

BUSINESS LAW

THE ETHICAL, GLOBAL, AND E-COMMERCE ENVIRONMENT

T W E L F T H E D I T I O N

MALLOR · BARNES · BOWERS · LANGVARDT

BUSINESS LAW

TWELFTH EDITION

*The Ethical, Global, and
E-Commerce Environment*

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A. James Barnes

Thomas Bowers

Arlen W. Langvardt

all of Indiana University



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

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THE AUTHORS

Jane P. Mallor has been a member of the Business Law faculty at Kelley School of Business, Indiana University, since 1976. She has a B.A. from Indiana University and a J.D. from Indiana University School of Law. She has been admitted to the Indiana Bar, the Bar of the Southern District of Indiana, and the Bar of the U.S. Supreme Court. She is a member of the Academy of Legal Studies in Business.

Professor Mallor has taught a range of courses, including an introductory legal environment course and a graduate-level legal concepts course, real estate law, university pedagogy courses for business doctoral students, and most recently, graduate and undergraduate courses on Internet law and e-commerce. She is a member of Indiana University's Faculty Colloquium for Excellence in Teaching and was a Lilly Postdoctoral Teaching Fellow. She has won a number of teaching awards, including the Amoco Foundation Award for Distinguished Teaching, the Dow Technology Teaching Award, and the Innovative Teaching Award. Her research has focused primarily on punitive damages, product liability, and employment rights. Her work has been published in law reviews such as *Hastings Law Journal*, *North Carolina Law Review*, *American Business Law Journal*, and *Notre Dame Lawyer*.

A. James Barnes, J.D., is Professor of Public and Environmental Affairs and Adjunct Professor of Law at Indiana University in Bloomington. He previously served as Dean of the School of Public and Environmental Affairs (SPEA). His teaching interests include environmental law, alternative dispute resolution, law and public policy, and ethics and the public official. He has written, testified, and spoken extensively on environmental issues and has considerable international experience dealing with environmental officials in other countries. He currently consults on a variety of environmental matters.

From 1985 to 1988, Professor Barnes served as the deputy administrator of the U.S. Environmental Protection Agency. As the agency's number two official, he gained extensive experience in environmental policy making and administration. From 1983 to 1985, he was the EPA General Counsel, and in the early 1970s participated in the formation of EPA and served as the chief of staff to its first administrator, William D. Ruckelshaus.

Professor Barnes also served as a trial attorney for the U.S. Department of Justice and as general counsel for the U.S. Department of Agriculture from 1981 to 1983, where he dealt with a wide variety of public policy issues, including environmental issues involving the Forest Service, Soil and Conservation Service, and federal agriculture programs. For six years, from 1975 to 1981, he had a commercial and environmental law practice with the firm of Beveridge and Diamond in Washington, D.C.

Thomas Bowers is Argosy Gaming Faculty Fellow in the Kelley School of Business at Indiana University, Bloomington. He is co-director of the Kelley MBA Sports and Entertainment Academy. Focusing primarily on the law of business organizations, securities regulation, professional responsibility, and business ethics, Dr. Bowers teaches two courses in the Kelley School's Systems and Accounting Graduate Program. His students have honored him with 15 outstanding teaching awards. He joined the faculty at Indiana University after obtaining a B.S. in finance from The Ohio State University and a J.D. from New York University.

Arlen W. Langvardt, Professor of Business Law, joined the faculty of Indiana University's Kelley School of Business in 1985. Professor Langvardt earned a Bachelor of Arts degree (summa cum laude) from Hastings College in 1976 and a Juris Doctor degree (with distinction) from the University of Nebraska in 1981.

From 1981-85, Professor Langvardt was a trial attorney with firms in Nebraska. He tried cases in a variety of legal areas, including tort, contract, constitutional, and miscellaneous commercial cases, as well as criminal and domestic relations cases.

Professor Langvardt has received several teaching awards and honors at the undergraduate and MBA levels. His graduate-level teaching assignments have included Legal Concepts and Trends Affecting Business, Managing Legal and Ethical Risk, Legal Issues in Marketing Management, and Legal Issues in the Arts. At the undergraduate level, he has taught Legal Environment of Business, Legal Aspects of Marketing, Commercial Law, Personal Law, and Law and the Arts.

