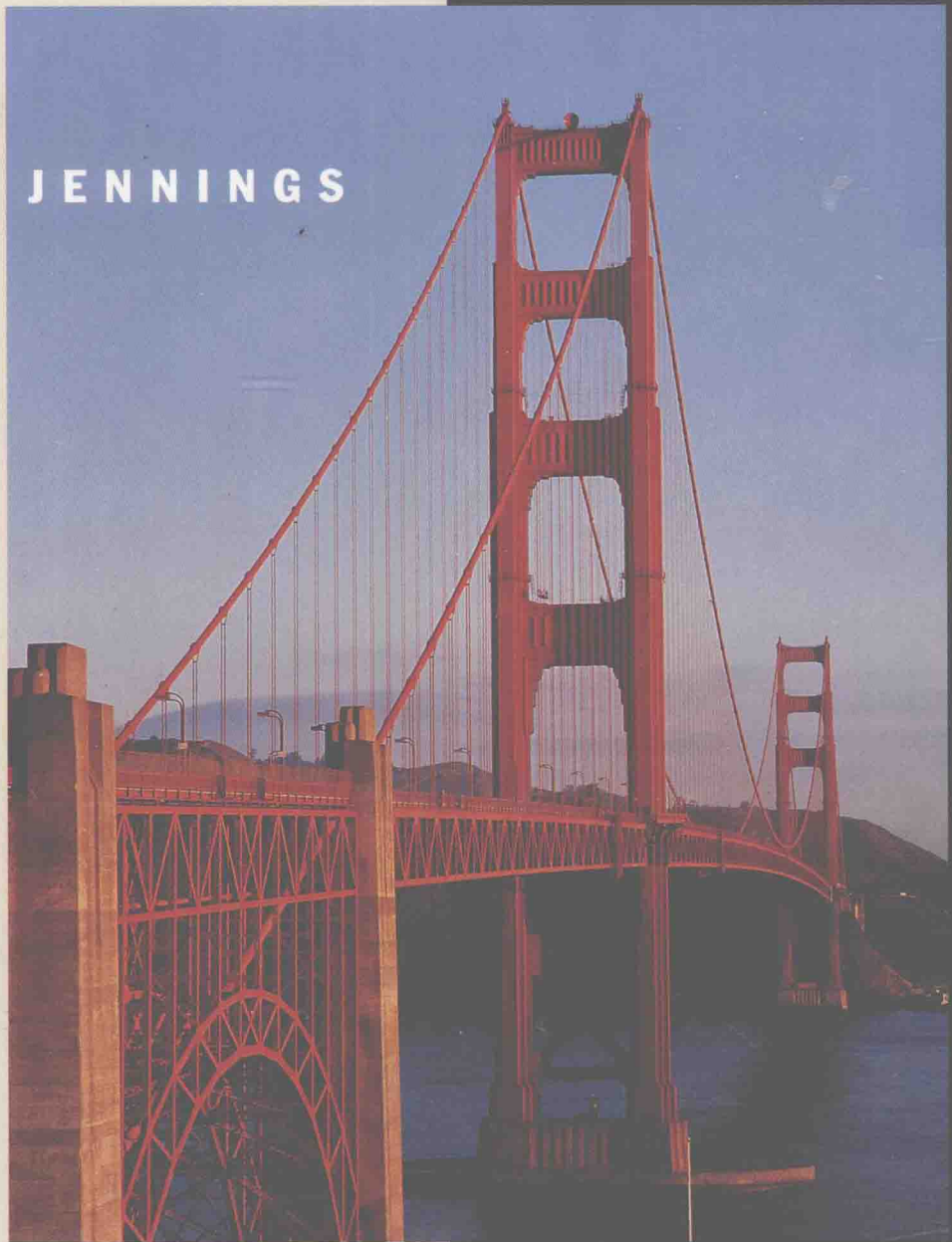


MARIANNE JENNINGS



BUSINESS *Its Legal, Ethical and Global Environment*

FOURTH EDITION

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Business: Its Legal, Ethical, and Global Environment

4th Edition

Marianne Moody Jennings
Arizona State University



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*To the core of my global environment:
Terry, Sarah, Claire, Sam, and John*

Preface

BUSINESS: ITS LEGAL, ETHICAL, AND GLOBAL ENVIRONMENT

Building the Bridge: Applying Legal and Ethical Reasoning to Business Analysis

As the capstone project for their business degree, our business school students at Arizona State University were assigned the Marriott International case study. Our students expertly discussed Marriott's core competencies. The students offered classic SWOT analysis: Strengths, Weaknesses, Opportunities, and Threats. Should Marriott spin off its real estate assets and focus on hotel management? In came the students' economic analysis, factoring in the nature and importance of economic swings and the resulting vulnerability of real estate ventures. Later, they discussed Marriott's marketing and its hotel management. In other words, we had very capable *business* students.

