



The Legal and Regulatory Environment

THIRD EDITION

HENRY R. CHEESEMAN

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Third Edition

The Legal and Regulatory Environment

*E-Commerce,
International, and
Ethical Environment*

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Preface

—TO THE STUDENTS—

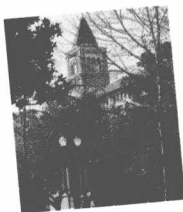
Each semester, as I stand up in front of a new group of business majors in my business law class I am struck by the thought that, cases and statutes aside, I know two very important things that they have yet to learn. The first is that I draw as much from them as they do from me. Their youth, enthusiasm, questions, and even the doubts a few of them hold about the relevance of law to their futures, fuel my teaching. They don't know that every time they open their minds to look at a point from a new perspective or critically question something they have taken for granted, I get a wonderful reward for the work that I do.

The other thing I know is that both teaching and learning the law are all about stories. The stories I tell provide the framework on which students will hang everything they learn about the law in my class. It is my hope that long after the facts about the specific language of the cases and statutes have faded, they will retain that framework. Several years from now, "unintentional torts" may draw only a glimmer of recognition with business managers who learn about them as students in my class this year. However, they will likely recall the story of the man who sued Pepsi as a result of impotence caused by a vending machine. The story sticks and gives students the hook on which to hang the concepts.

I remind myself of these two facts every time I sit down to work on writing and revising *The Legal and Regulatory Environment*, as well. My goal is to present the law in a way that will spur students to ask questions, to go beyond rote memorization. Business law is an evolving outgrowth of its environment, and that environment keeps changing. In addition to the social, ethical, and international contexts I have incorporated in previous editions of *The Legal and Regulatory Environment*, this third edition adds coverage and emphasis on electronic commerce and entrepreneurship as two vital catalysts to the law and a key part of its environment.

It is my wish that my commitment to these goals shines through in this labor of love, and I hope you have as much pleasure in using it as I have had in creating it for you.

Henry Cheeseman



Making the Most of the Third Edition

These chapters and boxes focus on the business challenges and legal issues businesses face as they either launch new Internet ventures or rise to the challenge of incorporating on-line technologies into their existing business models.

The Internet and E-Commerce Law

UNIT III Internet and E-Commerce Environment

Intellectual Property and Internet Law

The Congress shall have the power . . . To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.

—Article I, Section 8, clause 8 of the U.S. Constitution

Chapter Objectives

Electronic Commerce and Domain Names

Through the use of chat rooms, any person with a phone line can become a town crier with a voice that resonates farther than it could from any soapbox. Through the use of Web pages, mail exploders, and newsgroups, the same individual can become a pamphleteer.

—Justice Stevens
Reno v. American Civil Liberties Union, 521 U.S. 844 (1997)

Chapter Objectives

After studying this chapter, you should be able to:

Two chapters dedicated to coverage of the Internet, E-Commerce, and the Law.

- **Chapter 9** Intellectual Property and Internet Law
- **Chapter 10** Electronic Commerce and Domain Names

Over 50 E-Commerce and Internet Law Boxes focus on the legal issues businesses face as they either launch new Internet ventures or rise to the challenge of incorporating online technologies into their existing business models.

E-Commerce & Internet Law

AMAZON.COM'S 1-CLICK® PATENT UPHOLD

Our forefathers believed that innovation was so important that they provided in the U.S. Constitution, as ratified by the states in 1788, for the protection of inventions. Since then, the U.S. Congress has enacted several patent statutes. The most recent major overhaul of the patent laws was completed in 1952, during the Industrial Age of mechanical devices. But what happens when old laws meet the new technology of the Digital Age? Consider the following case.

Amazon.com, Inc. enables customers to find and purchase books, music, videos, consumer electronics, games, toys, gifts, and other items over the Internet by using its Web site www.amazon.com. As an early entrant into this market, Amazon.com became a leader in electronic commerce. Other e-commerce retailers began offering goods and services for sale over the Web.

One problem that most of these e-commerce retailers faced was that over 50 percent of potential customers who went shopping online and selected items for purchase abandoned their transaction before checkout. To address this problem, Amazon.com devised a method that enabled online customers to purchase selected items with a single click of a computer mouse button. Only customers who had previously registered their name, address, and credit card number with Amazon.com could complete purchases by clicking an instant "buy" button. This ordering system was implemented by Amazon.com in September 1997. On September 21, 1997, Amazon.com applied for a patent for its one-click ordering system, and on September 28, 1998, the United States Patent and Trademark office granted patent No. 5,960,411 ('411 patent) to Amazon.com. This was designated the 1-click® ordering system by Amazon.com.