Most of Professor Langvardt's research focuses on the First Amendment's application in contexts such as

advertising regulation, trademark protection, and corporate defamation. He has published numerous articles in law journals and business journals, including the *Minnesota Law Review*, the *American Business Law Journal*, the *Journal of Marketing*, the *Trademark Reporter*, the *Villanova Law Review*, and the *Kansas Law Review*. Professor Langvardt has won several research awards from professional associations, including the Holmes/Cardozo Award from the American Business Law Association (now the Academy of Legal Studies in Business). The Brand Names Education Foundation selected him as winner of the 1992 Ladas Memorial Award for writing

the best trademark law article published in 1991. By invitation of the Brand Names Education Foundation, Professor Langvardt delivered the 1992 Boal Memorial Lecture (part of a lecture series on trademark and unfair competition law) at the Georgetown University Law Center. In 2000, he was named the Kelley School's Murray Robinson Faculty Fellow, in recognition of his teaching, research, and service efforts. Professor Langvardt also serves as chair of the Kelley School's Department of Business Law.

Professor Langvardt and his wife, Mary, are the parents of Kyle and Tara.

PREFACE

This is the Twelfth UCC Edition (and the nineteenth overall edition) of a business law text that first appeared in 1935. Throughout its nearly 70 years of existence, this book has been a leader and an innovator in the fields of business law and the legal environment of business. One reason for the book's success is its clear and comprehensive treatment of the standard topics that form the traditional business law curriculum. Another reason is its responsiveness to changes in these traditional subjects and to new views about that curriculum. In 1976, this textbook was the first to inject regulatory materials into a business law textbook, defining the "legal environment" approach to business law. Over the years, this textbook has also pioneered by introducing materials on business ethics, corporate social responsibility, global legal issues, and e-commerce law. The Twelfth edition continues to emphasize change by integrating these four areas into its pedagogy.

Continuing Strengths

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

- *Comprehensive Coverage.* We believe that the text continues to excel both in the number of topics it addresses and the depth of coverage within each topic. This is true both of the basic business law subjects that form the core of the book and also of the regulatory and other subjects that are said to constitute the "legal environment" curriculum.
- *Style and Presentation.* This text is written in a style that is direct, lucid, and organized, yet also relatively relaxed and conversational. For this reason, we often have been able to cover certain topics by assigning them as reading without lecturing on them. As always, key points and terms are emphasized; examples, charts, figures, and concept summaries are used liberally; and elements of a claim and lists of defenses are stated in numbered paragraphs.
- *Case Selection.* We try very hard to find cases that clearly illustrate important points made in the text, that should interest students, and that are fun to teach. Except when older decisions are landmarks or continue to best illustrate particular concepts, we also try to select recent cases. Our collective in-class teaching experience with recent editions has helped us determine which of those cases best meet these criteria.

- *AACSB Curricular Standards.* The AACSB's curriculum standards say that both undergraduate and MBA curricula should include ethical and global issues; should address the influence of political, social, legal and regulatory, environmental, and technological issues on business; and should also address the impact of demographic diversity on organizations. In addition to its obvious stress on legal and regulatory issues, the book contains chapters on business ethics, the legal environment for international business, and environmental law, as well as Ethics in Action boxes. By putting legal changes in their social, political, and economic context, several text chapters enhance students' understanding of how political and social changes influence business and the law. Chapter 51's discussion of employment discrimination law certainly speaks to the subject of workplace diversity. Finally, the Twelfth UCC Edition examines many specific legal issues involving e-commerce and the Internet.

Features

The Twelfth Edition introduces six new features:

Opening Vignettes precede the chapter discussion in order to give students a context for the law they are about to study. Many opening vignettes raise issues that come from the corporate social responsibility crisis that students have read about the last few years.

Ethics in Action boxes are interspersed where ethical issues arise, asking students to consider the ethics of actions and laws. The Sarbanes-Oxley Act of 2002 is often featured in the ethics boxes.

Cyberlaw in Action boxes discuss e-commerce and Internet law at the relevant points of the text.

The Global Business Environment boxes address the legal and business risks that arise in international business transactions, including being subject to the laws of other countries. By integrating the global business environment boxes in each chapter, students are taught that global issues are an integral part of business decision making.

Log On boxes direct students to Internet sites where they can find additional legal and business materials that will aid their understanding of the law.

Online Research Problems close each chapter by challenging students to use their Internet research skills to expand their understanding of the chapter.

This edition also retains four features of previous editions:

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

Cases include the judicial opinions accompanying court decisions. These help to provide concrete examples of the rules stated in the text, and to provide a real-life application of the legal rule.

Problem Cases are included at the end of each chapter to provide review questions for students.

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

Important Changes in This Edition

The chapters in the Twelfth UCC Edition have been reorganized slightly. For instance, the chapter on the legal environment for international business was deleted and the content was reworked into the relevant chapters including the new Global Business Environment boxes. Also, Chapter 46 now includes coverage of auditors, consultants, and securities professionals.

