgment 103
- Unit One Task-Based Simulation 107**
- Unit One Application and Ethics:**
- “Arbitration, No Class Actions” 108

Unit Two

Torts and Crimes 111

Chapter 6

Tort Law 112

- The Basis of Tort Law 112
- Intentional Torts against Persons 113
- Case Analysis 6.1** *Blake v. Giustibelli* 115
- Digital Update: Revenge Porn and Invasion of Privacy 119

vi Contents

| | |
|--|-----|
| Intentional Torts against Property | 122 |
| Unintentional Torts—Negligence | 124 |
| Case 6.2 <i>Bogenberger v. Pi Kappa Alpha Corporation, Inc.</i> | 125 |
| Defenses to Negligence | 128 |
| Spotlight on the Seattle Mariners | |
| Case 6.3 <i>Taylor v. Baseball Club of Seattle, LP</i> | 129 |

Chapter 7 Strict Liability and Product Liability 134

| | |
|--|-----|
| Strict Liability | 134 |
| Product Liability | 135 |
| Case Analysis 7.1 <i>Schwarck v. Arctic Cat, Inc.</i> | 136 |
| Strict Product Liability | 137 |
| Case 7.2 <i>Stange v. Janssen Pharmaceuticals, Inc.</i> | 140 |
| ■ Managerial Strategy: When Is a Warning Legally Bulletproof? | 142 |
| Defenses to Product Liability | 143 |
| Case 7.3 <i>VeRost v. Mitsubishi Caterpillar Forklift America, Inc.</i> | 144 |

Chapter 8 Intellectual Property Rights 150

| | |
|---|-----|
| Trademarks and Related Property | 150 |
| Classic Case 8.1 <i>The Coca-Cola Co. v. The Koke Co. of America</i> | 150 |
| Case 8.2 <i>Headspace International, LLC v. Podworks Corp.</i> | 152 |
| ■ Global Insight: ALEVE versus FLANAX—Same Pain Killer, But in Different Countries | 154 |
| Patents | 157 |
| Copyrights | 159 |
| Case Analysis 8.3 <i>Winstead v. Jackson</i> | 161 |
| Trade Secrets | 164 |
| International Protection for Intellectual Property | 164 |

Chapter 9 Internet Law, Social Media, and Privacy 170

| | |
|--|-----|
| Internet Law | 170 |
| Spotlight on Internet Porn | |
| Case 9.1 <i>Hasbro, Inc. v. Internet Entertainment Group, Ltd.</i> | 173 |
| Copyrights in Digital Information | 174 |
| ■ Digital Update: Riot Games, Inc., Protects Its Online Video Game Copyrights | 175 |
| Case 9.2 <i>BMG Rights Management (US), LLC v. Cox Communications, Inc.</i> | 176 |
| Social Media | 178 |
| Online Defamation | 180 |
| Other Actions Involving Online Posts | 181 |
| Case Analysis 9.3 <i>David v. Textor</i> | 182 |
| Privacy | 183 |

Chapter 10 Criminal Law and Cyber Crime 187

| | |
|--|-----|
| Civil Law and Criminal Law | 187 |
| Criminal Liability | 189 |
| ■ Digital Update: Using Twitter to Cause Seizures— A Crime? | 189 |
| Case 10.1 <i>United States v. Crabtree</i> | 190 |
| ■ Managerial Strategy: The Criminalization of American Business | 192 |
| Types of Crimes | 193 |
| Spotlight on White-Collar Crime | |
| Case 10.2 <i>People v. Sisuphan</i> | 195 |
| Defenses to Criminal Liability | 199 |
| Criminal Procedures | 201 |
| Cyber Crime | 204 |
| Case Analysis 10.3 <i>United States v. Warner</i> | 205 |
| Unit Two Task-Based Simulation 211 | |
| Unit Two Application and Ethics: | |
| <i>One of the Biggest Data Breaches Ever</i> | 212 |

Unit Three Contracts and E-Contracts 215

| | |
|--|-----|
| Chapter 11 | |
| Nature and Terminology 216 | |
| An Overview of Contract Law | 216 |
| Elements of a Contract | 217 |
| Case Analysis 11.1 <i>Weston v. Cornell University</i> | 218 |
| Types of Contracts | 219 |
| Case 11.2 <i>Boswell v. Panera Bread Co.</i> | 220 |
| Quasi Contracts | 223 |
| Interpretation of Contracts | 225 |
| Spotlight on Columbia Pictures | |
| Case 11.3 <i>Wagner v. Columbia Pictures Industries, Inc.</i> | 226 |

| | |
|--|-----|
| Chapter 12 | |
| Agreement 231 | |
| Elements of Agreement | 231 |
| Classic Case 12.1 <i>Lucy v. Zehmer</i> | 232 |
| Spotlight on Amazon.com | |
| Case 12.2 <i>Basis Technology Corp. v. Amazon.com, Inc.</i> | 234 |
| ■ Digital Update: Can Your E-Mails or Instant Messages Create a Valid Contract? | 238 |
| Agreement in E-Contracts | 240 |
| Case 12.3 <i>Bailey v. Kentucky Lottery Corp.</i> | 242 |
| U.S. Laws Affecting E-Contracts | 245 |
| International Treaties Affecting E-Contracts | 247 |

Chapter 13 Consideration 250

Elements of Consideration 250

Classic Case 13.1 *Hamer v. Sidway* 250

Case 13.2 *Cincinnati Reds, LLC v. Testa* 252

Agreements That Lack Consideration 254

Settlement of Claims 256

Spotlight on Nike

Case 13.3 *Already, LLC v. Nike, Inc.* 257

Exceptions to the Consideration Requirement 258

Chapter 14 Capacity and Legality 263

Contractual Capacity 263

Case 14.1 *PAK Foods Houston, LLC v. Garcia* 264

Legality 268

Case 14.2 *Kennedy v. Shave Barber Co.* 270

Case Analysis 14.3 *Holmes v. Multimedia KSDK, Inc.* 273

■ Managerial Strategy: Creating Liability Waivers That Are Not Unconscionable 275

Chapter 15 Mistakes, Fraud, and Voluntary Consent 280

Mistakes 280

Fraudulent Misrepresentation 282

Case 15.1 *McCullough v. Allstate Property and Casualty Insurance Co.* 282

Case Analysis 15.2 *Cronkelton v. Guaranteed Construction Services, LLC* 285

■ Digital Update: “Catfishing” and Fraudulent Misrepresentation 287

Case 15.3 *Fazio v. Cypress/GR Houston I, LP* 288

Undue Influence 289

Duress 289

Adhesion Contracts and Unconscionability 290

Chapter 16 The Writing Requirement 294

The Statute of Frauds 294

Contracts That Require a Writing 294

Case Analysis 16.1 *Sloop v. Kiker* 295

Exceptions to the Writing Requirement 298

Sufficiency of the Writing 300

Case 16.2 *Moore v. Bearkat Energy Partners, LLC* 301

The Parol Evidence Rule 302

Case 16.3 *Frewil, LLC v. Price* 303

The Statute of Frauds in the International Context 305

Chapter 17 Third Party Rights 309

Assignments and Delegations 309

Case 17.1 *Bass-Fineberg Leasing, Inc. v. Modern Auto Sales, Inc.* 312

Case 17.2 *Mirandette v. Nelnet, Inc.* 314

Third Party Beneficiaries 316

Case Analysis 17.3 *Bozzio v. EMI Group, Ltd.* 317

Chapter 18 Performance and Discharge 324

Conditions 324

Discharge by Performance 325

Classic Case 18.1 *Jacob & Youngs v. Kent* 327

Case Analysis 18.2 *Kohel v. Bergen Auto Enterprises, L.L.C.* 328

Discharge by Agreement 330

Case 18.3 *DWB, LLC v. D&T Pure Trust* 332

Discharge by Operation of Law 333

■ Ethics Today: When Is Impossibility of Performance a Valid Defense? 334

Chapter 19 Breach of Contract and Remedies 339

Damages 339

Case Analysis 19.1 *Baird v. Owens Community College* 340

Spotlight on Liquidated Damages

Case 19.2 *Kent State University v. Ford* 344

Equitable Remedies 345

Case 19.3 *Cipriano Square Plaza Corp. v. Munawar* 346

Recovery Based on Quasi Contract 349

Waiver of Breach 350

Contract Provisions Limiting Remedies 351

Unit Three Task-Based Simulation 355

Unit Three Application and Ethics:

Nondisclosure Agreements 356

Unit Four Domestic and International Sales and Lease Contracts 359

Chapter 20 Sales and Lease Contracts 360

The Uniform Commercial Code 360

The Scope of Articles 2 (Sales) and 2A (Leases) 361

■ Digital Update: Taxing Web Purchases 363

The Formation of Sales and Lease Contracts 365

Case 20.1 *Toll Processing Services, LLC v. Kastalon, Inc.* 365

Case 20.2 *C. Mahendra (N.Y.), LLC v. National Gold & Diamond Center, Inc.* 369

Classic Case 20.3 *Jones v. Star Credit Corp.* 375
Contracts for the International Sale of Goods 376

Appendix to Chapter 20 *An Example of a Contract for the International Sale of Coffee* 382

Chapter 21

Title, Risk, and Insurable Interest 386

Identification 386

Case Analysis 21.1 *BMW Group, LLC v. Castle Oil Corp.* 387

When Title Passes 388

■ Managerial Strategy: Commercial Use of Drones 389

Case 21.2 *Louisiana Department of Revenue v. Apeck Construction, Inc.* 389

Spotlight on Andy Warhol Case 21.3 *Lindholm v. Brant* 393

Risk of Loss 395

Insurable Interest 399

Chapter 22

Performance and Breach of Sales and Lease Contracts 403

Obligations of the Seller or Lessor 403

Case 22.1 *All the Way Towing, LLC v. Bucks County International, Inc.* 405

Obligations of the Buyer or Lessee 409

Remedies of the Seller or Lessor 411

Remedies of the Buyer or Lessee 413

Case Analysis 22.2 *Genesis Health Clubs, Inc. v. LED Solar & Light Co.* 416

Spotlight on Baseball Cards

Case 22.3 *Fitl v. Strek* 418

Additional Provisions Affecting Remedies 419

Dealing with International Contracts 420

Chapter 23

Warranties 424

Warranties of Title 424

Express Warranties 425

Implied Warranties 427

Classic Case 23.1 *Webster v. Blue Ship Tea Room, Inc.* 429

Overlapping Warranties 431

Warranty Disclaimers and Limitations on Liability 432

Case Analysis 23.2 *Roberts v. Lanigan Auto Sales* 432

Chapter 24

International and Space Law 437

International Law 437

Case 24.1 *Rubin v. Islamic Republic of Iran* 441

Doing Business Internationally 442

■ Ethics Today: Is It Ethical (and Legal) to Brew “Imported” Beer Brands Domestically? 443

Regulation of Specific Business Activities 445

Case 24.2 *Changzhou Trina Solar Energy Co., Ltd. v. United States International Trade Commission* 446

International Dispute Resolution 448

U.S. Laws in a Global Context 449

Spotlight on International Torts

Case 24.3 *Daimler AG v. Bauman* 449

Space Law 451

Unit Four Task-Based Simulation 456

Unit Four Application and Ethics:

Success in Global Commerce 457

Unit Five

Negotiable Instruments 461

Chapter 25

Negotiable Instruments 462

Types of Negotiable Instruments 462

Case 25.1 *Silicon Valley Bank v. Miracle Faith World Outreach, Inc.* 465

Requirements for Negotiability 466

Case Analysis 25.2 *OneWest Bank, FSB v. Nunez* 468

Factors That Do Not Affect Negotiability 472

Case 25.3 *Charles R. Tips Family Trust v. PB Commercial, LLC* 473

Chapter 26

Transferability and Holder in Due Course 478

Negotiation 478

Indorsements 479

Case 26.1 *In re Bass* 479

Case Analysis 26.2 *AS Peleus, LLC v. Success, Inc.* 481

Holder in Due Course (HDC) 486

Case 26.3 *Jarrell v. Conerly* 488

Holder through an HDC 491

Chapter 27

Liability, Defenses, and Discharge 496

Signature Liability 496

Case Analysis 27.1 *Envision Printing, LLC v. Evans* 499

Warranty Liability 502

Defenses and Limitations 505

Case 27.2 *Mills v. Chauvin* 507

Discharge 510

Chapter 28 Banking 514

- Checks 514
- The Bank-Customer Relationship 516
- The Bank's Duty to Honor Checks 517
- Case Analysis 28.1** *Legg v. West Bank* 517
- Case 28.2** *Horton v. JPMorgan Chase Bank, N.A.* 521
- The Bank's Duty to Accept Deposits 523
- Case 28.3** *Shahin v. Delaware Federal Credit Union* 525
- Electronic Fund Transfers 528
- Online Banking and E-Money 529
- Digital Update: Electronic Payment Systems Are Reducing the Use of Checks 530
- Unit Five Task-Based Simulation** 533
- Unit Five Application and Ethics:**
Virtual Currency—Is It Safe? 534

Unit Six Creditors' Rights and Bankruptcy 537

Chapter 29 Creditors' Rights and Remedies 538

- Laws Assisting Creditors 538
- Case Analysis 29.1** *Picerne Construction Corp. v. Villas* 539
- Mortgages 542
- Ethics Today: Creditors' Rights When Debtors Move to Another State 543
- Case 29.2** *Banc of California, N.A. v. Madhok* 545
- Suretyship and Guaranty 547
- Case 29.3** *HSBC Realty Credit Corp. (USA) v. O'Neill* 548
- Protection for Debtors 550

Chapter 30 Secured Transactions 554

- The Terminology of Secured Transactions 554
- Creation of a Security Interest 554
- Case 30.1** *Royal Jewelers, Inc. v. Light* 555
- Digital Update: Secured Transactions—Escrow Services Online 557
- Perfection of a Security Interest 557
- The Scope of a Security Interest 562
- Case 30.2** *In re Tusa-Expo Holdings, Inc.* 563
- Priorities 566
- Rights and Duties of Debtors and Creditors 569
- Default 569
- Case 30.3** *SunTrust Bank v. Monroe* 571

Chapter 31 Bankruptcy Law 577

- The Bankruptcy Code 577
- Liquidation Proceedings 578
- Case 31.1** *In re Anderson* 584
- Ethics Today: Should There Be More Relief for Student Loan Defaults? 587
- Case 31.2** *In re Cummings* 588
- Reorganizations 589
- Bankruptcy Relief under Chapter 12 and Chapter 13 591
- Case 31.3** *In re Chamberlain* 593
- Unit Six Task-Based Simulation** 599
- Unit Six Application and Ethics:**
Federal Student Loans—Default and Discharge 600

Unit Seven Agency and Employment 603

Chapter 32 Agency Formation and Duties 604

- Agency Relationships 604
- Ethics Today: Is It Fair to Classify Uber and Lyft Drivers as Independent Contractors? 606
- Formation of the Agency Relationship 607
- Case 32.1** *Riedel v. Akron General Health System* 608
- Duties of Agents and Principals 610
- Spotlight on Taser International**
Case 32.2 *Taser International, Inc. v. Ward* 611
- Case Analysis 32.3** *NRT New England, LLC v. Jones* 614
- Rights and Remedies of Agents and Principals 616

Chapter 33 Agency Liability and Termination 620

- Scope of Agent's Authority 620
- Spotlight on Apparent Authority of Managers**
Case 33.1 *Lundberg v. Church Farm, Inc.* 622
- Case 33.2** *Dearborn West Village Condominium Association v. Makki* 623
- Liability for Contracts 625
- Liability for Torts and Crimes 627
- Global Insight: Islamic Law and *Respondeat Superior* 629
- Case Analysis 33.3** *M.J. v. Wisan* 631
- Termination of an Agency 633

Chapter 34 Employment, Immigration, and Labor Law 639

- Employment at Will 639
- Case 34.1** *Caterpillar, Inc. v. Sudlow* 640

X Contents

Wages, Hours, and Layoffs 642

■ Ethics Today: Is It Fair to Dock Employees' Pay for Bathroom Breaks? 643

Case 34.2 *Encino Motorcars, LLC v. Navarro* 643

Family and Medical Leave 645

Health, Safety, and Income Security 646

Employee Privacy Rights 649

Immigration Law 650

Labor Unions 652

■ Managerial Strategy: Union Organizing Using a Company's E-Mail System 655

Case Analysis 34.3 *Contemporary Cars, Inc. v. National Labor Relations Board* 655

Chapter 35

Employment Discrimination 662

Title VII of the Civil Rights Act 662

■ Digital Update: Hiring Discrimination Based on Social Media Posts 666

Case Analysis 35.1 *Bauer v. Lynch* 667

Case 35.2 *Young v. United Parcel Service, Inc.* 668

Case 35.3 *Franchina v. City of Providence* 672

Discrimination Based on Age 673

Discrimination Based on Disability 675

Discrimination Based on Military Status 677

Defenses to Employment Discrimination 678

Affirmative Action 679

Unit Seven Task-Based Simulation 683

Unit Seven Application and Ethics:

Health Insurance and Small Business 684

Unit Eight

Business Organizations 687

Chapter 36

Small Businesses and Franchises 688

General Considerations for Small Businesses 688

Sole Proprietorships 689

Case Analysis 36.1 *A. Gadley Enterprises, Inc. v. Department of Labor and Industry Office of Unemployment Compensation Tax Services* 690

■ Digital Update: A Sole Proprietorship, Facebook Poker, and Bankruptcy 692

Franchises 693

Franchise Termination 696

Case 36.2 *S&P Brake Supply, Inc. v. Daimler Trucks North America, LLC* 696

Spotlight on Holiday Inns

Case 36.3 *Holiday Inn Franchising, Inc. v. Hotel Associates, Inc.* 698

Chapter 37

All Forms of Partnerships 703

Basic Partnership Concepts 703

Case 37.1 *Harun v. Rashid* 704

Formation and Operation 706

Classic Case 37.2 *Meinhard v. Salmon* 708

Dissociation and Termination 711

Case Analysis 37.3 *Shamburger v. Shamburger* 714

Limited Liability Partnerships 715

Limited Partnerships 716

■ Ethics Today: Should an Innocent General Partner Be Jointly Liable for Fraud? 719

Chapter 38

Limited Liability Companies and Special Business Forms 723

The Limited Liability Company 723

Case 38.1 *Hodge v. Strong Built International, LLC* 725

LLC Management and Operation 727

■ Managerial Strategy: Can a Person Who Is Not a Member of a Protected Class Sue for Discrimination? 728

Case 38.2 *Schaefer v. Orth* 729

Dissociation and Dissolution of an LLC 730

Case Analysis 38.3 *Reese v. Newman* 731

Special Business Forms 733

Chapter 39

Corporate Formation and Financing 739

The Nature and Classification of Corporations 739

■ Digital Update: Programs That Predict Employee Misconduct 741

Case 39.1 *Drake Manufacturing Co. v. Polyflow, Inc.* 741

Case Analysis 39.2 *Pantano v. Newark Museum* 743

Case 39.3 *Greenfield v. Mandalay Shores Community Association* 746

Corporate Formation and Powers 748

■ Global Insight: Does Cloud Computing Have a Nationality? 751

Piercing the Corporate Veil 751

Corporate Financing 753

Chapter 40

Corporate Directors, Officers, and Shareholders 759

Role of Directors and Officers 759

Duties and Liabilities of Directors and Officers 762

Case 40.1 *Oliveira v. Sugarman* 764

Classic Case 40.2 *Guth v. Loft, Inc.* 765

The Role of Shareholders 767

Rights of Shareholders 770
Case 40.3 *Hammoud v. Advent Home Medical, Inc.* 772
 Duties and Liabilities of Shareholders 774

Chapter 41 Mergers and Takeovers 778

Merger, Consolidation, and Share Exchange 778
Case Analysis 41.1 *In re Trulia, Inc. Stockholder Litigation* 780
 Purchase of Assets 782
Case 41.2 *Heavenly Hana, LLC v. Hotel Union & Hotel Industry of Hawaii Pension Plan* 784
 Purchase of Stock 785
 Corporate Termination 787
 Major Business Forms Compared 788

Chapter 42 Investor Protection, Insider Trading, and Corporate Governance 794

The Securities Act of 1933 794
 ■ Managerial Strategy: The SEC's Pay-Ratio Disclosure Rule 796
 ■ Digital Update: Investment Crowdfunding—Regulations and Restrictions 798
Case 42.1 *Omnicare, Inc. v. Laborers District Council Construction Industry Pension Fund* 800
 The Securities Exchange Act of 1934 802
Classic Case 42.2 *SEC v. Texas Gulf Sulphur Co.* 803
Case 42.3 *Singer v. Real* 807
 State Securities Laws 809
 Corporate Governance 810
Unit Eight Task-Based Simulation 816
Unit Eight Application and Ethics:
Business Start-Ups Online 817

Unit Nine Government Regulation 821

Chapter 43 Administrative Agencies 822

The Practical Significance of Administrative Law 822
 Agency Creation and Powers 823
Case 43.1 *Simmons v. Smith* 826
 The Administrative Process 828
Case 43.2 *Craker v. Drug Enforcement Administration* 831
 Judicial Deference to Agency Decisions 832
Case Analysis 43.3 *Olivares v. Transportation Security Administration* 833
 Public Accountability 835

Chapter 44 Consumer Law 839

Advertising, Marketing, and Sales 839
Case 44.1 *POM Wonderful, LLC v. Federal Trade Commission* 840
 ■ Digital Update: Regulating “Native” Ads on the Internet 843
Case 44.2 *Haywood v. Massage Envy Franchising, LLC* 844
 Labeling and Packaging Laws 846
 Protection of Health and Safety 847
 Credit Protection 848
Case Analysis 44.3 *Santangelo v. Comcast Corp.* 850

Chapter 45 Environmental Protection 856

Common Law Actions 856
 Federal, State, and Local Regulations 857
Case Analysis 45.1 *Friends of Animals v. Clay* 857
 ■ Global Insight: Can a River Be a Legal Person? 860
 Air Pollution 860
Case 45.2 *United States v. O'Malley* 862
 Water Pollution 864
 Toxic Chemicals and Hazardous Waste 866

Chapter 46 Antitrust Law 871

The Sherman Antitrust Act 871
 Section 1 of the Sherman Act 872
 Section 2 of the Sherman Act 875
Case Analysis 46.1 *McWane, Inc. v. Federal Trade Commission* 877
 The Clayton Act 878
Case 46.2 *Candelore v. Tinder, Inc.* 879
 Enforcement and Exemptions 882
Case 46.3 *TransWeb, LLC v. 3M Innovative Properties Co.* 883
 U.S. Antitrust Laws in the Global Context 884
 ■ Digital Update: The European Union Issues Record Fines Against Google in Antitrust Case 886

Chapter 47 Professional Liability and Accountability 890

Potential Liability to Clients 890
 ■ Ethics Today: What Are an Attorney's Responsibilities for Protecting Data Stored in the Cloud? 891
 Potential Liability to Third Parties 894
Case Analysis 47.1 *Perez v. Stern* 896
 The Sarbanes-Oxley Act 897
Case 47.2 *Laccetti v. Securities and Exchange Commission* 898

Potential Liability of Accountants under Securities Laws 901
Confidentiality and Privilege 904
Case 47.3 *Commonwealth of Pennsylvania v. Schultz* 905
Unit Nine Task-Based Simulation 910
Unit Nine Application and Ethics:
Climate Change 911