While Amazon.com's patent application was pending,

1999, Amazon.com sued Barnesandnoble.com alleging patent infringement, and sought an injunction against Barnesandnoble.com from using its one-click ordering system. Barnesandnoble.com defended, asserting that a one-click ordering system was clearly obvious and therefore did not meet the required "nonobvious" test of federal patent law for an invention to qualify for a patent.

The court was faced with several novel issues. The first was whether this business model—the one-click ordering system—qualified as patentable subject matter. Following the lead of the U.S. Court of Appeals in *State Street Bank & Trust Co. v. Signature Financial Group, Inc.*, 149 F.3d 1368 (Fed. Cir. 1998), the court acknowledged that business models qualify as a new breed of patentable subject matter. The second issue was whether the one-click ordering system was "nonobvious." After examining the evidence, the court decided that Amazon.com's one-click system was nonobvious when it was invented in 1997.

Barnesandnoble.com appealed to the federal court of appeals, arguing that Amazon.com's 1-click ordering system was not novel or nonobvious as required by patent law. Barnesandnoble.com cited the following evidence that one-click ordering systems existed in the prior art before Amazon.com filed for its patent: (1) since the 1990s the CompuServe Trend System provided for single-click ordering of stock charts over the Internet; (2) another Internet vendor's "WebBasket" allowed one click ordering; (3) the "Oliver's Market" ordering system of another online vendor permitted one-click ordering; and (4) the book *Creating the Virtual Store*, published before Amazon.com filed for its '411 patent, suggested modifying software to provide for one-click ordering online. The federal court of appeals relied on these prior

The Entrepreneur and the Law

Chapter 13 Entrepreneurship, Franchising, & Licensing recognizes the explosion of entrepreneurial ventures as an important factor in contemporary American business and investigates the legal issues unique to them.

Entrepreneurship, Franchising, and Licensing

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Commerce never really flourishes so much, as when it is delivered from the guardianship of legislators and ministers.

—William Godwin
Enquiry Concerning Political Justice (1798)

Chapter Objectives

After studying this chapter, you should be able to:

1. Describe the role of entrepreneurs in starting and operating businesses.
2. List and describe the forms of conducting domestic business.
3. Describe sole proprietorships, general partnerships, limited partnerships, limited liability companies, and corporations.
4. Describe the taxation of the major forms of conducting business.
5. Describe the use of agents, representatives, and distributors in conducting international business.
6. Explain the growth of Internet companies.
7. Define *franchise* and identify the parties to a franchise arrangement.
8. Describe various forms of franchise fees.
9. Explain how a franchisor licenses its trademarks, service marks, and trade secrets to franchisees.
10. Describe international franchising and licensing.

Chapter Contents

1 Entrepreneurial Forms of Conducting Business

Entrepreneurship and the Law Business Insurance

Over 40 Entrepreneur and the Law boxes examine the legal implications of entrepreneurial successes and failures.

Entrepreneur and the Law

THE ENTREPRENEURIAL SPIRIT: THE CREATION OF AMAZON.COM

In 1994, Jeff Bezos, the son of a Cuban immigrant to the United States, had made it big. After graduating from Princeton University, he had gone on to Wall Street where he worked for a hedge fund. But Bezos saw an even greater opportunity: online commerce. So he quit his job, jumped in the car with his wife, MacKenzie, and headed west. While she drove, he typed on his laptop computer. Bezos drew up a list of 20 products that he figured he could sell online but then narrowed it to two—books and music. Bezos settled on books for two reasons. First, there are more to sell (about 1.3 million books in print versus 300,000 music titles). Second, the Goliaths of publishing seemed less imposing than the six record companies that dominated music; there were thousands of bookstores, the largest being Barnes & Noble with 12 percent of the industry's \$25 billion annual sales.

After checking out Colorado and Oregon, Bezos and his wife settled in Seattle, Washington. They rented a house, hired four employees, and started Amazon.com out of their garage. Bezos and his family incorporated the business, sold some stock to friends and other investors, and kept the rest of the stock for themselves. Bezos took a traditional business—bookselling—online. He reasoned that books were fungible—everyone sold the same product—and that a portion of a traditional bookseller's cost represented the real estate on which the store sat. So Bezos lined up a distribution center in Oregon and began taking orders in cyberspace. Amazon.com sold its first book in July 1995.

Amazon.com became a success, at least at selling books. However, it was not a success at making a profit, losing

money for years. But Bezos's strategy plan called for building a client base and making Amazon.com a readily recognized e-commerce name. He accomplished this by attracting a client base of over 10 million loyal book-buying customers and getting the Amazon.com brand name to be recognized by over one-quarter of Americans. Like most start-ups, Amazon.com needed more seed money. Undeterred by the company's unprofitability, the venture capitalist firm Kleiner Perkins Caufield & Byer put up \$10 million for preferred stock, which represented a 15 percent stake in Amazon.com.

