



# **LEGAL ENVIRONMENT OF BUSINESS**

In the Information Age

David L. Baumer

J. C. Poindexter

# Legal Environment of Business in the Information Age

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## LEGAL ENVIRONMENT OF BUSINESS IN THE INFORMATION AGE

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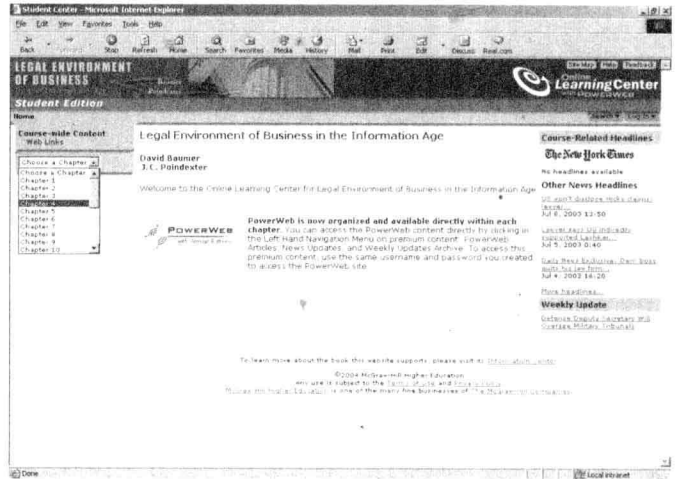
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# The Legal Environment of Business in the Information Age

Online Learning Center

[www.mhhe.com/baumerleob](http://www.mhhe.com/baumerleob)



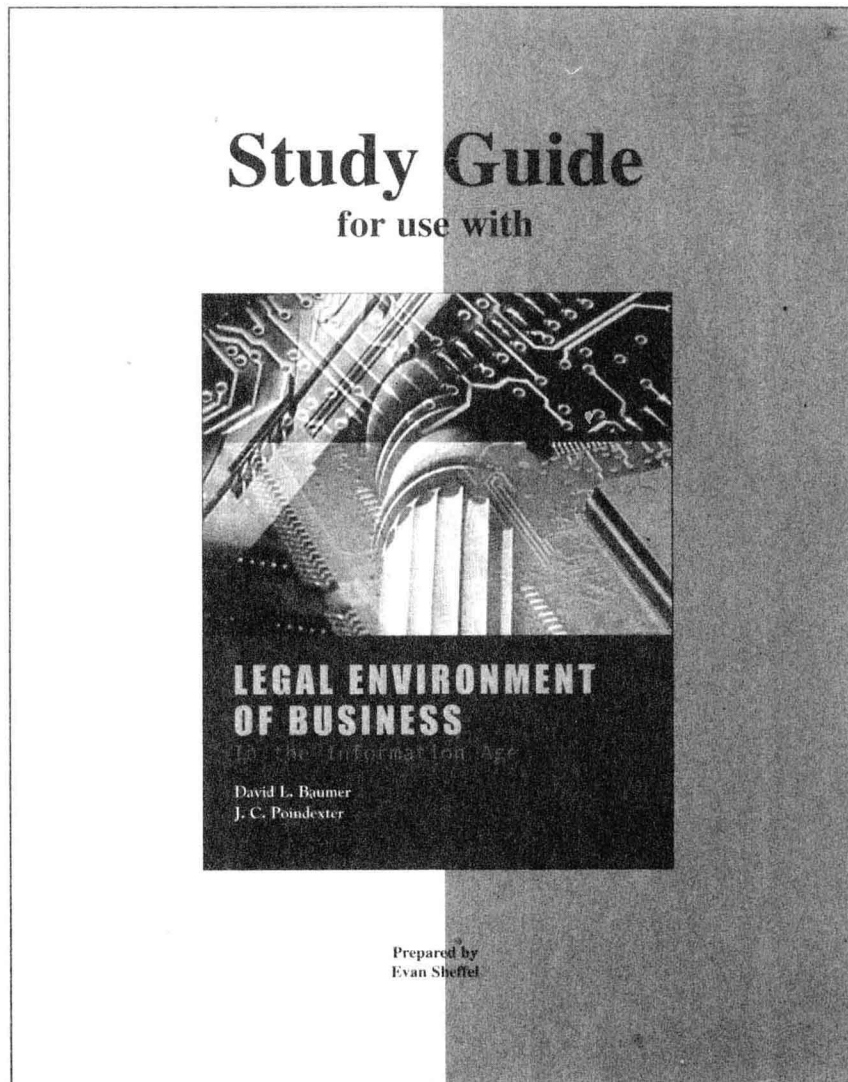
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Study Guide



In it you'll find:

- The Learning Objectives from the chapter revisited.
- A detailed outline that reviews the important concepts of each chapter.
- Multiple Choice and True/False questions to quiz yourself on material.
- Issue Development and Essay questions to help you think through key legal situations and arguments, just like you'll have on exams.
- Answers at the back of the guide to provide you with quick access to the information and mobile study opportunities.