But with each presentation I found myself raising the same unanswered questions: What are the rights of the bondholders and the shareholders? Would a corporate resolution with shareholder approval be necessary for Marriott's strategy? Could the officers and directors be accused of insider trading for giving themselves as shareholders the most valuable portions of the company and spinning off the company's heavy debt obligations? What are the ethics of transferring all the risk and debt to the bondholders? Are shareholders and bondholders both stakeholders? Don't both have rights within the company? Our capable business students, adept at complex business analysis, stumbled over basic legal and ethical issues.

Why couldn't these students competently discuss legal issues? It was not for lack of exposure to the law. I taught my course "by the book," so to speak. Students could recite the components of a valid contract, rattle off the requirements for bankruptcy, recall from memory the antitrust statutes. Yet, I was coming to realize, this rote knowledge was not enough. One of my best former

students, who had gone on to medical school, came to me perplexed about her office lease. She said that the complex in which she wanted to open her practice had a “no advertising” policy. In fact, she said that when she toured the premises with a leasing agent, the leasing agent turned to her and said, “You’re not one of those doctors who advertises, are you? Because if you are, we can’t lease to you. We have a policy against it.” One of my best students, who knew the antitrust statutes well, could not apply them to her everyday business. Worse, perhaps, she could not *recognize* when to apply these statutes: She did not see the antitrust implications of the agent’s statements nor the problems with the physicians in the complex taking such an approach to screening tenants.

I reached the conclusion that there were shortcomings in the standard approach to teaching business students law and ethics. Students were not ignorant to legal issues; rather, they simply lacked the necessary skills to recognize legal and ethical issues and to apply law and ethics to business decision-making. As instructors, we were not integrating legal and ethical reasoning with business analysis. My conclusion led me to develop my own materials for classroom use and eventually led to the publication of the first edition of this book. Now in its fourth edition, *Business: Its Legal, Ethical, and Global Environment* brings to the classroom the most integrated approach to learning law and ethics available in the market today. Throughout every chapter and in every feature, students and instructors are continually reminded of how various legal and ethical principles apply in business contexts. For all areas of law and ethics, this book answers the question: How does this concept affect a business?

Strengthening the Bridge: New Content, Business Applications, and Learnings Aids

For the fourth edition, *Business: Its Legal, Ethical, and Global Environment* has undergone a major revision. New content has been added, new business applications integrated into every chapter, and new learning aids developed to help students understand legal and ethical concepts.

NEW CONTENT

Parts and chapters in *Business: Its Legal, Ethical, and Global Environment* have been reorganized and redesigned to better facilitate student understanding of how law and ethics apply to the business world. In general, each part begins with an overview and ends with a series of integrative problems to help students combine the various aspects of law with business management and operations. Part I offers the student an overview of the legal, ethical, and judicial environments of business. Part II covers the regulatory environments of business. Part III covers the law and ethics of competition and sales. Part IV covers the legal and ethical issues of business and employees. Part V covers the law and ethical dilemmas of business organization and capitalization.

Ethics Business Ethics and Social Responsibility (Chapter 2) offers an increased focus on the application of ethics to business decision-making. Ethics coverage is also integrated throughout all chapters.

Property Business Property (Chapter 12) now offers a separate chapter on property law, including intellectual, tangible personal, and real property issues.

Alternative Dispute Resolution Managing Disputes: Alternative Dispute Resolution and Litigation Strategies (Chapter 4) now offers increased coverage of alternative dispute resolution (ADR) topics.

Bankruptcy Financing of Sales and Leases: Credit and Disclosure Requirements (Chapter 16) now includes coverage of bankruptcy.