Following on the heels of its book-selling success, Amazon.com began selling other products over the Internet, including CDs, videos, gifts, greeting cards, and thousands of other items. Amazon.com entered the world of online auctions; linked with other companies selling pet supplies, drugstore goods, and more; and agreed to pay fees of 4 to 8 percent to other Web site owners who linked a purchaser to Amazon.com. Purchasers pay Amazon.com by credit card, submitted over the telephone or the Web, and the transaction is guarded by encryption. Amazon.com offers one-click ordering, which lets buyers store credit cards and addresses after their first purchase.

After several years of operation and quick growth, Amazon.com needed more money to reach its goals. In May 1997, Amazon.com went public, raising over \$40 million by selling stock for \$18 per share. The price of Amazon.com doubled on the first day of trading and reached \$200 per share over the next year before retreating. Bezos became a billionaire before the age of 34. Bezos and his family own

International Law

Chapter 4 International and Comparative Law is devoted exclusively to coverage of international laws, courts, organizations, dispute resolution, and regional trade agreements.

International and Comparative Law

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International law, or the law that governs between nations, has at times, been like the common law within states, a twilight existence during which it is hardly distinguishable from morality or justice, till at length the imprimatur of a court attests its legal quality.

—Justice Cardozo
New Jersey v. Delaware, 291 U.S. 361,
54 S.Ct. 407, 78 L.Ed. 847 (1934)

Chapter Objectives

After studying this chapter, you should be able to:

1. Describe the federal government's power under the Foreign Commerce and Treaty Clauses of the U.S. Constitution.
2. List and describe the sources of international law.
3. Describe the functions and governance of the United Nations.
4. Describe the North American Free Trade Agreement (NAFTA) and other regional economic organizations.
5. Describe the United States-China trade pact.
6. Describe international intellectual property rights provided by Internet treaties.
7. Describe the act of state doctrine and the doctrine of sovereign immunity.
8. Describe the World Trade Organization (WTO) and explain how its dispute resolution procedure works.
9. Describe the arbitration of international disputes.
10. List and describe international e-commerce and Internet laws.

Chapter Contents

1 The United States and Foreign Affairs
International Perspective U.S. Supreme Court Treaties

International Perspective Old Enemies Become Economic Partners
1 International Courts

More than 40 International Perspective boxes provide students the opportunity to draw comparisons between the American system of justice and various other systems abroad.

International Perspective

CHINA AND THE UNITED STATES REACH LANDMARK TRADE PACT

For the past 50 years, China and the United States have pursued divergent paths. China became the world's largest communist country and the United States the leading democracy. China maintained its agricultural base, while the United States pursued industrialization. China's businesses were state-owned, while those in the United States were privately owned under a capitalist system. So what do these countries have in common? A new landmark trade pact. For over a decade, these two countries engaged in on-again, off-again trade negotiations. Then in November 1999 the two countries reached a landmark trade pact.

In exchange for being granted the right to import most goods and services into the United States, China, which had substantially restricted imports into its country, agreed to open its markets to foreign goods and services in the following ways:

- **Telecommunications** Foreign telephone companies may own up to 50 percent of Chinese telephone companies.
- **Entertainment** China will double the number of U.S. films that can be imported into the country to 20 annu-

ally; the content of these films must be approved by the Chinese government.

- **Banking and financial services** Foreign banks may offer financial services to Chinese customers. China will allow foreign companies to own up to 49 percent of banks, insurance companies, and other financial-service companies.
- **Distribution** Foreigners may establish their own product distribution systems and sell directly to Chinese customers.
- **Services** Foreigners may establish their own repair and maintenance service businesses in China.
- **Vehicle sales** China will permit foreign automobile manufacturers to sell and finance sales to Chinese customers.
- **Farm products** China will eliminate subsidies of Chinese exports.
- **Internet** Foreign investors may own up to 50 percent of Chinese Internet businesses.

Prior to the agreement, the United States annually granted China "most favored nation" status which permitted China to

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—John F. Dillon
Laws and Jurisprudence of England and America Lecture 1
(1894)

After studying this chapter, you should be able to:

1. Describe ethical fundamentalism and ethical relativism.
2. Describe utilitarianism as a moral theory.
3. Describe Kantian ethics.
4. Describe Rawls's social justice theory.
5. Describe maximizing profits as a theory of social responsibility.
6. Describe the moral minimum theory of social responsibility.
7. Describe the stakeholder interest and the corporate citizenship theory of social responsibility.
8. Describe corporate social audits.
9. Explain how the Internet has increased the potential for unethical conduct.