# About the Authors

**David L. Baumer** is an associate professor of law and technology at the College of Management, North Carolina State University. He received a B.A. in Economics from Ohio University, J.D. from the University of Miami, and a Ph.D. in Economics from the University of Virginia. Baumer is a licensed attorney in the state of North Carolina and has been a litigation consultant and expert witness in numerous antitrust, intellectual property, contract, wrongful death, and medical malpractice cases. He is the Director of the Cyberlaw Initiative at NCSU, which is a partnership between the NCSU College of Management and corporations that have substantial Internet presences.

**J. C. Poindexter** is an associate professor of economics and finance in the College of Management, North Carolina State University. He received a B.S. from the University of Virginia and a Ph.D. in economics from the University of North Carolina at Chapel Hill. He has more than two decades of experience as a consultant in litigation, encompassing a wide swath of the legal perils faced by businesses today, ranging from employment discrimination to antitrust violations. He has been the author or co-author of a number of widely used textbooks.



# Preface

Significant changes in society are often closely followed by significant legal changes. The changes in the U.S. and world economies during the last 10 years are, by any measure, significant. Arguably, most of these changes are due to advances in technology, particularly information technology. Broadly defined, more than one-third of the GDP in the United States is attributable to *information technology* and that figure is expected to exceed one-half by 2006. A large proportion of the laws that compose the legal environment of business will change and the pace of the change is likely to be quick. It is hoped that this book will enable business students to focus on the legal issues that have the most significant impacts on them and their businesses in the twenty-first century. This book targets future managers who will be dealing with information technology in some way.

Business pedagogy involves recognition that there are many issues that are basically *cross-functional*. Managers in each functional area of business already have had to deal with new challenges created by technology, advances in information systems, and, we believe, law. There are legal issues in every functional area of business, and many of them were hardly (or not) taught to business students 10 years ago. We are at the beginning of a new era in business and many of the more traditional concepts will have considerably less significance for business managers of the future. On the other hand, many new legal issues have emerged and are occupying center stage. Compared to other legal environment textbooks, we devote significantly more attention to e-commerce contract law and legal protection of intellectual property. We place an emphasis on the manner in which regulatory law deals with changes in technology. The Internet has significantly affected regulatory law dealing with consumer protection, securities, and antitrust among other issues. We hope that we provide a stimulating and relevant presentation of the significance of law in this exciting Information Age.

In this book, we have eschewed some of the traditional approaches to introducing business students to law. Many of the preliminary topics commonly covered in depth in the first chapter of legal environment textbooks, such as legal theory, the structure of the legal system in the United States, legal, vocabulary, ethics, and social responsibility of business, are integrated into the discussion in Chapters 2–6. Business students generally begin their training in business with an overall process course that provides integrated discussion of the major functions of business: marketing, production, finance, human resource management, and information systems. The plan in this book is to reinforce the latest trends in business education by providing a similar experience with law. In this textbook, and in real life, law is a cross-functional factor that affects the decision-making environment of managers in every functional area.

## PEDAGOGICAL FEATURES

### Emphasis on the Modern Legal Environment of Business

We have made a concerted effort in this textbook to focus on the present, the recent past, and the future. Most of the cases reviewed are recent. We take for granted that business students have more than a rudimentary knowledge of computers and the Internet. We do not explain each and every Internet term such as cookies, hyperlinks, and MP3 in detail, and we make frequent use of high-tech terminology and situations.

### Use of Mathematics and Statistics

Mathematics and statistics are required in virtually all business management programs. In many contexts, mathematical and statistical concepts such as present value illustrate points

much more cogently than long-winded discussions of vague trade-offs and concepts. We assume throughout the textbook that students have a working knowledge of algebra, calculus, present value, statistical significance, and other standard business management terms and concepts. The integration of law and quantitative analysis already has taken place at a number of law schools and in legal scholarship generally, and it is overdue in business law and legal environment textbooks.