As usual, there are many new cases, the text has been thoroughly updated, and a good number of problem cases have been replaced with new ones. The cases continue to include both hypothetical cases as well as real-life cases so that we can target particular issues that deserve emphasis. The Twelfth UCC Edition's most substantive changes are as follows:

- The **Sarbanes–Oxley Act of 2002** is covered throughout the Twelfth UCC Edition. This important legislation that intends to rein in corporate fraud is featured prominently in Chapters 4, 43, 45, and 46. See especially the Ethics in Action boxes on pages 945, 951, 1009, 1027, 1032, and 1047.
- Chapter 4 is a wholly-revised ethics chapter titled “Business Ethics, Corporate Social Responsibility, Corporate Governance, and Critical Thinking.” This highly readable and practical chapter contains a logical exposition of ethical thinking and includes new sections with guidelines for making ethical decisions and resisting requests to act unethically.
- Chapter 4 now includes a critical discussion of three familiar enemies of business ethics: moral relativism, psychological egoism, and ethical egoism.
- In addition to acquiring five new text cases, Chapter 8, which now bears the title “Intellectual Property and Unfair Competition,” includes discussions of copyright infringement issues in Internet-related contexts, the Copyright Term Extension Act of 1998, and the Anti-cybersquatting Consumer Protection Act of 1999.
- The contracts chapters integrate e-commerce issues at various points. Examples include treatments of the proposed Uniform Computer Information Transactions Act in Chapter 9, shrinkwrap and clickwrap contracts in Chapter 10, and digital or electronic signatures in Chapter 16.
- Chapter 20's discussion of product liability now discusses the new *Restatement (Third) of Torts: Product Liability*.
- Chapters 37 to 44 add business planning materials that help persons creating partnerships, LLPs, corporations, and other business forms. New materials give practical solutions that help business planners determine the compensation of partners in an LLP, ensure a return on investment for shareholders, anticipate management problems in partnerships and corporations, and provide for the repurchase of owners' interests in partnerships and corporations.
- Chapter 40 is restructured to give greater emphasis to the law affecting limited liability companies and covers the Uniform Limited Liability Company Act.
- New materials on complying with management duties give practical advice to boards of directors as well as consultants and investment bankers assisting corporate management. The new materials help managers make prudent business decisions. For example, a practical framework on how to comply with business judgement rule is on pages 938 and 939.
- Chapter 46, newly titled “Legal and Professional Responsibilities of Auditors, Consultants, and Securities Professionals,” covers the liability of professionals in general, with new emphasis on investment bankers, securities brokers, and securities analysts. The revised chapter is relevant not only to students studying accounting and auditing, but also to finance majors and MBA students who will work in the consulting and securities industries.
- Chapters 36–38 have been updated to reflect the fact that a majority of the states have adopted the Revised Uniform Partnership Act.
- Chapter 40, which now bears the title “Limited Liability Companies, Limited Partnerships, and Limited Li-

ability Limited Partnerships” has been revised to reflect the creation of a new business form, the limited liability limited partnership.

- Chapters 40 and 44 incorporate Internet issues by discussing the recent efforts of Internet companies to avoid state sales taxes through subsidiary corporations, and by including recent S.E.C. changes that permit Internet marketing of initial public offerings.
- In addition to including a new case that moves vertical maximum price-fixing from the per se category to rule-of-reason category, Chapter 49 includes the Justice Department’s case against Microsoft.

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Jane P. Mallor
A. James Barnes
Thomas Bowers
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A GUIDED TOUR

A New Kind of Business Law Experience

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

OPENING VIGNETTES

Each chapter begins with an opening vignette that presents students with a mix of real-life and hypothetical situations and discussion questions. These stories provide a motivational way to open the chapter and get students interested in the chapter content.

2

THE RESOLUTION OF PRIVATE DISPUTES

Victoria Wilson, a resident of Illinois, wishes to bring an invasion of privacy lawsuit against XYZ Co. because XYZ used a photograph of her, without her consent, in an advertisement for one of the company's products. Wilson will seek money damages of \$150,000 from XYZ, whose principal offices are located in New Jersey. A New Jersey newspaper was the only print media outlet in which the advertisement was published. However, XYZ also placed the advertisement on the firm's website. This website may be viewed by anyone with Internet access, regardless of the viewer's geographic location.

Consider the following questions regarding Wilson's case as you read Chapter 2:

- Where, in a geographic sense, may Wilson properly file and pursue her lawsuit against XYZ?
- Must Wilson pursue her case in a state court, or does she have the option of litigating in federal court?
- Assuming that Wilson files her case in a state court, what strategic option may XYZ exercise if it acts promptly?
- Regardless of the court in which the case is litigated, what procedural steps will occur as the lawsuit proceeds from beginning to end?