Unit Ten

Property and Its Protection 915

Chapter 48

Personal Property and Bailments 916

Personal Property versus Real Property 916
Acquiring Ownership of Personal Property 917
■ Digital Update: The Exploding World of Digital Property 917
Classic Case 48.1 *In re Estate of Piper* 919
Mislaid, Lost, and Abandoned Property 920
Case 48.2 *State of Washington v. Preston* 923
Bailments 924
Ordinary Bailments 925
Case Analysis 48.3 *Zissu v. IH2 Property Illinois, L.P.* 928
Special Types of Bailments 930

Chapter 49

Real Property and Landlord-Tenant Law 935

The Nature of Real Property 935
Ownership and Other Interests in Real Property 937
Case 49.1 *In the Matter of the Estate of Nelson* 938
Transfer of Ownership 942
Spotlight on Sales of Haunted Houses
Case 49.2 *Stambovsky v. Ackley* 943
Case Analysis 49.3 *Montgomery County v. Bhatt* 946
Limitations on the Rights of Property Owners 948

■ Ethics Today: Should Eminent Domain Be Used to Promote Private Development? 949
Zoning and Government Regulations 950
Landlord-Tenant Relationships 952

Chapter 50

Insurance 957

Insurance Terminology and Concepts 957
Case 50.1 *Breeden v. Buchanan* 959
The Insurance Contract 960
Case 50.2 *Cannon v. Farm Bureau Insurance Company* 964
Types of Insurance 966

Chapter 51

Wills and Trusts 973

Wills 973
Case 51.1 *In re Navarra* 976
Case Analysis 51.2 *Peterson v. Harrell* 978
■ Digital Update: Social Media Estate Planning 981
Intestacy Laws 981
Trusts 984
Case 51.3 *Dowdy v. Dowdy* 985
Other Estate-Planning Issues 989
Unit Ten Task-Based Simulation 994
Unit Ten Application and Ethics:
Business Planning for Divorce 995

Appendices

A How to Brief Cases and Analyze Case Problems A–1
B Answers to the *Issue Spotters* A–4
C Sample Answers for *Business Case Problems with Sample Answer* A–13

Glossary G–1
Table of Cases TC–1
Index I–1

Concept Summaries

- 1.1 Sources of American Law 5
- 1.2 The Common Law Tradition 11
- 1.3 Schools of Jurisprudential Thought 13
- 4.1 Jurisdiction 72
- 4.2 Types of Courts 78
- 5.1 Pretrial Procedures 98
- 5.2 Trial Procedure 101
- 5.3 Posttrial Options 103
- 6.1 Intentional Torts against Persons 121
- 6.2 Intentional Torts against Property 124
- 7.1 Defenses to Product Liability 147
- 10.1 Types of Crimes 199
- 11.1 Types of Contracts 224
- 12.1 Methods by Which an Offer Can Be Terminated 237
- 13.1 Consideration 254
- 13.2 Settlement of Claims 259
- 14.1 Contracts by Minors 266
- 14.2 Contracts by Intoxicated Persons 267
- 14.3 Contracts by Mentally Incompetent Persons 268
- 15.1 Factors That May Indicate a Lack of Voluntary Consent 291
- 17.1 Assignment and Delegations 316
- 19.1 Equitable Remedies 350
- 20.1 Offer, Acceptance, and Consideration under the UCC 372
- 20.2 The Parol Evidence Rule 375
- 21.1 Delivery without Movement of the Goods 397
- 21.2 Risk of Loss When a Sales or Lease Contract Is Breached 399
- 22.1 Obligations of the Seller or Lessor 409
- 23.1 Warranties of Title and Express Warranties 426
- 25.1 Requirements for Negotiability 474
- 26.1 Types of Indorsements and Their Effect 484
- 26.2 Requirements for HDC Status 492
- 27.1 Signature Liability 503
- 28.1 Basic Rules for Honoring Checks 524
- 29.1 Remedies Available to Creditors 546
- 30.1 Creating Security Interest 557
- 30.2 Perfecting a Security Interest 563
- 30.3 Remedies of the Secured Party on the Debtor's Default 573
- 31.1 Forms of Bankruptcy Relief Compared 595
- 32.1 Formation of the Agency Relationship 610
- 33.1 Authority of an Agent to Bind the Principal and a Third Party 625
- 33.2 Agency Termination by Operation of Law 635
- 35.1 Coverage of Employment Discrimination Laws 678
- 38.1 Special Business Forms 735
- 39.1 Classification of Corporations 747
- 40.1 Roles of Directors and Officers 762
- 40.2 Duties and Liabilities of Directors and Officers 767
- 40.3 Role, Rights, and Liability of Shareholders 775
- 41.1 Merger, Consolidation, and Share Exchange 783
- 41.2 Purchases of Assets and Purchases of Stock 785
- 47.1 Common Law Liability of Accountants and Other Professionals 898
- 47.2 Statutory Liability of Accountants and Other Professionals 904
- 48.1 Acquisition of Personal Property 921
- 48.2 Mislaid, Lost, and Abandoned Property 921
- 48.3 Rights and Duties of the Bailee and the Bailor 931
- 51.1 Wills 982
- 51.2 Trusts 988

Exhibits

- 1-1 Areas of the Law That Can Affect Business Decision Making 3
- 1-2 Equitable Maxims 7
- 1-3 Procedural Differences between an Action at Law and an Action in Equity 7
- 1-4 National Reporter System—Regional/Federal 15
- 1-5 How to Read Citations 17
- 1-6 A Sample Court Case 20
- 2-1 Protections Guaranteed by the Bill of Rights 31
- 2-2 Federal Legislation Relating to Privacy 41
- 3-1 An Analysis of Ethical Approaches to the Sample Dilemma 57
- 4-1 Exclusive and Concurrent Jurisdiction 70
- 4-2 The State and Federal Court Systems 73
- 4-3 Geographic Boundaries of the U.S. Courts of Appeals and U.S. District Courts 77
- 4-4 Basic Differences in the Traditional Forms of ADR 80
- 5-1 Stages in a Typical Lawsuit 87
- 5-2 A Typical Complaint 89
- 5-3 Pretrial Motions 91
- 8-1 Forms of Intellectual Property 165
- 10-1 Key Differences between Civil Law and Criminal Law 187
- 10-2 Civil (Tort) Lawsuit and Criminal Prosecution for the Same Act 188
- 10-3 Major Procedural Steps in a Criminal Case 203
- 11-1 Classifications Based on Contract Formation 219
- 11-2 Enforceable, Voidable, Unenforceable, and Void Contracts 223
- 11-3 Rules of Contract Interpretation 225
- 12-1 A Click-On Agreement Sample 242
- 12-2 The E-SIGN Act and the UETA 246
- 13-1 Consideration in Bilateral and Unilateral Contracts 252
- 13-2 Examples of Agreements That Lack Consideration 256
- 14-1 Unconscionability 272
- 14-2 Contract Legality 276
- 15-1 Mistakes of Fact 281
- 16-1 The One-Year Rule 297
- 16-2 Collateral Promises 298
- 16-3 Business Contracts and the Writing Requirement 300
- 16-4 The Parol Evidence Rule 305
- 17-1 Assignment Relationships 310
- 17-2 Delegation Relationships 313
- 17-3 Third Party Beneficiaries 320
- 18-1 Conditions of Performance 325
- 18-2 Discharge by Performance 330
- 18-3 Contract Discharge 335
- 19-1 Measure of Damages—Breach of Construction Contracts 342
- 19-2 Remedies for Breach of Contract 349
- 20-1 The Law Governing Contracts 362
- 20-2 Major Differences between Contract Law and Sales Law 373
- 21-1 Void and Voidable Titles 392
- 21-2 Contract Terms—Definitions 396
- 22-1 The Perfect Tender Rule and Its Exceptions 406
- 22-2 Obligations of the Buyer or Lessee 410
- 22-3 A Letter-of-Credit Transaction 421
- 23-1 Types of Implied Warranties 427
- 24-1 The Legal Systems of Selected Nations 439
- 24-2 Examples of International Principles and Doctrines 442
- 25-1 Basic Types of Negotiable Instruments 463
- 25-2 A Typical Time Draft 464
- 25-3 A Typical Promissory Note 466
- 25-4 A Sample Certificate of Deposit 467
- 26-1 A Blank Indorsement 479
- 26-2 A Special Indorsement 481
- 26-3 A Qualified Indorsement 482
- 26-4 “For Deposit Only” and “For Collection Only” Indorsements 483
- 26-5 Trust (Agency) Indorsements 484
- 26-6 Converting an Order Instrument to a Bearer Instrument and Vice Versa 485
- 26-7 Taking for Value 487
- 27-1 Time for Proper Presentment 498
- 27-2 Transfer Warranty Liability for Transferors Who Receive Consideration 504
- 27-3 Defenses against Liability on Negotiable Instruments 505
- 28-1 A Cashier’s Check 515
- 28-2 An American Express Traveler’s Check 516
- 28-3 The Check-Collection Process 527
- 29-1 Methods of Avoiding Foreclosure 544
- 29-2 Suretyship and Guaranty Parties 547
- 30-1 Secured Transactions—Concept and Terminology 555
- 30-2 A Sample Uniform Financing Statement Form 558
- 30-3 Selected Types of Collateral and Methods of Perfection 562
- 30-4 Priority of Claims to a Debtor’s Collateral 568

- 31-1 Collection and Distribution of Property in Most Voluntary Bankruptcies 586
- 32-1 Duties of the Agent 611
- 32-2 Duties of the Principal 613
- 33-1 A Sample General Power of Attorney 621
- 33-2 Termination by Act of the Parties 633
- 34-1 Good Faith versus Bad Faith in Collective Bargaining 657
- 36-1 The FTC's Franchise Rule Requirements 694
- 37-1 Provisions Commonly Included in a Partnership Agreement 706
- 37-2 A Comparison of General Partnerships and Limited Partnerships 717
- 38-1 Management of an LLC 727
- 38-2 Provisions Commonly Included in an LLC Operating Agreement 729
- 39-1 How Do Stocks and Bonds Differ? 753
- 39-2 Common and Preferred Stocks 754
- 40-1 Directors' Management Responsibilities 760
- 40-2 Results of Cumulative Voting 770
- 41-1 Merger 778
- 41-2 Consolidation 779
- 41-3 The Terminology of Takeover Defenses 786
- 41-4 Major Forms of Business Compared 789
- 42-1 Exempt Transactions under the 1933 Securities Act 797
- 42-2 Comparison of Coverage, Application, and Liability under SEC Rule 10b-5 and Section 16(b) 805
- 42-3 Some Key Provisions of the Sarbanes-Oxley Act Relating to Corporate Accountability 812
- 43-1 Executive Departments and Important Subagencies 824
- 43-2 Selected Independent Regulatory Agencies 825
- 43-3 The Formal Administrative Agency Adjudication Process 830
- 44-1 Selected Areas of Consumer Law Regulated by Statutes 840
- 45-1 Major Federal Environmental Statutes 858
- 45-2 Environmental Impact Statements 861
- 45-3 Pollution-Control Equipment Standards under the Clean Air Act and the Clean Water Act 865
- 46-1 Required Elements of a Sherman Act Violation 872
- 46-2 Exemptions to Antitrust Enforcement 885
- 47-1 Three Basic Rules of an Accountant's Liability to Third Parties 896
- 47-2 Key Provisions of the Sarbanes-Oxley Act Relating to Public Accounting Firms 900
- 48-1 Degree of Care Required of a Bailee 927
- 49-1 Interests in Real Property 942
- 50-1 Selected Insurance Classifications 958
- 50-2 Insurance Contract Provisions and Clauses 961
- 50-3 Typical Fire Insurance Policies 967
- 51-1 Excerpts from Michael Jackson's Will 974
- 51-2 *Per Stirpes* Distribution 983
- 51-3 *Per Capita* Distribution 984
- 51-4 A Revocable Living Trust Arrangement 985

Preface

The study of business law and the legal environment of business has universal applicability. A student entering any field of business must have at least a passing understanding of business law in order to function in the real world. *Business Law*, Fifteenth Edition, provides the information that students need in an interesting and contemporary way.