- Every case in the text ends with an ethics question for discussion.

Each chapter ends with additional ethics cases.

Contemporary Business Application

GENERAL MOTORS HIT WITH BILLION DOLLAR JUDGMENT

On Christmas Eve, Patricia Anderson was driving her Chevrolet Malibu automobile, which was manufactured in 1996, to church. She was 57 years old, a member of the church. Her four young children, ages one through nine, and a neighbor, were also in the car. The Chevy Malibu was stopped at a stoplight on Highway 28 in the town of New Hope, Pa., when a drunk driver plowed his car into the back of the Malibu at 50 to 70 mph. The Malibu burst into flames as its gas tank ruptured and the fire overtook the car in less than a minute. The Malibus were severely burned. Many required substantial and multiple skin grafts.

The two injured women and four injured children sued GM, claiming they alleged that the fuel tank of the Chevy Malibu was defectively designed and placed too close to the rear bumper. GM countered that the tragic accident was the fault of the driver who crashed into the Malibu. The accident victims presented evidence that showed that GM knew that the car's fuel-tank design was unsafe but had not changed the design because of cost. The Chevy Malibu was one of the best-selling cars in America. It was sold in 1996 in 30 states, Am., the Oldsmobile Cutlass, and the Chevrolet Monte Carlo. All of which have similar fuel-tank designs. The plaintiffs produced GM memos that said it would cost GM \$8.59 per car to change the design.

GM acknowledged that it had not notified the state attorneys about the accident. The jury then tasked an \$49.8 million punitive damages to punish GM. This was the largest punitive award in the history of a personal injury lawsuit. GM, the world's largest automobile company, reported annual earnings of \$3 billion in 1998, the year of the verdict. After the trial, GM's stock price fell 10 percent, to 59 1/2 dollars. That's something that is wrong.

GM asked the trial judge to throw the trial out. GM claimed that it was not given a fair trial because the trial judge had allowed the jury to hear testimony from (1) the driver of the other car was drunk and went to jail and (2) crash-test data that showed the safety features of the vehicle. GM also claimed that the jury was prejudiced by the testimony of a GM engineer who testified that GM "lied" and its lawyers as "hired guns" who consumed "cappuccinos and designer mugs." GM did not convince the judge that such testimony influenced the jury's decision. The judge said this was allowed to hear evidence that it should not have heard, namely, that GM had lobbied Congress in the 1970s to not adopt tougher standards for protecting fuel tanks in crashes. The judge also noted that GM had paid \$4.8 million in punitive damages, specifically the \$4.8 billion of punitive damages, was the result of bias and prejudice of the jury, and asked the trial court judge to throw out the punitive damages. This was the last time that GM did not lose. He let the compensatory damages stand.

Each chapter includes 3 to 5 interesting and lively cases presented in an edited format, retaining the language of the court. The format of each case is: Fact, Issue, In the Language of the Court, Decision. Three questions follow each case to promote active learning.

Fact

person to appropriate a living person's name or identity for commercial purposes is actionable. The wrongdoer is liable for the **right to publicity** (also called the **right of appropriation**). In such cases, the plaintiff can (1) recover the unauthorized profits made by the offending party and (2) obtain an injunction against further unauthorized use of his or her name or identity. Many states provide that the right to publicity survives a person's death and may be enforced by the deceased's heirs.

In Case 5.1 the court found that there had been a misappropriation of the right to publicity.



Hoffman v. Los Angeles Magazine, Inc.
33 F.Supp.2d 867 (1999)
United States District Court, C.D. California

FACTS

Dustin Hoffman is one of the most successful and recognizable motion picture actors. He has appeared in such movie classics as *The Graduate* and *Rainman* and has won two Academy Awards, a Golden Globe Award, and an Emmy Award for his work. In 1982, Hoffman appeared as the main character in the movie *Tootsie*, where he played a male actor who dressed as a woman to get acting jobs as an actress. In the movie, Hoffman appeared in a woman's bright red dress posing in front of the American flag, which was used as a still shot in advertising for the movie. The movie was a great commercial success.

In 1997, *Los Angeles Magazine*, a glossy regional magazine, decided to rev up sales by including more celebrity photos in the magazine. The March 1997 issue included a feature called "Grand Illusions" where celebrity figures were dressed in clothes, shoes, and accessories of fashion designers who advertised in the magazine. One photo was the full-length shot of Dustin Hoffman from *Tootsie* that had been digitally altered to remove the red dress and heels and replace them with a silk gown designed by Richard Tyler and high-heeled shoes designed by Ralph Lauren. *Los Angeles Magazine* did not ask Mr. Hoffman for permission to use his name and likeness. After the magazine was published, Mr. Hoffman sued *Los Angeles Magazine, Inc.*, in federal court to protect his name from commercial exploitation and recover damages.