4

BUSINESS ETHICS, CORPORATE SOCIAL RESPONSIBILITY, CORPORATE GOVERNANCE, AND CRITICAL THINKING

You work for N-Rot Company, a large energy trading company. N-Rot's chief financial officer (CFO) asks you to create a \$50,000,000-asset energy services partnership with Martin Lowell Company, an investment banking firm. The CFO tells you, "Make sure the partnership has some positive cash flow over the next two years, but don't worry about whether the partnership will make money long term. Just make sure you convince Martin Lowell to partner with us, and that our ownership is only around 8 percent so that we don't have to record any liabilities from the venture on our balance sheet."

The purpose of the partnership, the CFO explains, is to generate income for N-Rot for the current year without materially affecting N-Rot's assets or liabilities. The CFO also tells you, "Convince our auditors, Armen Andrusian LLP, to book in the current year all the partnership's projected earnings for the next two years. If Andrusian resists, tell them that we can always find someone else to take over the \$100,000,000 in consulting business we give them every year."

The CFO continues, "We'll make you a manager of the partnership, which will pay you about \$900,000 a year. Also, I'll ask Martin Lowell to allocate some IPO [initial public offering] shares to you. The IPO shares I've been getting from Martin Lowell have been going up three to five times the first day of trading. This will be a good deal for you. You can make \$300,000 every time, almost risk free."

Finally, the CFO says, "Remember where the paper shredder is. If things get a little hot around here, be sure to use it."

- Do you see any potential ethical problems with what the CFO has asked you to do?
- What principles and guidelines help you decide what to do?
- How do you resist the CFO's request for you to create the partnership without jeopardizing your career and without harming N-Rot?

Why Study Business Ethics?

Enron. Arthur Andersen. WorldCom. Tyco. Adelphia. Global Crossing. InClone. These business names from the front pages of 2002 and 2003 conjure images of unethical and socially irresponsible behavior by corporations and their executives. The United States Congress, employees, investors, and other critics of the power held

and abused by some corporations and their management have demanded that corporate wrongdoers be punished and that future wrongdoers be deterred. Consequently shareholders, creditors, and state and federal attorneys general have brought several civil and criminal actions against wrongdoing corporations and their executives. Congress has also got in the action, passing the Sarbanes-Oxley Act of 2002, which increased penalties for corporate wrongdoers and established rules

BUSINESS LAW COURSES normally examine many substantive legal rules—laws that tell us how to behave in business and in society. Examples include the rules of contract, tort, and agency law, as well as those of many other legal areas addressed later in this text. Most of these rules are applied by courts as they decide civil cases involving private parties. This chapter lays a foundation for the text's discussion of substantive legal rules by examining the court systems of the United States and by outlining how civil cases proceed from beginning to end. The chapter also explores related subjects, including *alternative dispute resolution*, a collection of processes for resolving private disputes outside the court systems.

State Courts and Their Jurisdiction

The United States has 52 court systems—a federal system plus a system for each state and the District of Columbia. This section describes the various types of state

courts. It also considers the important subject of *jurisdiction*, something a court must have if its decision in a case is to be binding on the parties.

Courts of Limited Jurisdiction

Minor criminal cases and civil disputes involving small amounts of money or specialized matters frequently are decided in *courts of limited jurisdiction*. Examples include traffic courts, probate courts, and small claims courts. Such courts often handle a large number of cases. In some of these courts, procedures may be informal and parties unrepresented by attorneys often argue their own cases. Courts of limited jurisdiction often are not courts of record—meaning that they may not keep a transcript of the proceedings conducted. Appeals from their decisions therefore require a new trial (a *trial de novo*) in a trial court.

Trial Courts

Courts of limited jurisdiction find the relevant facts, identify the appropriate rule(s) of law, and combine the

REVISED CHAPTER 4 ON ETHICS

With ethics in the forefront now, the authors have greatly expanded this chapter and incorporated recent events. The chapter defines several ethical theories and discusses their strengths and weaknesses, as well as providing a guideline for ethical decision making.

CYBERLAW IN ACTION

Electronic Writings and the Statute of Frauds

The Electronic Signatures in Global and National Commerce Act (the "E-sign" act) was enacted by Congress and became effective in the United States on October 1, 2000. The E-Sign law covers many everyday transactions including sales transactions even where the law of the state involved still has a version of Article 2 that requires a "signed writing" or another means of satisfying the Article 2 statute of frauds found



in Section 2-201. Federal laws "preempt", that is, displace state laws if the two sets of laws are in conflict. If state law requires a signed writing or another indicator that the purported buyer and seller actually intended to form a contract, E-Sign allows the parties to use electronic authentications instead of signed writings. E-mail messages and online orders sent by the buyer would suffice. States that have adopted the Uniform Electronic Transactions Act (UETA) also allow online communications to satisfy the Section 2-201 statute of frauds requirement.