Additionally, students preparing for a career in accounting, government and political science, economics, and even medicine can use much of the information they learn in a business law and legal environment course. In fact, every individual throughout his or her lifetime can benefit from knowledge of contracts, real property law, landlord-tenant relationships, and other business law topics. Consequently, we have fashioned this text as a useful “tool for living” for all of your students (including those taking the CPA exam).

The Fifteenth Edition of this best-selling text is more modern, exciting, and visually appealing than ever before. We have added many new features, cases, concept summaries, and exhibits. The text also contains hundreds of highlighted and numbered *Cases in Point* and *Examples*, as well as a number of new case problems and unit-ending *Task-Based Simulations*. Special pedagogical elements within the text focus on legal, ethical, global, and corporate issues while addressing core curriculum requirements.

Highlights of the Fifteenth Edition

Instructors have come to rely on the coverage, accuracy, and applicability of *Business Law*. To make sure that our text engages your students, solidifies their understanding of legal concepts, and provides the best teaching tools available, we offer the following.

The IDDR Approach: A New Emphasis on Ethics

The ability of businesspersons to reason through ethical issues is now more important than ever. For the Fifteenth Edition of *Business Law*, we have created a

completely new framework for helping students (and businesspersons) make ethical decisions. We present **The IDDR Approach** in Chapter 3 (Ethics in Business). This systematic approach provides students with a clear step-by-step process to analyze the legal and ethical implications of decisions that arise in everyday business operations.

The new IDDR Approach uses four logical steps:

- **Step 1: Inquiry**
- **Step 2: Discussion**
- **Step 3: Decision**
- **Step 4: Review**

Students can remember the first letter of each step easily by using the phrase: “I Desire to Do Right.”

Completely Revised Chapter 3 on Ethics in Business

A newly revised Chapter 3 details each IDDR step’s goals and then provides a Sample Scenario to help students apply this new approach to ethical decision making. In addition to introducing the IDDR Approach, we have made Chapter 3 more current and more practical, and reduced the amount of theoretical ethical principles it presents. The chapter now focuses on real-life application of ethical principles.

New A Question of Ethics throughout Text

After Chapter 3, to reinforce the application of the IDDR Approach, students are asked to use its various steps when answering each chapter’s *A Question of Ethics*. To challenge students in analyzing the ethical angles in today’s business legal environment, each of the *A Question of Ethics* problems have been updated throughout the text and are based on a 2017, 2018 or 2019 case.

A Variety of Exciting Features

The Fifteenth Edition of *Business Law* is filled with numerous features specifically designed to cover current legal topics of high interest.

Each feature is related to a topic discussed in the text and ends with *Critical Thinking* or *Business Questions*. Suggested answers to all of the *Critical Thinking* and *Business Questions* are included in the *Answers Manual* for this text.

1. **Ethics Today.** These features focus on the ethical aspects of a topic discussed in the text to emphasize that ethics is an integral part of a business law course. Examples include the following:
 - Applying the IDDR Framework (Chapter 3)
 - Is It Ethical (and Legal) to Brew “Imported” Beer Brands Domestically? (Chapter 24)
 - Should There Be More Relief for Student Loan Defaults? (Chapter 31)
 - Is It Fair to Classify Uber and Lyft Drivers as Independent Contractors? (Chapter 32)
2. **Global Insight.** These features illustrate how other nations deal with specific legal concepts to give students a sense of the global legal environment. Subjects include the following:
 - Aleve versus Flanax—Same Pain Killer, but in Different Countries (Chapter 8)
 - Islamic Law and *Respondeat Superior* (Chapter 33)
 - Does Cloud Computing Have a Nationality? (Chapter 39)
 - Can a River Be a Legal Person (Chapter 45)
3. **Digital Update.** These features are designed to examine cutting-edge cyberlaw topics, such as the following:
 - Does Everyone Have a Constitutional Right to Use Social Media? (Chapter 2)
 - Should Employees Have a “Right of Disconnecting”? (Chapter 3)
 - Revenge Porn and Invasion of Privacy (Chapter 6)
 - Riot Games, Inc., Protects Its Online Video Game Copyrights (Chapter 9)
 - “Catfishing” and Fraudulent Misrepresentation (Chapter 15)
 - Hiring Discrimination Based on Social Media Posts (Chapter 35)
4. **Managerial Strategy.** These features emphasize the management aspects of business law and the legal environment. Topics include the following:
 - Should You Consent to Have Your Business Case Decided by a U.S. Magistrate Judge? (Chapter 4)
 - When Is a Warning Legally Bulletproof? (Chapter 7)
 - The Criminalization of American Business (Chapter 10)
 - Commercial Use of Drones (Chapter 21)
 - The SEC’s Pay-Ratio Disclosure Rule (Chapter 42)

Entire Chapter on Internet Law, Social Media, and Privacy

The Fifteenth Edition again includes a whole chapter (Chapter 9) on *Internet Law, Social Media, and Privacy*.

Social media have entered the mainstream and become a part of everyday life for many businesspersons. In this special chapter, we give particular emphasis to the legal issues surrounding the Internet, social media, and privacy. We also recognize this trend throughout the text by incorporating the Internet and social media as they relate to the topics under discussion.

Coverage of Topics on the Revised CPA Exam

In 2016, the American Institute of CPAs (AICPA) issued its final report on “Maintaining the Relevance of the Uniform CPA Exam.” In addition to more focus on critical thinking, authentic applications, and problem solving, the content of the exam will change to some extent.

The Fifteenth Edition of *Business Law* incorporates information on the new topics on the CPA exam, specifically addressing the following:

- Agency law (worker classification and duties of principals and agents)
- Employment law (Affordable Care Act)
- Business organizations (corporate governance issues, including Sarbanes-Oxley compliance and criminal liability for organizations and management)

In addition, the Fifteenth Edition continues to cover topics that are essential to new CPAs who are working with sophisticated business clients, regardless of whether the CPA exam covers these topics.

We recognize that today’s business leaders must often think “outside the box” when making business decisions. For this reason, we strongly emphasize business and critical thinking elements throughout the text. We have carefully chosen cases, features, and problems that are relevant to business operations. Almost all of the features and cases conclude with some type of critical thinking question. For those teaching future CPAs, this is consistent with the new CPA exam’s focus on higher-order skills, such as critical thinking and problem solving.

Highlighted and Numbered Examples and Case in Point Illustrations

Many instructors use cases and examples to illustrate how the law applies to business. Students understand legal concepts better in the context of their real-world application. Therefore, for this edition of *Business Law*, we have expanded the number of highlighted numbered *Examples* and *Cases in Point* in every chapter.

Examples illustrate how the law applies in a specific situation. *Cases in Point* present the facts and issues of an actual case and then describe the court's decision and rationale. These two features are uniquely designed and consecutively numbered throughout each chapter for easy reference. The *Examples* and *Cases in Point* are integrated throughout the text to help students better understand how courts apply legal principles in the real world.

Task-Based Simulations: A New Unit-Ending Feature

A new *Task-Based Simulation* feature concludes each of the ten units in the Fifteenth Edition. This feature presents a hypothetical business situation and then asks a series of questions about how the law applies to various actions taken by the firm. To answer the questions, the students must apply the laws discussed throughout the unit.

In addition, each unit ends with an *Application and Ethics* feature that provides additional analysis on a topic related to that unit and explores its ethics ramifications. Each of the features ends with two questions—a *Critical Thinking* question and an *Ethics Question*. Some topics covered include the following:

- One of the Biggest Data Breaches Ever (Unit 2)
- Nondisclosure Agreements (Unit 3)
- Virtual Currency—Is It Safe? (Unit 5)
- Health Insurance and Small Business (Unit 7)

Suggested answers to the questions in the new *Task-Based Simulation* features (and the *Application and Ethics* features) are included in the *Answers Manual* for this text.

New Cases and Case Problems

For the Fifteenth Edition of *Business Law*, we have added more than a hundred new cases and case problems, most from 2017, 2018, and 2019. The new cases and problems have been carefully selected to illustrate important points of law and to be of high interest to students and instructors. We have made it a point to find recent cases that enhance learning and are relatively easy to understand.

1. *Spotlight Cases and Classic Cases.* Certain cases and case problems that are exceptionally good teaching cases are labeled as *Spotlight Cases* and *Spotlight Case Problems*. Examples include *Spotlight on Amazon*, *Spotlight on Beer Labels*, *Spotlight on Gucci*, *Spotlight on Nike*, and *Spotlight on the Seattle Mariners*. Instructors will find these *Spotlight Cases* useful to illustrate the legal concepts under discussion, and students will enjoy studying the

cases because they involve interesting and memorable facts. Other cases have been chosen as *Classic Cases* because they establish a legal precedent in a particular area of law.

- 2. *Critical Thinking Section.*** Each case concludes with a *Critical Thinking* section, which normally includes two questions. The questions may address *Legal Environment, E-Commerce, Economic, Environmental, Ethical, Global, Political, or Technological* issues, or they may ask *What If the Facts Were Different?* Each *Classic Case* ends with an *Impact of This Case on Today's Law* discussion and a *Critical Thinking* question.
- 3. *Longer Excerpts for Case Analysis.*** We have also included one longer case excerpt in most chapters—labeled *Case Analysis*—followed by three *Legal Reasoning Questions*. The questions are designed to guide students' analysis of the case and build their legal reasoning skills. These *Case Analysis* cases may be used for case-briefing assignments.

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

Business Case Problem with Sample Answer

In response to those instructors who would like students to have sample answers available for some of the questions and case problems, we include a *Business Case Problem with Sample Answer* in each chapter. The *Business Case Problem with Sample Answer* is based on an actual case, and students can find a sample answer at the end of the text. Suggested answers to the *Business Case Problems with Sample Answers* are provided in Appendix C and in the *Answers Manual* for this text.

Exhibits and Concept Summaries

We have spent considerable effort developing and designing all of the exhibits and concept summaries in this text to achieve better clarity and more visual appeal.

Practice and Review

In the Fifteenth Edition of *Business Law*, we offer a *Practice and Review* feature at the end of every chapter to help solidify students' understanding of the chapter materials. Each *Practice and Review* feature presents a hypothetical scenario and then asks a series of questions that require students to identify the issues and apply the legal concepts discussed in the chapter.

These features are designed to help students review the chapter topics in a simple and interesting way and see how the legal principles discussed in the chapter affect the world in which they live. An instructor can use these features as the basis for in-class discussion or encourage students to use them for self-study prior to completing homework assignments. Suggested answers to the questions posed in the *Practice and Review* features can be found in the *Answers Manual* for this text.

Issue Spotters

At the conclusion of each chapter, we have included a special section with two *Issue Spotters* related to the chapter's topics. These questions facilitate student learning and review of the chapter materials. Suggested answers to the *Issue Spotters* in every chapter are provided in Appendix B and in the *Answers Manual* for this text.

Time-Limited Group Assignment

For instructors who want their students to engage in group projects, each chapter of the Fifteenth Edition includes a special *Time-Limited Group Assignment*. Each activity begins by describing a business scenario and then poses several questions pertaining to the scenario. Each question is to be answered by a different group of students based on the information in the chapter. These projects may be used in class to spur discussion or as homework assignments. Suggested answers to the *Time-Limited Group Assignments* are included in the *Answers Manual* for this text.

Supplements/Digital Learning Systems

Business Law, Fifteenth Edition, provides a comprehensive supplements package designed to make the tasks of teaching and learning more enjoyable and efficient. The following supplements and digital products are offered in conjunction with the text.