ISSUE

Did *Los Angeles Magazine, Inc.*, misappropriate Dustin Hoffman's right to publicity?

IN THE LANGUAGE OF THE COURT

Trotter, District Judge. The right to an Plaintiff Dustin Hoffman's name and likeness is an extremely valuable commodity and privilege not only because of Mr. Hoffman's stature as an actor, but because he does not knowingly permit commercial use of his identity. Since appearing in the film *The Graduate*, Mr. Hoffman has scrupulously guarded and guarded the manner in

which he has been shown to the public. Mr. Hoffman maintains a strict policy of not endorsing commercial products for fear that he will be perceived in a negative light by his peers and motion picture industry executives, suggesting that his career is in decline and that he no longer has the business opportunities or the box office draw as before.

Defendant, *Los Angeles Magazine, Inc.*, did not seek or obtain permission from Mr. Hoffman to use his name or likeness in the March 1997 issue of *Los Angeles Magazine* and, in particular, did not obtain Mr. Hoffman's consent to commercially endorse or "sell" for any fashion designer or advertiser or the magazine. The reason permission was not sought is because *Los Angeles Magazine* knew, or should have known, that the celebrities either would not consent or, alternatively, would demand payment for the fair market value for their right to utilize their names and likeness in this manner for commercial exploitation. The photographs were manipulated and cannibalized to such an extent that the celebrities were commercially exploited and were robbed of their dignity, professionalism and talent. To be blunt, the celebrities were violated by technology.

DECISION AND REMEDY

The federal district court held that *Los Angeles Magazine, Inc.* had misappropriated plaintiff Dustin Hoffman's right to publicity and awarded Mr. Hoffman \$1.5 million in compensatory damages and \$1.5 million in punitive damages.

Case Questions

Critical Legal Thinking Should the right to publicity be a protected right? Why or why not?

Ethics Did *Los Angeles Magazine* act ethically in using Dustin Hoffman's celebrity status without getting his permission or paying him?

Contemporary Business Application What kind of message does this case send to parties who intend to commercially exploit a celebrity's name and likeness?

The concept that federal law takes precedence over state or local law.

jurisdiction. In these instances, state and local governments have *concurrent jurisdiction* to regulate the area or activity. However, any state or local law that "directly and substantially" conflicts with valid federal law is preempted under the Supremacy Clause.

Case 3.1 illustrates the preemption doctrine.



Geier v. American Honda Motor Company, Inc.
120 S.Ct. 1913 (2000)
United States Supreme Court

FACTS

The United States Department of Transportation is the federal administrative agency responsible for administering and enforcing federal traffic safety laws, including the National Traffic and Motor Vehicle Safety Act of 1966. Pursuant to this act, in 1987 the Department of Transportation adopted a Federal Motor Vehicle Safety Standard that required automobile manufacturers to equip 10 percent of their 1987 vehicles with passive restraints, including automatic seat belts or airbags.

In 1992, Alexis Geier, driving a 1987 Honda Accord automobile in the District of Columbia, collided with a tree and was seriously injured. The car was equipped with manual shoulder and lap belts, which Geier had buckled up at the time of the accident; the car was not equipped with airbags, however. Geier sued the car's manufacturer, the American Honda Motor Company, Inc., alleging that American Honda had negligently and defectively designed the car because it

thus violating the District of Columbia's common law tort action in which the plaintiff claims that the defendant American Honda, which was in compliance with the federal standard, should nonetheless have equipped the 1987 automobile with airbags?

ISSUE

Does the federal passive restraint safety standard preempt the District of Columbia's common law tort action in which the plaintiff claims that the defendant American Honda, which was in compliance with the federal standard, should nonetheless have equipped the 1987 automobile with airbags?