CYBERLAW IN ACTION BOXES

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

ETHICS IN ACTION BOXES

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

ETHICS IN ACTION

For those who draft and proffer standardized form contracts, the parol evidence rule can be a powerful ally because it has the effect of limiting the scope of an integrated, written contract to the terms of the writing. Although statements and promises made to a person before he signs a contract might be highly influential in persuading him to enter the contract, the parol evidence rule effectively prevents these pre-contract communications from



being legally enforceable. Consider also that standardized form contracts are usually drafted for the benefit of and proffered by the more sophisticated and powerful party in a contract (e.g., the landlord rather than the tenant, the bank rather than the customer). Considering all of this, do you believe that the parol evidence rule promotes ethical behavior?

THE GLOBAL BUSINESS ENVIRONMENT

Foreign Businesses Face Tougher Laws in U.S. than at Home

Although American executives accused of defrauding shareholders are prosecuted or hauled before congressional hearings, wrongdoing managers in the rest of the world often escape the grasp of their countries' regulators. In most of Asia, Europe, and Latin America, regulations and enforcement are weak. Some legal systems are poorly equipped to handle executive misconduct. The Japanese Securities and Exchange Surveillance Commission has only 360 employees and no power to file civil suits or bring administrative actions against corporate wrongdoers. It brings about seven cases a year, compared to the 50 usually brought by the United States Securities and Exchange Commission.

Taiwan's Securities and Futures Commission has no power to conduct its own investigations, and local prosecutors who do have that power have little expertise in market and accounting fraud. Germany has been labeled the Wild West, with numerous scandals in newly public companies, yet few actions against the perpetrators. The German Association for Shareholder Protections, a shareholder rights group, regularly brings abuse allegations to state prosecutors, yet the cases are often too complicated for untrained prosecutors to handle. Fewer than 5 percent are investigated. In Italy, false accounting was decriminalized in 2001, making it merely a misdemeanor.

Yet if those executives manage foreign businesses that register their securities on a stock exchange in the United



States, such as the New York Stock Exchange, the Sarbanes-Oxley Act of 2002 requires them to comply with some of the act's toughest provisions. More than 1,300 foreign corporations, such as Sony, Nokia, and Daimler Chrysler, and their executives could be affected by the act's provisions that ban loans to officers, require independent audit committees, and impose personal liability on officers for errors in the corporate books.

Foreign governments and businesses have already started lobbying to be granted exemptions from the Sarbanes-Oxley Act. The European Union wrote to U.S. legislators that the act gives the SEC unjustified authority over foreign auditing firms that could chill trans-Atlantic trade. The EU warned that it may consider regulating American auditing firms. The president of the Japanese Institute of Certified Public Accountants argued that the act places U.S. law above Japanese securities and CPA law, violates international treaties, and infringes Japanese sovereignty.

As it does with many of its financial rules, the United States is expected to exempt foreign businesses from some of the requirements of the Sarbanes-Oxley Act, especially those that conflict with their home countries' laws, such as the ban on loans to officers. Foreign businesses are not expected to receive exemptions from other provisions, such as the requirement that CEOs certify the accuracy of financial statements. That part of the law may affect the decision whether foreign businesses continue to list their securities on U.S. stock exchanges.

THE GLOBAL BUSINESS ENVIRONMENT BOXES

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

LOG ON BOXES

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

LOG ON

Go to <http://gncurtis.home.texas.net/mainpage.html>
Maintained by Gary Curtis, *The Fallacy Files* cover more than 45 fallacies. Click on the link to "Taxonomy of Fallacies" to find explanations of fallacies and links to valuable resources.
Go to www.philosophy.unimelb.edu.au/reason/critical/index.htm
Tim van Gelder's *Critical Thinking on the Web* lists some of the best websites with information about reasoning and critical thinking.

CONCEPT REVIEW

What Terminates Offers?

- Their own terms
- Rejection
- Lapse of time
- Death or insanity of offeror or offeree
- Revocation
- Destruction of subject matter
- Intervening illegality

ONLINE RESEARCH PROBLEMS

These end-of-chapter research problems drive students to the Internet and include discussion questions so they can be used in class or as homework.

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Part Three Contracts

10. Soldau was fired by Organon, Inc. He received a letter from Organon offering to pay him double the normal severance pay if he would sign a release giving up all claims against the company. The letter incorporated the proposed release, which Soldau signed, dated, and deposited in a mailbox outside a post office. When he returned home, Soldau found that he had received a check from Organon in the amount of the increased severance pay. He returned to the post office and persuaded a postal employee to open the mailbox and retrieve the release. Soldau cashed Organon's check and subsequently filed an age discrimination suit against Organon. Was Soldau bound by the release?