MindTap for Business Law

MindTap™ for *Business Law*, Fifteenth Edition, is a fully online, highly personalized learning experience built upon Cengage Learning content. By combining readings, multimedia, activities, and assessments into a

singular Learning Path, *MindTap Business Law* guides students through their course with ease and engagement.

Instructors can personalize the experience by customizing Cengage Learning resources and adding their own content via apps that integrate into the *MindTap* framework seamlessly with Learning Management Systems (LMS).

The *MindTap Business Law* product provides a four-step Learning Path, Case Repository, Adaptive Test Prep, and an Interactive eBook designed to meet instructors' needs while also allowing instructors to measure skills and outcomes with ease. Each and every item is assignable and gradable. This gives instructors knowledge of class standings and students' mastery or concepts that may be difficult. Additionally, students gain knowledge about where they stand—both individually and compared to the highest performers in class.

Cengage Testing Powered by Cognero

Cengage Testing Powered by Cognero is a flexible, online system that allows you to do the following:

- 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.

Start Right Away! *Cengage Testing Powered by Cognero* works on any operating system or browser.

- Use your standard browser; no special installs or downloads are needed.
- Create tests from school, home, the coffee shop—anywhere with Internet access.

What Will You Find?

- *Simplicity at every step.* A desktop-inspired interface features drop-down menus and familiar intuitive tools that take you through content creation and management with ease.
- *Full-featured test generator.* Create ideal assessments with your choice of fifteen question types—including true/false, multiple choice, opinion scale/Likert, and essay. Multi-language support, an equation editor, and unlimited metadata help ensure your tests are complete and compliant.
- *Cross-compatible capability.* Import and export content to and from other systems.

Instructor's Companion Website

The Instructor's Companion Website for the Fifteenth Edition of *Business Law* contains the following supplements:

- **Instructor's Manual.** Includes sections entitled “Additional Cases Addressing This Issue” at the end of selected case synopses.
- **Answers Manual.** Provides answers to all questions presented in the text, including the questions in each case and feature, the *Practice and Review*, the *Issue Spotters*, the *Business Scenarios and Case Problems*, and the unit-ending *Task-Based Simulation* and *Application and Ethics* features.
- **Test Bank.** A comprehensive test bank that contains multiple-choice, true/false, and short essay questions.
- **Case-Problem Cases.**
- **Case Printouts.**
- **PowerPoint Slides.**
- **Lecture Outlines.**
- **MindTap Integrated Syllabus.**

For Users of the Previous Edition

First of all, we want to thank you for helping make *Business Law* the best-selling business law text in America today. Second, we want to make you aware of the numerous additions and changes that we have made in this edition—many in response to comments from reviewers.

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

- Chapter 2 (Business and the Constitution)—The chapter has been revised and updated to be more business oriented. It has a new case, two new case problems, and a new *Digital Update* feature on a United States Supreme Court decision concerning whether everyone has a constitutional right to use social media.
- Chapter 3 (Ethics in Business)—The chapter contents have been revised and updated to be more practical for businesspersons. A new section introduces a systematic approach to resolving ethical issues called the IDDR Approach. (“I Desire to Do Right” is a useful mnemonic device

- for remembering the individual steps: Inquiry, Discussion, Decision, and Review.) A new *Ethics Today* feature illustrates how to apply the IDDR framework. The step-by-step IDDR approach is then reiterated in the problems labeled *A Question of Ethics* that appear in every subsequent chapter. There are five new *Cases in Point*, seven new *Examples*, a new case, and four new case problems in the chapter. A *Digital Update* feature explores whether employees have a right to disconnect from their electronic devices after work hours. The chapter concludes with a new *Time-Limited Group Assignment* on corporate social responsibility.
- Chapter 8 (Intellectual Property Rights)—The materials on intellectual property rights have been thoroughly revised and updated to reflect the most current laws and trends. A new *Global Insight* feature discusses confusion in the context of trademark infringement. There are new *Cases in Point* and *Examples*, as well as a new case and two new case problems.
- Chapter 9 (Internet Law, Social Media, and Privacy)—This chapter, which covers legal issues that are unique to the Internet, has been thoroughly revised and updated for the Fifteenth Edition. It includes a new case, four new *Cases in Point*, and a new *Digital Update* feature on how copyright law applies to video games.
- Chapters 11 through 19 (Contracts and E-Contracts)—In this unit, we have added nine new cases and fifteen new *Cases in Point*, along with new *Examples* and case problems. We have also reworked exhibits, concept summaries, and features. These updates clarify and enhance our already superb contract law coverage.
- Chapters 20 through 23 (the first three chapters in the Domestic and International Sales and Lease Contracts unit)—We have streamlined and simplified our coverage of the Uniform Commercial Code and added three new cases, as well as four new *Cases in Point* and one new *Example*. New case problems have also been added.
- Chapter 24 (International and Space Law)—The last chapter in the unit on Domestic and International Sales and Lease Contracts includes a section on space law—international and domestic. Two cases presented are new to this edition. There is an updated discussion of NAFTA (now called USMCA) and on a United States Supreme Court decision concerning the Alien Tort Statute. The chapter also includes an updated *Ethics Today*

feature on the domestic brewing of imported beer brands.

- Chapter 28 (Banking) This chapter reflects the realities of banking in today’s digital world. A new case is presented, along with a new *Case in Point*, a new *Example*, and two new case problems. A *Digital Update* feature explains how electronic payment systems are reducing the use of checks.
- Chapter 34 (Employment, Immigration, and Labor Law) and Chapter 35 (Employment Discrimination)—These two chapters covering employment law have been thoroughly updated to include discussions of legal issues facing employers today. Chapter 34 has two new cases, three new *Cases in Point*, one new *Example*, and two new case problems. Features include an *Ethics Today* on whether employees should receive paid bathroom breaks and a *Managerial Strategy* on union organizing using company e-mail systems. Chapter 35 has one new case, four new *Cases in Point*, a new concept summary, and two new case problems. A revised *Digital Update* feature discusses hiring discrimination based on social media posts. We discuss relevant United States Supreme Court
- Chapters 36 through 42 (Business Organizations)—This unit has been revised and updated to improve flow and clarity. We provide more practical information and recent examples. We start with small business forms, go on to partnerships, and then cover limited liability companies. We discuss corporations in Chapters 39 through 42. There are new cases in every chapter and new *Cases in Point* throughout the unit. In Chapter 39, a *Global Insight* feature examines whether cloud computing has a nationality. The chapter on securities law (Chapter 42) has been substantially revised and updated due to the changes in Regulation A (Regulation A+). The chapter includes a new exhibit, two new *Cases in Point*, and a new *Digital Update* feature on investment crowdfunding. A *Managerial Strategy* feature discusses the SEC’s pay-ratio disclosure rule.
- Chapter 48 (Personal Property and Bailments) and Chapter 49 (Real Property and Landlord-Tenant Law)—Each chapter includes a new case, as well as a *Classic Case* or *Spotlight Case*. There are two new *Cases in Point*, a new concept summary, and four new case problems in these two chapters.

Acknowledgments for Previous Editions

Since we began this project many years ago, a sizable number of business law professors and others have helped us in revising the book, including the following:

Jeffrey E. Allen
University of Miami

Judith Anshin
Sacramento City College, California

Thomas M. Apke
California State University, Fullerton

Raymond August
Washington State University

William Auslen
San Francisco City College, California

Mary B. Bader
Moorhead State University, Kentucky

Frank Bagan
County College of Morris, New Jersey

John J. Balek
Morton College, Illinois

Michael G. Barth
University of Phoenix, Arizona

David L. Baumer
North Carolina State University

Barbara E. Behr
Bloomsburg University of Pennsylvania

Robert B. Bennett, Jr.
Butler University, Indiana

Robert C. Bird
University of Connecticut

Heidi Boerstler
University of Colorado Denver

Maria Kathleen Boss
California State University, Los Angeles

Lawrence J. Bradley
University of Notre Dame, Indiana

Dean Bredeson
University of Texas at Austin

Kylar William Broadus, Esq.
Lincoln University, Missouri

Doug Brown
Montana State University

Kristi K. Brown
University of Texas at Austin

Elizabeth K. Brunn, Esq.
University of Baltimore; University of Maryland University College

William J. Burke
University of Massachusetts Lowell

Kenneth Burns
University of Miami

Daniel R. Cahoy
Pennsylvania State University

- Rita Cain**
University of Missouri-Kansas City
- Jeanne A. Calderon**
New York University
- Joseph E. Cantrell**
DeAnza College, California
- Donald Cantwell**
University of Texas at Arlington
- Arthur J. Casey**
San Jose State University, California
- Thomas D. Cavenagh**
North Central College, Illinois
- Robert Chatov**
University at Buffalo, New York
- Corey Ciocchetti**
University of Denver, Colorado
- Nanette C. Clinch**
San Jose State University, California
- Robert J. Cox**
Salt Lake Community College
- Thomas Crane**
University of Miami
- Angela Crossin**
Purdue University Northwest, Indiana
- Kenneth S. Culott**
University of Texas at Austin
- Larry R. Curtis**
Iowa State University
- Richard Dalebout**
Brigham Young University, Utah
- William H. Daughtrey, Jr.**
Virginia Commonwealth University
- Michael DeAngelis**
University of Rhode Island
- James Doering**
University of Wisconsin-Green Bay
- John V. Dowdy**
University of Texas at Arlington
- Michele A. Dunkerley**
University of Texas at Austin
- Julia M. Dunlap, Esq.**
University of California San Diego
- Paul Dusseault**
Herkimer College, New York
- Maria Elena Ellison**
Florida Atlantic University
- Nena Ellison**
Florida Atlantic University
- O. E. Elmore**
Texas A&M University
- Robert J. Enders**
*California State Polytechnic University,
Pomona*
- Michael Engber**
Ball State University, Indiana
- David A. Escamilla**
University of Texas at Austin
- Denise M. Farag**
Linfield College, Oregon
- James S. Fargason**
Louisiana State University
- Frank S. Forbes**
University of Nebraska Omaha
- Joe W. Fowler**
Oklahoma State University
- Stanley G. Freeman**
University of South Carolina
- Joan Gabel**
Florida State University
- Christ Gaetanos**
State University of New York at Fredonia
- Chester S. Galloway**
Auburn University, Alabama
- Bob Garrett**
American River College, California
- Gary L. Giese**
University of Colorado Denver
- Thomas Gossman**
Western Michigan University
- John D. Grigsby**
Pennsylvania College of Technology
- Dr. J. Keaton Grubbs**
Stephen F. Austin State University, Texas
- Patrick O. Gudridge**
University of Miami School of Law, Florida
- Paul Guymon**
William Rainey Harper College, Illinois
- Jacqueline Hagerott**
Franklin University, Ohio
- James M. Haine**
University of Wisconsin-Stevens Point
- Gerard Halpern**
University of Arkansas
- Christopher L. Hamilton**
Golden West College, California
- JoAnn W. Hammer**
University of Texas at Austin
- Charles Hartman**
Wright State University, Ohio
- Richard A. Hausler**
University of Miami School of Law, Florida
- Harry E. Hicks**
Butler University, Indiana
- Janine S. Hiller**
*Virginia Polytechnic Institute and
State University*
- Rebecca L. Hillyer**
Chemeketa Community College, Oregon
- E. Clayton Hipp, Jr.**
Clemson University, South Carolina
- Anthony H. Holliday, Jr.**
Howard University, Washington D.C.
- Telford Hollman**
University of Northern Iowa
- June A. Horrigan**
California State University, Sacramento
- John P. Huggard**
North Carolina State University
- Terry Hutchins**
*The University of North Carolina at
Pembroke*
- Robert Jespersion**
University of Houston, Texas
- Debra M. Johnson**
Montana State University Billings
- Bryce J. Jones**
Truman State University, Missouri
- Margaret Jones**
Missouri State University
- Peter A. Karl III**
SUNY Polytechnic Institute, New York
- Jack E. Karns**
East Carolina University
- Anne E. Kastle**
Edmonds Community College, Washington