NEW BUSINESS APPLICATIONS

Biography Each chapter contains at least one biography. Biographies (1- to 3-page features) provide students with business history through the study of individuals and companies involved with the area of law and ethics covered in the chapter. For example, Business and the Constitution (Chapter 5) discusses Time Warner's public relations battle and ethical dilemma over the release of its artist Ice-T's album with the song "Cop Killer" (pgs. 166–168). Students have the opportunity to see how the constitutional principle of free speech relates to business and how businesses face questions of social responsibility. In addition, they are given insights into issues such as shareholder power and the interaction of corporate managers with the powerful forces of an institutional investor such as a police pension fund.

For the Manager's Desk Each chapter also contains at least one For the Manager's Desk. These readings provide students with excerpts from various business publications including *Forbes*, *The Wall Street Journal*, *Fortune*, and *Business Week*, as well as other publications including the *National Law Journal*, *California Management Review*, *American Business Law Journal*, and the *Real Estate Law Journal*. These readings, some short and others in-depth, offer students the opportunity to see how business interrelates with ethics and law. See pages 34, 46, and 77.

Judg

Judgment Judgments open each chapter by presenting a legal and ethical problem relevant to the topics covered in the chapter. For example, Business and the Constitution (Chapter 5) presents students with the case facts from *United States v. Lopez* and questions why federal law, and not state law, applies to a high school in San Antonio, Texas. Students then find answers to these questions within the text of the chapter (in this situation, the *Lopez* case appears later in the chapter). Moreover, these answers are referenced in the text and clearly marked with a Judgment icon.

Integrative Problems Each Part closes with 1–5 substantive problems that require students to think critically about and apply the major issues from the preceding chapters. Integrative problems offer students the opportunity to apply legal and ethical reasoning to business analysis. Often these problems require students to prepare memoranda or other practical types of business writing. See pages 141–146.

LEARNING AIDS

Internet Margin Notes For further student exploration, every chapter integrates World Wide Web addresses highlighting links to legal and business resources. At their option, students can review unedited cases and full statutes, visit government departments and international organizations, and examine relevant business materials. The text includes over 150 Web addresses. See pages 83, 86, and 172.

Visit the Jennings
Legal Environment
Web Site:
<http://www.thomson.com/swcp/bef/jennings/jennings.html>

Case Headlines Every court case has a case headline that summarizes what issues are involved in the case. In Business Torts (Chapter 9), students read *Page v. American National Bank & Trust Company* (pgs. 311–314), a case addressing the liability of banks for robberies of customers as they use or attempt to use the bank’s ATMs. Although students likely won’t remember the name *Page*, the headline, “Pummeled at the ATM,” will keep the case and its holding fresh in their memories.

Chapter Openers Chapters begin with an opening problem, titled Judgment, which presents a legal dilemma, relevant to the chapter’s discussion and similar to those business managers need to handle. These are revisited and answered in the body of the chapter. Next, opening statements discuss the major topics of the chapter and present the general goals for the chapter, in the form of questions to be answered. Finally, quotations, often humorous, pique students’ interest and focus the chapter to the major issues.

Chapter Summary Each chapter concludes with a summary that reinforces the major concepts of the chapter. Each summary is constructed around the key questions introduced at the start of the chapter and key terms presented throughout the chapter.

Text Design *Business: Its Legal, Ethical, and Global Environment* now takes advantage of a full-color design. Each feature has a distinctive design and color for easy identification. All Judgments, and many of the Biographies and For the Manager’s Desk readings, contain relevant photos to help students relate to the people and issues discussed.

Supporting the Bridge: Organization and Features

In addition to the new features added to this edition, the classic features have been updated and strengthened. As well, the organization has been revised to better meet student needs in the classroom.

ORGANIZATION

As noted above, there are five new parts in the book which serve to organize the materials around business operations. Every chapter integrates international (marked by a global icon) and ethical topics.

Part 1 In four chapters, Part 1 offers an introduction to law, an introduction to business ethics and the judicial system, and a discussion of litigation and alternative dispute resolution. Part 1 provides students with a foundation in law and ethics, as well as legal and ethical reasoning, necessary for the areas of law in the chapters that follow. By being brief (four chapters), Part 1 offers instructors an early and logical break for exams.