Online Research: Finding Contracts on the Internet

1. *Finding Contracts on the Internet* Surf the web and find an example of a click-wrap and an example of what the court in *Specht* calls a "browse-wrap."
2. Find a User Agreement (also called Terms of Use Agreement) on any website. How does the User Agreement that you find indicate that a user's acceptance to the terms of the agreement will be shown?

PROBLEMS AND PROBLEM CASES

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

Lewis v. Abbott Laboratories

1991 Supp. 2d 908 S.D. Miss. 390

Abbott Laboratories manufactured and sold the Life Care PCA, a pump that delivers medication into a person intravenously at specific time intervals. Beverly Lewis used Abbott in a Mississippi state court, alleging that a defective Life Care PCA had injured her by delivering an excessive quantity of morphine. Abbott served Lewis with a request for admission calling for her to admit that her damages did not exceed \$75,000.00. Lewis did not answer the request for admission. Abbott then removed the case to the U.S. District Court for the Southern District of Mississippi, predicting the court's subject matter jurisdiction on diversity of citizenship and an amount in controversy exceeding \$75,000.00. Lewis moved to have the case remanded to the state court on the ground that her silence had amounted to an admission that her damages were less than \$75,000.00.

Wingate, District Judge Generally, in diversity cases, the courts determine the amount in controversy from the complaint itself, unless it appears, or is in some way shown, that the amount stated in the complaint is not claimed in good faith. The United States Supreme Court in *Horton v. Liberty Mutual Insurance Company*, 367 U.S. 348 (1961) stated that "in deciding this question of good faith we have said that it most appear to a legal certainty that the claim is really for less than the jurisdictional amount to justify dismissal." This "legal certainty" test is applied to jurisdictional amount questions in removed cases, as well as cases originally brought in federal court. So, this court lacks jurisdiction if it is apparent, to a legal certainty, that Lewis cannot, or is not entitled to, recover the jurisdictional minimum.

Of course, when a plaintiff does not desire to try his case in the federal court, he may resort to the expedient of suing for less than the jurisdictional amount, and though he would be justly entitled to more, the defendant cannot remove the

case. Thus, if a plaintiff pleads damages less than the jurisdictional amount, he can bar a defendant from removing the case to federal court.

This court finds that while Lewis failed to respond to a request for admissions relative to this court's jurisdictional amount, Abbott still has not established that Lewis' current claim for damages . . . is above this court's minimum jurisdictional amount of \$75,000.00. By failing to answer the request for admissions, Lewis, under state law . . . admitted that her damages do not exceed \$75,000.00. Upon this occurrence, Lewis's complaint was in no different posture from one where plaintiff explicitly pleaded an amount below this court's jurisdictional limit. Under either or both of these scenarios, defendant, to justify removal, must present this court more than a hunch or suspicion that the amount in controversy exceeds \$75,000.00. Abbott has not met that burden.

Case remanded to Mississippi state court.

CASES

The cases in each chapter help to provide concrete examples of the rules stated in the text.

CONCEPT REVIEWS

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

Chapter Nineteen Formation and Terms of Sales Contracts 429

Problems and Problem Cases

1. Mr. and Mrs. Ahneman engaged the Capitol Termite and Pest Control Company to treat their home for a termite infestation. The chemical used by Capitol was Gold Crest Termitic manufactured by Velocid Chemical Corporation. Velocid sold the Gold Crest Termitic to a distributor, which in turn sold it to Capitol as bulk—in 55-gallon drums. Capitol did not specifically buy materials for each termite job. One 55-gallon drum would service many homes. Employees of Capitol pumped the chemical from the 55-gallon drums into a 5-gallon pail at Capitol's premises. The solution was then poured from the 5-gallon pail into a 1-gallon pail, which they filled half full.

Next, the half-gallon of Gold Crest Termitic was poured into a fixed 50-gallon tank on the back of Capitol's trucks and then the tank was filled to capacity with water. This solution was then applied to the Ahneman's residence by employees of Capitol. The Ahnemens abandoned their home the day after Capitol completed treatment. Three years later they brought suit against Capitol and Velocid contending that the termiticide had caused personal injuries and property damages. Among other things, they claimed there was a breach of express and implied warranties provided by the Uniform Commercial Code (discussed in Chapter 20). Velocid and Capitol sought to dismiss these claims on the ground that there had not been a sale of goods and thus no warranties had arisen. Was the contract to obtain treatment for termites a sale of goods under the Uniform Commercial Code?