xxiv Preface

- Tamra Kempf**
University of Miami, Florida
- Judith Kenney**
University of Miami, Florida
- Barbara Kincaid**
Southern Methodist University, Texas
- Carey Kirk**
University of Northern Iowa
- Nancy P. Klintworth**
University of Central Florida
- Kurtis P. Klumb**
University of Wisconsin-Milwaukee
- Kathleen M. Knutson**
St. Catherine University, Minnesota
- Lisa Quinn Knych**
Syracuse University, Whitman School of Management, New York
- Peter Kwiatkowski, Esq.**
Baldwin Wallace University, Ohio
- Meg Costello Lambert**
*Oakland Community College—
Auburn Hills Campus, Michigan*
- Vonda M. Laughlin**
Carson-Newman University, Tennessee
- M. Alan Lawson**
Mt. San Antonio College, California
- Leslie E. Lenn**
St. Edward's University, Texas
- Susan Liebeler**
Loyola University, California
- Robert B. Long**
Oakland Community College, Michigan
- Stuart MacDonald**
University of Central Oklahoma
- Thomas E. Maher**
California State University, Fullerton
- Sal Marchionna**
Triton College, Illinois
- Gene A. Marsh**
University of Alabama
- Michael Martin, J.D., M.B.A., LL.M.**
*University of Northern Colorado,
Monfort College of Business*
- Karen Kay Matson**
University of Texas at Austin
- Woodrow J. Maxwell**
*Hudson Valley Community College,
New York*
- Bruce E. May**
University of South Dakota
- Diane May**
Winona State University, Minnesota
- Gail McCracken**
University of Michigan-Dearborn
- John W. McGee**
Texas State University
- Cotton Meagher**
University of Nevada, Las Vegas
- Christopher Meakin**
University of Texas at Austin
- Roger E. Meiners**
University of Texas at Arlington
- Gerald S. Meisel**
Bergen Community College, New Jersey
- Jennifer Merton, J.D.**
University of Massachusetts Amherst
- Richard Mills**
Cypress College, California
- David Minars**
City University of New York, Brooklyn
- Leo Moersen**
*The George Washington University,
Washington D.C.*
- Alan Moggio**
Illinois Central College
- Violet E. Molnar**
Riverside City College, California
- James E. Moon**
Meyer, Johnson & Moon, Minneapolis
- Melinda Ann Mora**
University of Texas at Austin
- Bob Morgan**
Eastern Michigan University
- Barry S. Morinaka**
Baker College, Michigan
- Melanie Morris**
*Raritan Valley Community College,
New Jersey*
- Joan Ann Mrava**
Los Angeles Southwest College, California
- Dwight D. Murphey**
Wichita State University, Kansas
- Daniel E. Murray**
University of Miami School of Law, Florida
- Paula C. Murray**
University of Texas at Austin
- Gregory J. Naples**
Marquette University, Wisconsin
- George A. Nation III**
Lehigh University, Pennsylvania
- Caleb L. Nichols**
Western Connecticut State University
- John M. Norwood**
University of Arkansas
- Jamie O'Brien**
University of Notre Dame, Indiana
- Dr. Kelly E. O'Donnell, J.C.D.**
California Lutheran University, California
- Michael J. O'Hara**
University of Nebraska Omaha
- Rick F. Orsinger**
College of DuPage, Illinois
- Daniel J. O'Shea**
Hillsborough Community College, Florida
- Thomas L. Palmer**
Northern Arizona University
- Charles M. Patten**
The University of Wisconsin Oshkosh
- Patricia Pattison**
Texas State University
- Peyton J. Paxson**
University of Texas at Austin
- Carlton Perkins**
Texas Southern University
- Darren A. Prum**
Florida State University
- Ralph L. Quinones**
University of Wisconsin Oshkosh
- Carol D. Rassic**
Virginia Commonwealth University
- Marvin H. Robertson**
Harding University, Arkansas
- Bert K. Robinson**
Kennesaw State University, Georgia

- Norberto Ruiz**
Chabot College, California
- Gary K. Sambol**
Rutgers University, New Jersey
- Rudy Sandoval**
University of Texas at San Antonio
- Sidney S. Sappington**
York College of Pennsylvania
- Martha Sartoris**
*North Hennepin Community College,
Minnesota*
- Barbara P. Scheller**
Temple University, Pennsylvania
- S. Alan Schlact**
Kennesaw State University, Georgia
- Lorne H. Seidman**
University of Nevada, Las Vegas
- Ira Selkowitz**
University of Colorado Denver
- Roscoe B. Shain**
Austin Peay State University, Tennessee
- Bennett D. Shulman**
Lansing Community College, Michigan
- S. Jay Sklar**
Temple University, Pennsylvania
- Dana Blair Smith**
University of Texas at Austin
- Michael Smydra**
*Oakland Community College—
Royal Oak Campus, Michigan*
- Arthur Southwick**
University of Michigan
- Sylvia A. Spade**
University of Texas at Austin
- John A. Sparks**
Grove City College, Pennsylvania
- Robert D. Sprague**
University of Wyoming
- Elisabeth Sperow**
*California Polytechnic University,
San Luis Obispo*
- Brenda Steuer**
*Lone Star College-North Harris
Campus, Texas*
- Craig Stilwell**
Michigan State University
- Irwin Stotsky**
*University of Miami School of Law,
Florida*
- Larry Strate**
University of Nevada, Las Vegas
- Charles R. B. Stowe**
Sam Houston State University, Texas
- Raymond Mason Taylor**
North Carolina State University
- Thomas F. Taylor**
Campbell University, North Carolina
- Ray Teske**
University of Texas at San Antonio
- H. Allan Tolbert**
Central Texas College
- Jesse C. Trentadue**
University of North Dakota
- Edwin Tucker**
University of Connecticut
- Gary Victor**
*Eastern Michigan University,
Michigan*
- William H. Volz**
Wayne State University, Michigan
- David Vyncke**
Scott Community College, Iowa
- William H. Walker**
*Indiana University–Purdue University
Fort Wayne*
- Diana Walsh**
County College of Morris, New Jersey
- Robert J. Walter**
University of Texas at El Paso
- Gary Watson**
California State University, Los Angeles
- Katherine Hannan Wears, J.D.**
*Clarkson University School of Business,
New York*
- John L. Weimer**
Nicholls State University, Louisiana
- Marshall Wilkerson**
University of Texas at Austin
- Melanie Stallings Williams**
*California State University,
Northridge*
- Arthur D. Wolfe**
Michigan State University
- Elizabeth A. Wolfe**
University of Texas at Austin
- Daniel R. Wrentmore**
*Santa Barbara City College,
California*
- Eric D. Yordy**
Northern Arizona University
- Norman Gregory Young**
*California State Polytechnic University,
Pomona*
- Ronald C. Young**
*Kalamazoo Valley Community College,
Michigan*
- Bob Zaffram**
Erie Community College, New York

As in all past editions, we owe a debt of extreme gratitude to the numerous individuals who worked directly with us or at Cengage. In particular, we wish to thank Vicky True-Baker and Michael Giffen, senior product managers; Joe Sabatino, product director; Martha Conway and Julia Chase, senior content managers; and Lisa Elliot, Cengage subject matter expert. We also thank Sarah Huber and Courtney Wolstoncroft, learning designers; Jennifer Chinn and Steven McMillian, digital delivery leads; Christian Wood and Nick Perez, product assistants; Chris Doughman, designer; Carly Belcher, intellectual property project manager; and Ashley Maynard, intellectual property analyst. We are indebted as well to the staff at SPi Global, our compositor, as well as Phil Scott, project manager, for accurately generating pages for this text and making it possible for us to meet our ambitious schedule for print and digital products.

We especially wish to thank Katherine Marie Silsbee for her management of the entire project, as well as for

the application of her superb research and editorial skills. We also wish to thank William Eric Hollowell, who co-authored the *Instructor's Manual* and the *Test Bank*, for his excellent research efforts. We were fortunate enough to have the copyediting of Beverly Peavler and the proofreading of Susan Bradley. We are grateful for the many efforts of Vickie Reiersen, Roxanna Lee, and Suzanne Jasin, which helped to ensure an error-free text.

Through the years, we have enjoyed an ongoing correspondence with many of you who have found points on which you wish to comment. We continue to welcome all comments and promise to respond promptly. By incorporating your ideas, we can continue to write a business law text that is best for you and best for your students.

K.W.C.
R.L.M.

*For MaryKay and Jim,
May our many years of
friendship continue.
It's a great ride!
R.L.M.*

Unit One

The Legal Environment of Business



- 1. Law and Legal Reasoning**
- 2. Business and the Constitution**
- 3. Ethics in Business**
- 4. Courts and Alternative Dispute Resolution**
- 5. Court Procedures**

Chapter 1

Law and Legal Reasoning

One of the most important functions of law in any society is to provide stability, predictability, and continuity so that people can know how to order their affairs. If any society is to survive, its citizens must be able to determine what is legally right and legally wrong. They must know what sanctions will be imposed on them if they commit wrongful acts. If they suffer harm as a result of others' wrongful acts, they must know how they can seek compensation. By setting forth the rights, obligations, and privileges of citizens, the law enables individuals to go about their business with confidence and a certain degree of predictability.

Although law has various definitions, they all are based on the general observation that **law** consists of

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

In this introductory chapter, we look at how business law and the legal environment affect business decisions.

For instance, suppose that Hellix Communications, Inc., wants to buy a competing cellular company. It also wants to offer unlimited data plans once it has acquired this competitor. Management fears that if the company does not expand, one of its bigger rivals will put it out of business. But Hellix Communications cannot simply buy its rivals. Nor can it just offer a low-cost cell-phone plan to its customers. It has to follow the laws pertaining to its proposed actions. Some of these laws (or regulations) depend on interpretations by those running various regulatory agencies. The rules that control Hellix Communications' actions reflect past and current thinking about how large telecommunications companies should and should not act.

1-1 Business Activities and the Legal Environment

Laws and government regulations affect almost all business activities—from hiring and firing decisions to workplace safety, the manufacturing and marketing of products, business financing, and more. To make good business decisions, a basic knowledge of the laws and regulations governing these activities is beneficial—if not essential.

Realize also that in today's business world, knowing what conduct can lead to legal **liability** is not enough. Businesspersons must develop critical thinking and legal reasoning skills so that they can evaluate how various laws might apply to a given situation and determine the best course of action.

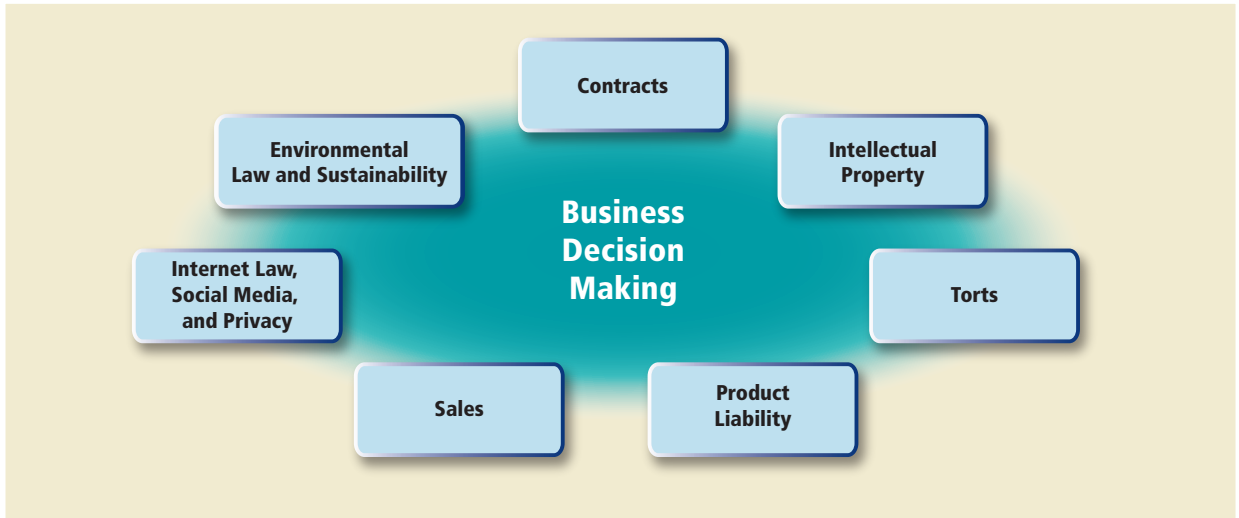
Our goal in this text is not only to teach you about specific laws, but also to teach you how to think about the law and the legal environment and to develop your

critical-thinking and legal-reasoning skills. The laws may change, but the ability to analyze and evaluate the legal (and ethical) ramifications of situations as they arise is an invaluable and lasting skill.