Part 2 In seven chapters, Part 2 covers the regulatory environment of business, including the following topics: constitutional law, administrative and international law, business crimes and business torts, product advertising and liability, and environmental regulation. With the completion of Parts 1 and 2, students have a grasp of the legal system, ethical boundaries, and the laws that affect business operational decisions.



Part 3 The five chapters in Part 3 present students with the legal and ethical issues surrounding competition and sales. Part 3 includes the following topics: real, tangible personal, and intellectual property; trade restraints and antitrust laws; contract and sales law; and financing of sales and leases, including credit disclosure and requirements. From the negotiation of price to the collection of accounts, this segment of the book covers all aspects of selling business products and services.

Part 4 The three chapters in Part Four discuss the contractual and regulatory aspects of employer and employee relationships. Topics include: agency law and employee conduct, management of employee welfare, and employment discrimination.

Part 5 In Part Five, students study the advantages and disadvantages of various business organizations and the regulation of the capital markets. The three chapters in Part 5 include the following topics: business organization, securities laws, and business combinations. The final chapter on business combinations has been reorganized, rewritten, and updated to reflect the new mergers of the 1990s.

FEATURES

Court Cases Edited court language cases provide in-depth points of law, and many cases include dissenting and concurring opinions. Case questions follow to help students understand the points of law in the case and think critically about the decision. See pages 153 and 159.

Consider . . . Consider problems, along with Ethical Issues boxes and Business Planning Tips, have been a part of every chapter since the first edition, and they are continued in greater numbers in this edition. Consider problems, often based on real court cases, ask students to evaluate and analyze the legal and ethical issues discussed in the preceding text. By being integrated into the text, students must address and think critically about these issues as they encounter them. Through interactive problems, students learn to judge case facts and determine the consequences. See pages 11 and 45.

Ethical Issues Ethical Issues boxes appear in every chapter and present students with real-world ethical problems for students to grapple with. Ethical Issues help integrate coverage of ethics into every chapter. See pages 20 and 63.

Business Planning Tips Students are given sound business and legal advice through Business Planning Tips. With these tips, students not only know the law, they know how to anticipate issues and ensure compliance. See pages 56, 60, and 162.

Exhibits Exhibits include charts, figures, and business and legal documents that help highlight or summarize legal and ethical issues from the chapter. See pages 39, 89, and 91.

End of Chapter Problems The end of the chapter problems have been updated and focus more on actual cases.

Crossing the Bridge: Who Should Use This Book?

With its comprehensive treatment of the law, integrated business applications, and new full-color design, *Business: Its Legal, Ethical, and Global Environment* is well-suited for both undergraduate and MBA students. The book is used

extensively in undergraduate education programs around the country. In addition, this edition has been class-tested with MBA students, and it is appropriate for MBA and executive education programs.

A Note on AACSB Standards

The AACSB standards emphasize the need for students to have an understanding of ethical and global issues. The fourth edition continues with its separate chapter on ethics as well as ethical issues and dilemmas for student discussion and resolution in every chapter. The separate chapter on international law appears in expanded version in this edition and each chapter has a segment devoted to international law issues. An icon appears in each of the chapters when legal and ethical issues related to global business issues appears. The fourth edition includes readings on women as executives in other cultures, the role of lawyers in other countries, and the attitude outside the United States on insider trading.

This edition presents students with the legal foundation necessary for business operations and sales, but also affords the students the opportunities to analyze critically the social and political environments in which the laws are made and in which businesses must operate. Just an examination of the lists of the companies and individuals covered in the biographies and of the publications from which the For the Manager's Desk readings are taken demonstrate the depth of background the fourth edition offers in those areas noted as critical by the AACSB. The materials provide a balanced look at regulation, free enterprise, and the new global economy.

New to this edition are margin notes that direct the student to various tools and topics available on the Internet. These margin notes offer students the opportunity to browse for more information or undertake projects for additional research and class work.