2. Keith Russell, a bear dealer, contracted to sell a 19-foot Kinnaver boat to Robert Chasew for \$8,500. The agreement stipulated that Chasew was to make a down payment of \$1,200, with the balance due when he took possession of the boat. According to the contract, Russell was to retain possession of the boat in order to install a new engine and drive train. While the boat was still in Russell's possession, it was completely destroyed when it struck a screw. Transamerica, Russell's insurance company, refused to honor Russell's claim for the damages to the boat. The insurance policy between Transamerica and Russell covered only watercraft under 26 feet in length that were not owned by Russell. Transamerica argued that the boat was not covered by the policy since Russell still owned it at the time of the accident. Did Russell have title to the boat at the time of the accident?

3. Club Pro Golf Products was a distributor of golf products. It employed salesmen who called on customers to take orders for merchandise. The merchandise was

sent by Club Pro directly to the purchaser and payment was made by the purchaser directly to Club Pro. A salesman for Club Pro, Carl Gude, transmitted orders for certain merchandise to Club Pro for delivery to several fictitious purchasers. Club Pro sent the merchandise to the fictitious purchasers at the fictitious addresses where it was picked up by Gude. Gude then sold the merchandise, worth approximately \$19,000, directly to Simpson, a golf pro at a golf club. Gude then retained the proceeds of sale for himself. Club Pro discovered the fraud and brought suit against Simpson to recover the merchandise. Did Simpson get good title to the merchandise he purchased from Gude even though Gude had obtained it by fraud?

4. Shaker Valley Auto & Tire purchased a pickup truck at an auction and brought the vehicle for service to Fred Madore, Chevrolet Pontiac Oldsmobile, Inc. automobile dealership that sells and services vehicles. A few weeks later, Madore sold the truck to Winston Tins. Tins was unaware of Shaker Valley's ownership of the vehicle. In a subsequent court proceeding, both Tins and Shaker Valley claimed valid title to the truck. Shaker Valley argued that it never authorized the sale of the vehicle and that Madore had no title to transfer to Tins because Shaker Valley never transferred title to Madore. Does Tins have good title to the truck under the Code?

5. Legendary Homes, a home builder, purchased various appliances from Rom Mead T.V. & Appliance, a retail merchant selling home appliances. They were intended to be installed in one of Legendary Homes' houses and were to be delivered on February 1. At 5 o'clock on that day, the appliances had not been delivered. Legendary Homes's employees closed the home and left. Sometime between 5 and 6:30, Rom Mead delivered the appliances. No one was at the home so the deliveryman put the appliances in the garage. During the night, someone stole the appliances. Legendary Homes obtained an insurance policy for the loss and refused to pay Rom Mead for the appliances. Rom Mead then brought suit for the purchase price. Did Legendary Homes have the risk of loss of the appliances?

6. The Coler Rapids YMCA bought a large number of cases of candy from Seaway Candy under an agreement by which any unused portion could be returned. The YMCA was to sell the candy to raise money to send boys to camp. The campaign was less than successful, and 688 cases remained unused. They were returned to Seaway Candy by truck. When delivered to the common carrier, the candy was in good condition, when it arrived at Seaway four days later, it had melted and was completely

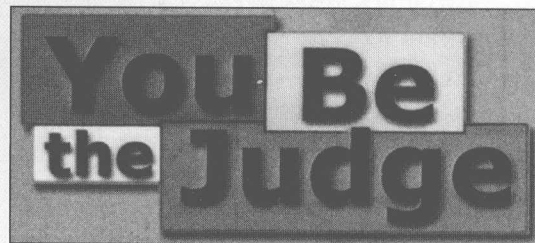
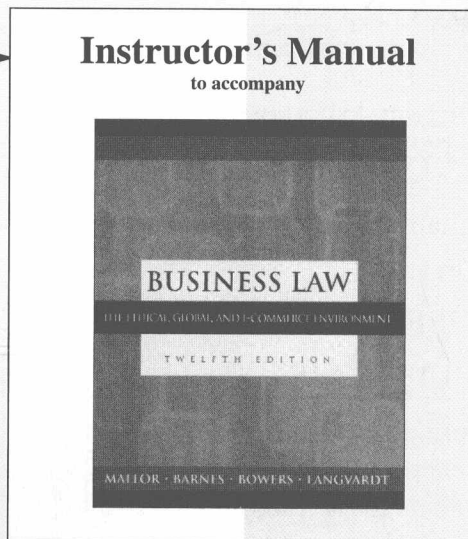
INSTRUCTOR AND STUDENT SUPPLEMENTS

INSTRUCTOR'S MANUAL

The Instructor's Manual consists of objectives, suggestions for lecture preparation, recommended references, answers to problems and problem cases, and suggested answers to the Online Research Problems and Opening Vignettes. It also includes answers to the Student Study Guide questions.