1-1a Many Different Laws May Affect a Single Business Decision

As you will note, each chapter in this text covers specific areas of the law and shows how the legal rules in each area affect business activities. Although compartmentalizing the law in this fashion promotes conceptual clarity, it does not indicate the extent to which a number of different laws may apply to just one decision. Exhibit 1-1 illustrates the various areas of the law that may influence business decision making.

Example 1.1 When Mark Zuckerberg, as a Harvard student, first launched Facebook, others claimed that Zuckerberg had stolen their ideas for a social networking

Exhibit 1-1 Areas of the Law That Can Affect Business Decision Making

site. They filed a lawsuit against him alleging theft of intellectual property, fraudulent misrepresentation, and violations of partnership law and securities law. Facebook ultimately paid \$65 million to settle those claims out of court.

Since then, Facebook has been sued repeatedly for violating users' privacy (and federal laws) by tracking their website usage and by scanning private messages for purposes of data mining and user profiling. Facebook's business decisions have also come under scrutiny by federal regulators, such as the Federal Trade Commission (FTC), and by international authorities, such as the European Union. The company settled a complaint filed by the FTC alleging that Facebook had failed to keep "friends" lists and other user information private. ■

1-1b Ethics and Business Decision Making

Merely knowing the areas of law that may affect a business decision is not sufficient in today's business world. Today, business decision makers need to consider not just whether a decision is legal, but also whether it is ethical.

Ethics generally is defined as the principles governing what constitutes right or wrong behavior. Often, as in several of the claims against Facebook discussed above, disputes arise in business because one party feels that he or she has been treated unfairly. Thus, the underlying reason for bringing some lawsuits is a breach of ethical duties (such as when a partner or employee attempts to secretly take advantage of a business opportunity).

Throughout this text, you will learn about the relationship between the law and ethics, as well as about

some of the types of ethical questions that arise in business. For instance, all of the unit-ending *Unit Application and Ethics* features include an *Ethical Connection* section that explores the ethical dimensions of a topic treated within the unit. We have also included *Ethical Questions* for each unit, as well as within many of the cases presented in this text. *Ethics Today* features, which focus on ethical considerations in today's business climate, appear in selected chapters, including this chapter. *A Question of Ethics* case problem is included at the end of every chapter to introduce you to the ethical aspects of specific cases involving real-life situations.

1-2 Sources of American Law

American law has numerous sources. Often, these sources of law are classified as either primary or secondary.

Primary sources of law, or sources that establish the law, include the following:

1. The U.S. Constitution and the constitutions of the various states.
2. Statutory law—including laws passed by Congress, state legislatures, or local governing bodies.
3. Regulations created by administrative agencies, such as the Federal Trade Commission.
4. Case law and common law doctrines.

Next, we describe each of these important sources of law.

Secondary sources of law are books and articles that summarize and clarify the primary sources of law.

Examples include legal encyclopedias, treatises, articles in law reviews, and compilations of law, such as the *Restatements of the Law* (which will be discussed later). Courts often refer to secondary sources of law for guidance in interpreting and applying the primary sources of law discussed here.

1-2a Constitutional Law

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

According to Article VI of the U.S. Constitution, the Constitution is the supreme law of the land. As such, it is the basis of all law in the United States. A law in violation of the Constitution, if challenged, will be declared unconstitutional and will not be enforced, no matter what its source.

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

1-2b Statutory Law

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

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

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

Statutory Conflicts Tension may sometimes arise between federal, state, and local laws. ■ **Example 1.2** This tension is evident in the national debate over so-called sanctuary cities—cities that limit their cooperation with federal immigration authorities. Normally, law

enforcement officials are supposed to alert federal immigration authorities when they come into contact with undocumented immigrants, so that the immigrants can be detained for possible deportation. But a number of cities across the United States have adopted either local ordinances or explicit policies that do not follow this procedure. Police in these cities often do not ask or report the immigration status of individuals with whom they come into contact. Other places refuse to detain undocumented immigrants who are accused of low-level offenses. ■

Uniform Laws During the 1800s, the differences among state laws frequently created difficulties for businesspersons conducting trade and commerce among the states. To counter these problems, a group of legal scholars and lawyers formed the National Conference of Commissioners on Uniform State Laws, or NCCUSL (www.uniformlaws.org), in 1892. The NCCUSL still exists today. Its object is to draft **uniform laws** (model statutes) for the states to consider adopting.

Each state has the option of adopting or rejecting a uniform law. *Only if a state legislature adopts a uniform law does that law become part of the statutory law of that state.* Note that a state legislature may adopt all or part of a uniform law as it is written, or the legislature may rewrite the law however the legislature wishes. Hence, even though many states may have adopted a uniform law, those states' laws may not be entirely "uniform."

The earliest uniform law, the Uniform Negotiable Instruments Law, was completed by 1896 and adopted in every state by the 1920s (although not all states used exactly the same wording). Over the following decades, other acts were drawn up in a similar manner. In all, more than two hundred uniform acts have been issued by the NCCUSL since its inception. The most ambitious uniform act of all, however, was the Uniform Commercial Code.

The Uniform Commercial Code One of the most important uniform acts is the Uniform Commercial Code (UCC), which was created through the joint efforts of the NCCUSL and the American Law Institute.¹ The UCC was first issued in 1952 and has been adopted in all fifty states,² the District of Columbia, and the Virgin Islands.

The UCC facilitates commerce among the states by providing a uniform, yet flexible, set of rules governing commercial transactions. Because of its importance in the area of commercial law, we cite the UCC frequently in this text.

1. This institute was formed in the 1920s and consists of practicing attorneys, legal scholars, and judges.
2. Louisiana has not adopted Articles 2 and 2A (covering contracts for the sale and lease of goods), however.

1-2c Administrative Law

Another important source of American law is **administrative law**, which consists of the rules, orders, and decisions of administrative agencies. An **administrative agency** is a federal, state, or local government agency established to perform a specific function. Administrative law and procedures constitute a dominant element in the regulatory environment of business.

Rules issued by various administrative agencies now affect almost every aspect of a business's operations. Regulations govern a business's capital structure and financing, its hiring and firing procedures, its relations with employees and unions, and the way it manufactures and markets its products. Regulations enacted to protect the environment also often play a significant role in business operations.

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

There are also major **independent regulatory agencies** at the federal level, such as the Federal Trade Commission, the Securities and Exchange Commission, and the Federal Communications Commission. The president's

power is less pronounced in regard to independent agencies, whose officers serve for fixed terms and cannot be removed without just cause.

State and Local Agencies There are administrative agencies at the state and local levels as well. Commonly, a state agency (such as a state pollution-control agency) is created as a parallel to a federal agency (such as the Environmental Protection Agency). Just as federal statutes take precedence over conflicting state statutes, federal agency regulations take precedence over conflicting state regulations.

1-2d Case Law and Common Law Doctrines

The rules of law announced in court decisions constitute another basic source of American law. These rules include interpretations of constitutional provisions, of statutes enacted by legislatures, and of regulations created by administrative agencies.

Today, this body of judge-made law is referred to as **case law**. Case law—the doctrines and principles announced in cases—governs all areas not covered by statutory law or administrative law and is part of our common law tradition. We look at the origins and characteristics of the common law tradition in some detail in the pages that follow.

See Concept Summary 1.1 for a review of the sources of American law.

Concept Summary 1.1

Sources of American Law

Constitutional Law

- Law as expressed in the U.S. Constitution or state constitutions.
- The U.S. Constitution is the supreme law of the land.
- State constitutions are supreme within state borders to the extent that they do not conflict with the U.S. Constitution.

Statutory Law

- Statutes (including uniform laws) and ordinances enacted by federal, state, and local legislatures.
- Federal statutes may not violate the U.S. Constitution.
- State statutes and local ordinances may not violate the U.S. Constitution or the relevant state constitution.

Administrative Law

- The rules, orders, and decisions of federal, state, and local administrative agencies.

Case Law and Common Law Doctrines

- Judge-made law, including interpretations of constitutional provisions, of statutes enacted by legislatures, and of regulations created by administrative agencies.

1-3 The Common Law Tradition

Because of our colonial heritage, much of American law is based on the English legal system. Knowledge of this tradition is crucial to understanding our legal system today because judges in the United States still apply common law principles when deciding cases.

1-3a Early English Courts

After the Normans conquered England in 1066, William the Conqueror and his successors began the process of unifying the country under their rule. One of the means they used to do this was the establishment of the king's courts, or *curiae regis*.

Before the Norman Conquest, disputes had been settled according to the local legal customs and traditions in various regions of the country. The king's courts sought to establish a uniform set of customs for the country as a whole. What evolved in these courts was the beginning of the **common law**—a body of general rules that applied throughout the entire English realm. Eventually, the common law tradition became part of the heritage of all nations that were once British colonies, including the United States.

Courts of Law and Remedies at Law The early English king's courts could grant only very limited kinds of **remedies** (the legal means to enforce a right or redress a wrong). If one person wronged another in some way, the king's courts could award as compensation one or more of the following: (1) land, (2) items of value, or (3) money.

The courts that awarded this compensation became known as **courts of law**, and the three remedies were called **remedies at law**. (Today, the remedy at law normally takes the form of monetary **damages**—an amount given to a party whose legal interests have been injured.) This system made the procedure for settling disputes more uniform. When a complaining party wanted a remedy other than economic compensation, however, the courts of law could do nothing, so “no remedy, no right.”

Courts of Equity When individuals could not obtain an adequate remedy in a court of law, they petitioned the king for relief. Most of these petitions were decided by an adviser to the king, called a *chancellor*, who had the power to grant new and unique remedies. Eventually, formal chancery courts, or **courts of equity**, were established.

Equity is a branch of law—founded on notions of justice and fair dealing—that seeks to supply a remedy when no adequate remedy at law is available.

Remedies in Equity The remedies granted by the equity courts became known as **remedies in equity**, or equitable remedies. These remedies include specific performance, injunction, and rescission. *Specific performance* involves ordering a party to perform an agreement as promised. An *injunction* is an order to a party to cease engaging in a specific activity or to undo some wrong or injury. *Rescission* is the cancellation of a contractual obligation. We will discuss these and other equitable remedies in more detail in later chapters.

As a general rule, today's courts, like the early English courts, will not grant equitable remedies unless the remedy at law—monetary damages—is inadequate. ■ **Example 1.3** Ted forms a contract (a legally binding agreement) to purchase a parcel of land that he thinks will be perfect for his future home. The seller **breaches** (fails to fulfill) this agreement. Ted could sue the seller for the return of any deposits or down payment he might have made on the land, but this is not the remedy he really wants. What Ted wants is to have a court order the seller to perform the contract. In other words, Ted will seek the equitable remedy of specific performance because monetary damages are inadequate in this situation. ■

Equitable Maxims In fashioning appropriate remedies, judges often were (and continue to be) guided by so-called **equitable maxims**—propositions or general statements of equitable rules. Exhibit 1-2 lists some important equitable maxims.