IN THE LANGUAGE OF THE COURT

Breyer, Justice. In effect, petitioner Geier's tort action depends upon his claim that the manufacturer had a duty to install an airbag when it manufactured the 1987 Honda Accord. Such a state law—i.e., a rule of state tort law imposing such a duty—by its terms would have required manufacturers of all similar cars to install airbags rather than other passive restraint systems, such as automatic belts or passive interiors. It would have required all manufacturers to have installed airbags in respect to the entire District of Columbia-related portion of their 1987 new car fleet, even though the federal safety standard at that time required only that 10% of a manufacturer's nationwide fleet be equipped with any passive restraint device at all. Regardless, the language of the federal passive restraint standard is clear enough: the federal stan-

CASE 3.1

Decision

Issue



M.A. Mortenson Company, Inc. v. Timberline Software Corporation
970 P.2d 803 (1998)
Court of Appeals of Washington

FACTS

The Timberline Software Corporation (Timberline) produces software programs that are used by contractors to prepare bids to do work on construction projects. The M.A. Mortenson Company (Mortenson), a contractor, had been using Timberline software for some time without any problem. In 1993, Timberline introduced an advanced version of its bidding software program called *Precision*. Mortenson, as the licensee, entered into a license agreement with Timberline, the licensee, to license the use of the *Precision* software. Timberline delivered the software to Mortenson and a Timberline representative installed the software on Mortenson's computer. The software license agreement contained the following terms, which were printed on the outside of the envelope in which the software disks were packaged and on the inside cover of the user's manual, and they also appear on the introductory computer screen each time the software program is executed:

CAREFULLY READ THE FOLLOWING TERMS AND CONDITIONS BEFORE USING THE PROGRAMS. USE OF THE PROGRAMS INDICATES YOUR ACKNOWLEDGEMENT THAT YOU HAVE READ THIS LICENSE, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS. IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, PROMPTLY RETURN THE PROGRAM AND USER MANUAL TO:

GENCE, STRICT TORT OR UNDER ANY WARRANTY, OR OTHERWISE, EVEN IF TIMBERLINE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR FOR ANY OTHER CLAIM BY ANY OTHER PARTY. TIMBERLINE'S LIABILITY FOR DAMAGES IN NO EVENT SHALL EXCEED THE LICENSE FEE PAID FOR THE RIGHT TO USE THE PROGRAMS.

On December 2, 1993, Mortenson used the *Precision* software and prepared a bid to do contracting work for the Harborview Hospital project. While preparing the bid, the program aborted at least five times before Mortenson's employees finished the bid. Subsequently, Mortenson claimed that its bid was \$2 million under what it should have been had the *Precision* software program worked correctly. Mortenson sued Timberline to recover consequential damages, arguing that the *Precision* software calculated an inaccurate bid. Timberline defended, alleging that the limitation of remedies clause in the software license prevented Mortenson's lawsuit. Mortenson countered that the limitation of remedies clause was unconscionable and therefore unenforceable. The trial court granted summary judgment to Timberline and dismissed the lawsuit. Mortenson appealed.

ISSUE

Was the limitation of remedies clause in the Timberline software license unconscionable?

CASE 10.1

Additional Support for Student Success

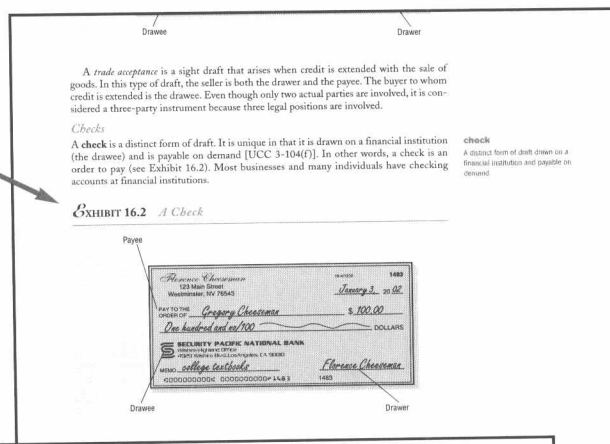
Exhibits help clarify legal formats and documents that may be foreign to students.

Margin notes include a running glossary of terms, **Business Briefs**, and relevant historical quotes

Concept Summaries appear periodically within each chapter to give students a chance to pause and be sure they have mastered the preceding material.

At the end of each chapter, **Working the Web** exercises require students to work through interactive Web-based activities.

Critical Legal Thinking Cases at the end of each chapter encourage the application of students' analytical skills, and **Critical Legal Thinking Writing Assignments** give students experience in briefing cases.



Business Brief
The same act may be the basis for both a criminal lawsuit and a civil lawsuit.

Criminal Acts as the Basis for Tort Actions
An injured party may bring a *civil tort action* against a wrongdoer who has caused the party injury during the commission of a criminal act. Civil lawsuits are separate from the government's criminal action against the wrongdoer. In many cases, a person injured by a criminal act will not sue the criminal to recover civil damages. This is because the criminal is often *judgment proof*—that is, the criminal does not have the money to pay judgment.