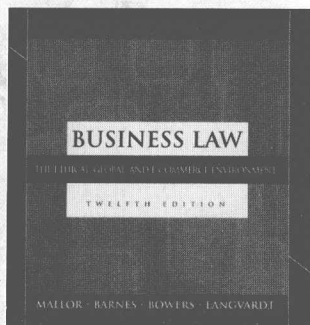
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This **new** DVD (included with each new copy of the text) features ten interactive case videos that showcase courtroom arguments of business law cases. This interactive DVD gives students the opportunity to watch profile interviews of the plaintiff and defendant, read background information, hear each case, review the evidence, make their decision, and then access an actual, unscripted judge's decision and reasoning. There are also instructor's notes available with each video to help prepare you for classroom discussion. Cases include topics such as sexual harassment, fraud, liability, and oral contracts.



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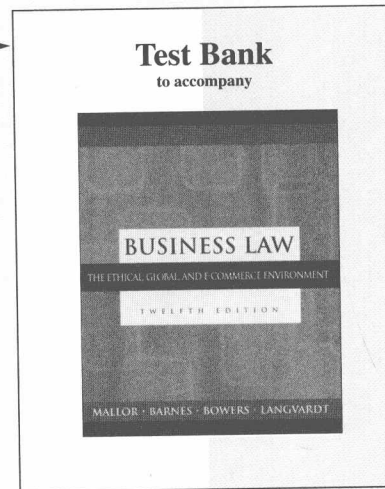
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SUPPLEMENTS

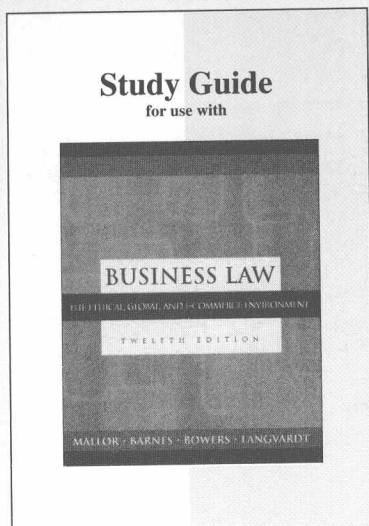
TEST BANK

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INSTRUCTOR'S RESOURCE CD

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STUDENT STUDY GUIDE

The Student Study Guide contains additional test questions for students so they can review and study the main concepts for each chapter. It also contains the Uniform Commercial Code articles.

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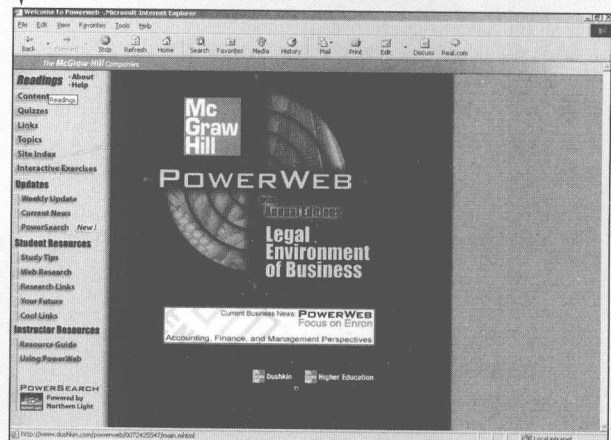
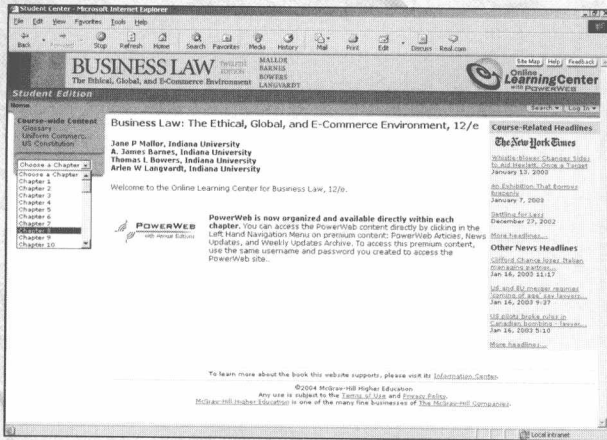
The Online Learning Center (OLC) is a website that follows the text chapter-by-chapter. The Twelfth Edition OLC contains case updates, Business Law in the News updates, quizzes and review terms for students to study from, downloadable supplements for the instructors, and links to professional resources for students and professors.

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