The last maxim listed in the exhibit—“Equity aids the vigilant, not those who rest on their rights”—merits special attention. It has become known as the equitable doctrine of **laches** (a term derived from the Latin *laxus*, meaning “lax” or “negligent”), and it can be used as a defense. A **defense** is an argument raised by the **defendant** (the party being sued) indicating why the **plaintiff** (the suing party) should not obtain the remedy sought. (Note that in equity proceedings, the party bringing a lawsuit is called the **petitioner**, and the party being sued is referred to as the **respondent**.)

The doctrine of laches arose to encourage people to bring lawsuits while the evidence was fresh. What constitutes a reasonable time, of course, varies according to the circumstances of the case. Time periods for different types of cases are now usually fixed by **statutes of limitations**. After the time allowed under a statute of limitations has

Exhibit 1–2 Equitable Maxims

1. *Whoever seeks equity must do equity.* (Anyone who wishes to be treated fairly must treat others fairly.)
2. *Where there is equal equity, the law must prevail.* (The law will determine the outcome of a controversy in which the merits of both sides are equal.)
3. *One seeking the aid of an equity court must come to the court with clean hands.* (The plaintiff must have acted fairly and honestly.)
4. *Equity will not suffer a wrong to be without a remedy.* (Equitable relief will be awarded when there is a right to relief and there is no adequate remedy at law.)
5. *Equity regards substance rather than form.* (Equity is more concerned with fairness and justice than with legal technicalities.)
6. *Equity aids the vigilant, not those who rest on their rights.* (Equity will not help those who neglect their rights for an unreasonable period of time.)

expired, no action (lawsuit) can be brought, no matter how strong the case was originally.

1–3b Legal and Equitable Remedies Today

The establishment of courts of equity in medieval England resulted in two distinct court systems: courts of law and courts of equity. The courts had different sets of judges and granted different types of remedies. During the nineteenth century, however, most states in the United States adopted rules of procedure that resulted in the combining of courts of law and equity. A party now may request both legal and equitable remedies in the same action, and the trial court judge may grant either or both forms of relief.

The distinction between legal and equitable remedies remains relevant to students of business law, however, because these remedies differ. To seek the proper remedy for a wrong, you must know what remedies are available. Additionally, certain vestiges of the procedures used when there were separate courts of law and equity still exist. For instance, a party has the right to demand a jury trial in an action at law, but not in an action in equity. Exhibit 1–3 summarizes the procedural differences (applicable in most states) between an action at law and an action in equity.

1–3c The Doctrine of *Stare Decisis*

One of the unique features of the common law is that it is *judge-made* law. The body of principles and doctrines that form the common law emerged over time as judges decided legal controversies.

Case Precedents and Case Reporters When possible, judges attempted to be consistent and to base their decisions on the principles suggested by earlier cases. They sought to decide similar cases in a similar way, and they considered new cases with care because they knew that their decisions would make new law. Each interpretation became part of the law on the subject and thus served as a legal **precedent**. A precedent is a decision that furnishes an example or authority for deciding subsequent cases involving identical or similar legal principles or facts.

In the early years of the common law, there was no single place or publication where court opinions, or written decisions, could be found. By the fourteenth century, portions of the most important decisions from each year were being gathered together and recorded in *Year Books*, which became useful references for lawyers and judges. In the sixteenth century, the *Year Books* were discontinued,

Exhibit 1–3 Procedural Differences between an Action at Law and an Action in Equity

| Procedure | Action at Law | Action in Equity |
|------------------------------|------------------------------|---|
| Initiation of lawsuit | By filing a complaint | By filing a petition |
| Decision | By jury or judge | By judge (no jury) |
| Result | Judgment | Decree |
| Remedy | Monetary damages or property | Injunction, specific performance, or rescission |

and other forms of case publication became available. Today, cases are published, or “reported,” in volumes called **reporters**, or *reports*—and are also posted online. We describe today’s case reporting system in detail later in this chapter.

Stare Decisis and the Common Law Tradition

The practice of deciding new cases with reference to former decisions, or precedents, became a cornerstone of the English and American judicial systems. The practice formed a doctrine known as *stare decisis*,³ a Latin phrase meaning “to stand on decided cases.”

Under the doctrine of *stare decisis*, judges are obligated to follow the precedents established within their jurisdictions. The term *jurisdiction* refers to a geographic area in which a court or courts have the power to apply the law. Once a court has set forth a principle of law as being applicable to a certain set of facts, that court must apply the principle in future cases involving similar facts. Courts of lower rank (within the same jurisdiction) must do likewise. Thus, *stare decisis* has two aspects:

1. A court should not overturn its own precedents unless there is a compelling reason to do so.
2. Decisions made by a higher court are binding on lower courts.

Controlling Precedents Precedents that must be followed within a jurisdiction are called *controlling precedents*. Controlling precedents are a type of binding authority. A **binding authority** is any source of law that a court must follow when deciding a case. Binding authorities include constitutions, statutes, and regulations that govern the issue being decided, as well as court decisions that are controlling precedents within the jurisdiction. United States Supreme Court case decisions, no matter how old, remain controlling until they are overruled by a subsequent decision of the Supreme Court or changed by further legislation or a constitutional amendment.

Stare Decisis and Legal Stability The doctrine of *stare decisis* helps the courts to be more efficient because, if other courts have analyzed a similar case, their legal reasoning and opinions can serve as guides. *Stare decisis* also makes the law more stable and predictable. If the law on a subject is well settled, someone bringing a case can usually rely on the court to rule based on what the law has been in the past. See this chapter’s *Ethics Today*

feature for a discussion of how courts often defer to case precedent even when they disagree with the reasoning in the case.

Although courts are obligated to follow precedents, sometimes a court will depart from the rule of precedent if it decides that the precedent should no longer be followed. If a court decides that a ruling precedent is simply incorrect or that technological or social changes have rendered the precedent inapplicable, the court might rule contrary to the precedent. Cases that overturn precedent often receive a great deal of publicity.

■ **Case in Point 1.4** The United States Supreme Court expressly overturned precedent in the case of *Brown v. Board of Education of Topeka*.⁴ The Court concluded that separate educational facilities for whites and blacks, which it had previously upheld as constitutional,⁵ were inherently unequal. The Supreme Court’s departure from precedent in this case received a tremendous amount of publicity as people began to realize the ramifications of this change in the law. ■

Note that a lower court will sometimes avoid applying a precedent set by a higher court in its jurisdiction by distinguishing the two cases based on their facts. When this happens, the lower court’s ruling stands unless it is appealed to a higher court and that court overturns the decision.

When There Is No Precedent Occasionally, courts must decide cases for which no precedents exist, called *cases of first impression*. For instance, as you will read throughout this text, the Internet and certain other technologies have presented many new and challenging issues for the courts to decide.

In deciding cases of first impression, courts often look at **persuasive authorities**—legal authorities that a court may consult for guidance but that are not binding on the court. A court may consider precedents from other jurisdictions, for instance, although those precedents are not binding. A court may also consider legal principles and policies underlying previous court decisions or existing statutes. Additionally, a court might look at issues of fairness, social values and customs, and public policy (governmental policy based on widely held societal values). Today, federal courts can also look at unpublished opinions (those not intended for publication in a printed legal reporter) as sources of persuasive authority.⁶

4. 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954).

5. See *Plessy v. Ferguson*, 163 U.S. 537, 16 S.Ct. 1138, 41 L.Ed. 256 (1896).

6. See Rule 32.1 of the Federal Rules of Appellate Procedure.

3. Pronounced *stahr-ee dih-si-sis*.

Ethics Today

Stare Decisis versus Spider-Man

Supreme Court Justice Elena Kagan, in a recent decision involving Marvel Comics' Spider-Man, ruled that, "What we can decide, we can undecide. But *stare decisis* teaches that we should exercise that authority sparingly." Citing a Spider-Man comic book, she went on to say that "in this world, with great power there must also come—great responsibility."^a In its decision in the case—*Kimble v. Marvel Entertainment, LLC*—the Supreme Court applied *stare decisis* and ruled against Stephen Kimble, the creator of a toy related to the Spider-Man figure.^b

Can a Patent Involving Spider-Man Last Super Long?

A patent is an exclusive right granted to the creator of an invention. Under U.S. law, patent owners generally possess that right for twenty years. Patent holders can license the use of their patents as they see fit during that period. In other words, they can allow others (called *licensees*) to use their invention in return for a fee (called *royalties*).

More than fifty years ago, the Supreme Court ruled in its *Brulotte* decision that a licensee cannot be forced to pay royalties to a patent holder after the patent has expired.^c So if a licensee signs a contract to continue to pay royalties after the patent has expired, the contract is invalid and thus unenforceable.

At issue in the *Kimble* case was a contract signed between Marvel Entertainment and Kimble, who had invented a toy made up of a glove equipped with a valve and a canister of pressurized foam. The patented toy allowed people to shoot fake webs intended to look like Spider-Man's. In 1990, Kimble tried to cut a deal with Marvel Entertainment concerning his toy, but he was unsuccessful. Then Marvel started selling its own version of the toy.

When Kimble sued Marvel for patent infringement, he won. The result was a settlement that involved a licensing agreement between Kimble and Marvel with a lump-sum payment plus a royalty to Kimble of 3 percent of all sales of the toy. The agreement did not specify an end date for royalty payments to Kimble, and Marvel later sued to have the payments stop after the patent expired, consistent with the Court's earlier *Brulotte* decision.

A majority of the Supreme Court justices agreed with Marvel. As Justice Kagan said in the opinion, "Patents endow their holders with certain super powers, but only for a limited time." The court further noted that the fifty-year-old *Brulotte* decision was perhaps based on what today is an outmoded understanding of economics. That decision, according to some, may even hinder competition and innovation. But "respecting *stare decisis* means sticking to some wrong decisions."

The Ethical Side

In a dissenting opinion, Supreme Court Justice Samuel A. Alito, Jr., said, "The decision interferes with the ability of parties to negotiate licensing agreements that reflect the true value of a patent, and it disrupts contractual expectations. *Stare decisis* does not require us to retain this baseless and damaging precedent. . . . *Stare decisis* is important to the rule of law, but so are correct judicial decisions."

In other words, *stare decisis* holds that courts should adhere to precedent in order to promote predictability and consistency. But in the business world, shouldn't parties to contracts be able to, for example, allow a patent licensee to make smaller royalty payments that exceed the life of the patent? Isn't that a way to reduce the yearly costs to the licensee? After all, the licensee may be cash-strapped in its initial use of the patent. Shouldn't the parties to a contract be the ones to decide how long the contract should last?

Critical Thinking When is the Supreme Court justified in not following the doctrine of *stare decisis*?

a. "Spider-Man," *Amazing Fantasy*, No. 15 (1962), p. 13.

b. ___ U.S. ___, 135 S.Ct. 2401, 192 L.Ed.2d 463 (2015). Also see *Nautilus, Inc. v. ICON Health & Fitness, Inc.*, 304 F.Supp.3d 552 (W.D.Texas—San Antonio 2018).

c. *Brulotte v. Thys Co.*, 379 U.S. 29, 85 S.Ct. 176 (1964).

1-3d Stare Decisis and Legal Reasoning

In deciding what law applies to a given dispute and then applying that law to the facts or circumstances of the case, judges rely on the process of **legal reasoning**. Through the use of legal reasoning, judges harmonize

their decisions with those that have been made before, as the doctrine of *stare decisis* requires.

Students of business law and the legal environment also engage in legal reasoning. For instance, you may be asked to provide answers for some of the case problems