Supplements

Business: Its Legal, Ethical, and Global Environment continues to offer a comprehensive and well-crafted supplement package for both students and instructors. Contact your ITP Sales Representative or South-Western College Publishing for more details. The following student supplements are available:

- Study Guide
- The Lighter Side of Law: Cases and Readings to Captivate our Imaginations and Memories about Business and Its Encounters with Law
- Legal Tutor software for contract law
- Legal Tutor software for sales law

The following instructor resources are available:

- Instructor's Manual with Transparency Masters
- Instructor's Manual MS-DOS 3.5"
- Test Bank
- MicroExam computerized test bank
- Cases on Disk 3.5"
- PowerPoint Masters and Disk
- Handbook of Statutes and Forms
- CNBC Video segments

ACKNOWLEDGMENTS

By its fourth edition, a book has evolved to a point of trademark characteristics. This book is known for its hands-on examples and readings for business managers. That trademark evolves because of the efforts of many. There are the reviewers and adopters of the text who provide ideas, cases, and suggestions for improvement and inclusion. For this edition, the following colleagues offered their seasoned advice:

William N. Bockanic
John Carroll University

Don Boren
Bowling Green State University

Richard Coffinberger
George Mason University

Evelyn Boss Cogan
LaSalle University

Norman Hawker
Western Michigan University

Andrew Jackson Holliday
Washington and Lee University

Henry E. Mallue, Jr.
College of William and Mary

Leo C. Moersen
George Washington University

Debi Moon
DeKalb College

John Norwood
University of Arkansas

Any edition of a book bears the mark of the editors who work to design, refine, market, and produce it. This book carries the insight of Rob Dewey, the steady hand of Kurt Gerdenich, the eye for detail of Karen Truman and Sharon Smith, and the design quality of Craig Ramsdell. This book also carries the unmistakable liveliness of an author who shares her life with four helpful children and one tolerant husband. Their vibrancy and inspiration is found in the color and charm of these pages.

Marianne Moody Jennings

ABOUT THE AUTHOR

Professor Marianne Jennings is a member of the Department of Business Administration in the College of Business at Arizona State University, a professor of legal and ethical studies in business and director of the Joan and David Lincoln Center for Applied Ethics. Professor Jennings earned her undergraduate degree in finance and her J.D. from Brigham Young University. She has worked with the Federal Public Defender and U.S. Attorney in Nevada and has done consulting work for law firms, businesses, and professional groups including the National Leadership Institute, Dial Corporation, Motorola, the National Association of Credit Managers, Mesa Community College, State Farm Insurance, Southern California Edison, the Arizona Auditor General, the city of Phoenix, Midwest Energy Supply, Bell Helicopter, and the Hispanic Women's Conference.

Professor Jennings joined the faculty at ASU in 1977 as an assistant professor. She was promoted to associate professor in 1980 and to full professor in 1983. At ASU, Jennings teaches graduate courses in business ethics, the legal environment of business, and strategic legal planning. She has authored more than 130 articles in academic, professional, and trade journals. Currently she has six textbooks and monographs in circulation. Jennings is a columnist for *The Arizona Republic*, and her work has appeared in *The Wall Street Journal*, *The Chicago Tribune*, *The Christian Science Monitor*, and other newspapers around the country. A collection of her essays, *Nobody Fixes Real Carrots Anymore*, was published in 1994. She was given the Arizona Press Club award in 1994 for her work as a feature columnist. Jennings is a weekly business commentator on "All Things Considered" for National Public Radio.

Jennings has conducted more than 200 workshops and seminars in the areas of business, personal and professional ethics, legal ethics, real estate, credit management, legal issues for academic administrators, law for the CPA, and legal and political strategic planning. She has twice been named professor of the year in the College of Business and was the recipient of a Burlington Northern teaching excellence award. Jennings was named a Wakonse Fellow in 1994 and was named Distinguished Faculty Researcher for the College of Business that same year. In 1995, she was appointed a Dean's Council of 100 Distinguished Scholar.

Jennings is a contributing editor for the *Real Estate Journal* and the *Journal of Corporate Finance*. In 1984, she served as then-Governor Bruce Babbitt's appointee to the Arizona Corporation Commission. During 1986–1988, she served as Associate Dean in the College of Business. From 1986–1987, she served as ASU's faculty representative to the NCAA and PAC-10. Jennings is a member of twelve professional organizations, including the state Bar of Arizona, and has served on four boards of directors. Currently she serves on the Board of Directors for Arizona Public Service, and the Center for Children with Chronic Illness and Disability at the University of Minnesota. Jennings is chair of the Bonneville International Advisory Board for KHTC/KIDR.

Jennings is married to Terry H. Jennings, and has four children: Sarah, Claire, Sam, and John.

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