CONCEPT SUMMARY... CIVIL AND CRIMINAL LAW COMPARED

Issue	Civil Law	Criminal Law
Party who brings the action	The plaintiff	The government
Trial by jury	Yes, except actions for equity	Yes
Burden of proof	Preponderance of the evidence	Beyond a reasonable doubt
Jury vote	Judgment for plaintiff requires specific jury vote (e.g., 9 of 12 jurors)	Conviction requires unanimous jury vote
Sanctions and penalties	Monetary damages and equitable remedies (e.g., injunction, specific performance)	Imprisonment, capital punishment, fine, probation

ical Perspective
SHOULD CRIME PAY?
To satisfy the public's seemingly endless thirst for tales of crime, publishers have eagerly paid large sums of money to acquire criminal defendants' rights to tell sensational stories. Convicted murderers Caryl Chessman, Juan Corona, James Earl Ray, Sirhan Sirhan, and other convicted felons, such as the Waregate burglars, have all reaped substantial profits from selling the publication rights to their stories. Beginning in the late 1970s, however, the public's distaste at rewarding crime fueled the passage by state legisla-

CRITICAL LEGAL THINKING CASES

9.1 Trade Secret CRA-MAR Video Center, Inc., sells electronic equipment and videocassettes, as does its competitor, Koach's Sales Corporation. Both CRA-MAR and Koach's purchased computers from Radio Shack. CRA-MAR used the computer to store customer lists, movie lists, personnel files, and financial records. Because the computer was new to CRA-MAR, Randall Young, Radio Shack's salesman and programmer, agreed to modify CRA-MAR's programs when needed, including the customer list program. At one point, CRA-MAR decided to send a mailing to everyone on its customer list. The computer was unable to perform the function, so Young took the disks containing the customer lists to the Radio Shack store to work on the program. Somewhat Koach's came into possession of CRA-MAR's customer lists and did advertising mailings to the parties on the lists. When CRA-MAR discovered this fact, it sued Koach's, seeking an injunction

used medical diagnostic tool. The device uses sound waves to produce moving images of the inside of a patient's body, which a computer processes into an image that is displayed on a video monitor. Acuson's unit provides finer resolution than Aloka's unit. Both companies have sold many units to hospitals and medical centers. In November 1985, Aloka decided to purchase an Acuson unit. Aloka had another company make the actual purchase because it was concerned that Acuson would not sell the unit to a competitor. After the unit was shipped to Tokyo, Aloka's engineers partially dismantled the Acuson unit. They recorded their observations in notebooks. When Acuson discovered that Aloka had purchased one of its units, it sued Aloka, seeking an injunction and return of the unit. Is Aloka liable for misappropriation of a trade secret? (*Acuson Corp. v. Aloka Co., Ltd.*, 10 U.S.P.Q.2d 1814, 257 Cal.Rptr. 368 (Cal. App. 1989))

9.3 Patent In 1968, patent no. 3,397,928 (928) was issued to

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Working the Web
Constitutional Authority to Regulate Business

WEB EXPLORATIONS

The Great American Web Site The U.S. Government is the largest source of information anywhere in the world—and it belongs to you! The mission of the Great American Web Site is to highlight the best, newest, and most useful information in our government's domain and to help you navigate the maze of government agencies. This site has something for everyone.
Visit at www.uncle-sam.com

The White House Beginning with the Clinton administration, our government made a serious commitment to providing access to government information via the Internet. Through this site, you can find out about the President and Vice President and their families and send them e-mail, find out what is happening at the White House, take a tour of the White House, search White House documents—even listen to speeches and view photos (with the right computer equipment).
Visit at www.whitehouse.gov

The U.S. House of Representatives Do you want to read the full text of bills introduced into the House of Representatives? Do you want to find out how each member voted pro and con? Do you want to find out how a bill becomes a law? Maybe you want to find out who your representative is. Print out what his or her e-mail address is.
Visit at www.house.gov

Thomas The Library of Congress began the Thomas Web site, in the spirit of Thomas Jefferson, in 1995. It is a collection of legislative information on the Internet. You can find out about floor activities of the House and Senate; bills (by topic, short title, bill number, etc.), bill summaries and status, and public laws; the text of the Congressional Record; committee information, historical documents, and links to other U.S. government Internet resources.
Visit at www.thomas.loc.gov

Cyber Exercises

1. You are interested in a bill that was introduced into the U.S. House of Representatives last month. You want to read the full text of the bill and find out what has happened to it (its legislative history). Using the U.S. House of Representatives Web site, retrieve a current House bill and its legislative history. Print out your results.
2. You want to find out who your representative is in the House of Representatives. Using the U.S. House of Representatives Web site, determine who your representative is. Print out what his or her e-mail address is.
3. You want to find out what is online from the Internal Revenue Service. Using the Great American Web Site, www.irs.gov, go to the Internal Revenue

An Integrated Supplements Package

To ensure consistency of style, approach, and coverage among the key print supplements, these critical pieces were created by a single author team working in conjunction with Henry Cheeseman.

The *Instructor's Manual* provides chapter outlines and reviews, answers to text questions and cases, and video discussions as well as lecture suggestions linked directly to PowerPoint slides.

PowerPoint slides provide complete lecture support.

The *Test Item File* contains all new questions to this edition and closely mirrors the content stressed in the *Instructor's Manual* and *Study Guide*.

With the *Prentice Hall Test Manager*, the Test Item File is available in a computerized format, allowing for easy test creation. Features include a grade database with archiving capabilities, importing and exporting capabilities, grade scaling and weighing, and more.

The *Study Guide* includes the same bulleted outline found in the *Instructor's Manual* along with a variety of objective questions and critical thinking legal essays to effectively reinforce the concepts introduced in the corresponding text chapter.

The *Interactive Study Guide* quizzes students on their mastery of the material in each chapter. It can be located at www.prenhall.com/cheeseman.

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The *Business Law Custom Video Series* provides ten 5-10 minute segments designed to foster discussion on key business law topics. Each segment revolves around the activities of a single company and its employees, suppliers, customers, and other associates.

The *TotalLaw CD-ROM* is available free with the purchase of each student text and includes the complete text of 30 acts that are important and relevant to business. A built-in feature allows users to search by keyword. This extensive resource is easy to load, convenient to use, and includes the U.S. Constitution, the United Nations Charter, the Uniform Commercial Code, and much more.

Prentice Hall's Learning on the Internet Partnership (PHLIP) Companion Web Site (www.prenhall.com/cheeseman) lets students log on to have a dialogue with their peers, talk to a tutor, take a quiz with immediate feedback, and read articles about current events—all with the click of a mouse.

Adopters of *The Legal and Regulatory Environment, Third Edition* are eligible to receive 10 free hours of LEXIS, the legal, online database service used by law professionals. This offer

is valid each semester the text is in use and applies to adoptions where new books are purchased. Contact your Prentice Hall sales representative for more information.

Prentice Hall offers a variety of online courses to provide you with a learning option in legal studies. The content has been preloaded into a choice of WebCT, Blackboard, or our new CourseCompass course management software. Contact your Prentice Hall sales representative for more information.

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When I first began writing this book, I was a solitary figure researching cases in the law library and writing text at my desk. As time passed, others entered upon the scene—editors, research assistants, reviewers, production personnel—and touched the project and made it better. Although my name appears on the cover of this book, it is no longer mine alone. I humbly thank the following persons for their contributions to this project.

The Professionals at Prentice Hall

For this third edition of *The Legal and Regulatory Environment*, a special group of people from Prentice Hall have come together: Cindy Spreder, production editor, whose design suggestions I accepted wholeheartedly, and who was a joy to work with through the patient task of shepherding the manuscript from first manuscript pages to the final bound book; Deb Clare, senior marketing manager, who is the most creative marketing person in the industry and who has more energy than anyone I know; Jim Boyd, vice president/editorial director, who authorized all the resources necessary to make this third edition possible; Jerome Grant, president of Prentice Hall Business Publishing, whose influence is a very important part of this revision.

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Jennifer Surich, supplements editor, is in charge of producing the extensive supplements that support this third edition of *The Legal and Regulatory Environment*. The supplements themselves have been produced by a remarkable team of authors: John T. Ballentine Jr., professor of business law, School of Business, University of Colorado; Rhonda Carlson, lecturer, University of Denver School of Law; Ed Gac, professor of business law, School of Business, University of Colorado; and Dawn Swink, College of Business, Minnesota State University. I have worked closely with this team in producing the *Instructor's Manual*, *Study Guide*, *Test Item File*, and PowerPoint slides to support this edition. Cindy Harford, media project manager, has been in charge of putting together the Prentice Hall Web Site to support this edition, as well as the *TotaLaw* CD-ROM.

The Prentice Hall “family” has come together and produced a book and supplements package that I believe is the best available. My success is theirs, and theirs mine. They are my friends.

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My family: My parents—Henry B. and Florence, deceased; my twin brother Gregory; my sister Marcia.

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While writing this Preface, I have thought about the thousands of hours I have spent researching, writing, and preparing this manuscript. I loved every minute, and the knowledge gained has been sufficient reward for the endeavor.

I hope this book and its supplementary materials will serve you as well as they have served me.

How
"Cheese!"

Henry R. Cheeseman

*With joy and sadness,
emptiness and fullness,
honor and humility,
I surrender the fruits of this labor*

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