### **The Cases Are Recent and Use the Language of the Courts**

In most chapters, there are from three to five cases, most of which have dates after 1980 and many of which were decided after 1998. The electronic environment that current business management students will inherit imposes a premium on selecting cases that deal with issues they are likely to encounter. Students are not likely to deal with the “mailbox” rule when fax machines and online contracting are the norm. Some of the cases are longer because they are more complicated factually and technically than when a farmer named Sherwood is selling a cow that becomes pregnant after the contract is signed.

Many of the cases deal with highly technical issues that courts tackle with admirable persistence. After teaching some of this material to students, undergraduates and graduates, for several semesters, we are convinced that students are easily capable of comprehending information age legal issues such as those associated with the Internet privacy protection. We provide what are intended to be thought-provoking questions at the end of each case to test students’ understanding of the case.

### **Management Suggestions and Recommendations Are Part of the Message**

Both authors have a great deal of experience as expert witnesses in high-tech cases. We have observed, up close and personal, management mistakes attributable to either ignorance of the legal environment or deliberately ignoring the legal environment. Also we both have Ph.D.s in economics, which enables us to view legal mistakes, evident in some of the cases, from a perspective of incentives, constraints, and principles of equilibrium. At times we make use of a law and economics approach that has been so influential in legal journals and in actual cases.

## **FEATURED BOXES**

### **Cyberlaw Developments**

In virtually every area of law, from contracts and torts to regulatory law, cyber considerations are very much in evidence. In most chapters, we attempt to bring in the flavor of legal issues that courts are dealing with that are created by cyberspace situations. Many of the issues dealt within the “Cyberlaw Developments” boxes have not been resolved to date, but are likely to require attention from legislatures or de novo examinations by the courts. Virtually all of the “Cyberlaw Developments” boxes would have been unfathomable to legal authorities as recently as 10 years ago because the technology did not exist that gave rise to the legal issue in cyberspace.

### **International Perspective**

Certainly, the impact of globalization is reflected in business management curricula throughout the United States. The impact of globalization also has been evident in business law and legal environment textbooks for some time. Originally, most textbooks devoted a single chapter to international law issues, but the trend more recently has been to integrate international issues throughout most areas of law. We follow the latter trend and integrate international considerations into chapters with an emphasis on “International Perspective” boxes. We also devote a separate chapter to international law issues, mainly jurisdiction and enforcement of intellectual property rights.



## Nutz and Boltz

Pictures, tables, and Internet inserts are placed throughout the textbook in boxes entitled “Nutz and Boltz.” For many subjects, visual aids enhance narrative discussions. For many legal avenues, the legal system is a process that more resembles a decision tree with numerous options along the way. We provide a large number of charts, tables, graphs, and other visual aids that are all subsumed under the rubric of “Nutz and Boltz.”

## Ethical Challenges

We also provide boxed inserts that illustrate ethical challenges that have confronted business and government leaders. Certainly recent events surrounding the collapse of Enron and other corporations illustrate the continuing significance of business ethics. We devote part of one chapter exclusively to ethics, but intersperse “Ethical Challenge” boxes throughout the textbook. Many of the most significant ethical challenges in business take place in cyberspace and involve privacy and property rights issues.

## END-OF-CHAPTER MATERIAL

Each chapter concludes with rich end-of-chapter material, including the following:

- *Summary by learning objectives.*
- *Key terms with definitions.* The key terms are found in the margins throughout each chapter. The list at the end of the chapter gives the page on which the defined term can be found.
- *Questions for Review and Analysis.* These questions review concepts and can be used as class discussion jump-starters.
- *If you really understood this chapter, you should be able to provide informed commentary on the following.* The title is self-explanatory.
- *Using the Internet to Your Advantage.* At the end of each chapter, we list a number of websites that enable students to dig deeper into the material discussed in the chapter. These websites can facilitate term projects or simply illustrate the text in the chapter. It is hoped that these websites will enable the student to be less intimidated by the prospect of legal research and to recognize that with the Internet, in most cases, there is no need to visit a bricks-and-mortar law library.

## ACKNOWLEDGMENTS

We have benefited mightily from two sources: (1) the McGraw-Hill staff and (2) reviews by our law colleagues. The McGraw-Hill staff of Andy Winston, Christine Scheid, and others have worked tirelessly to assist and prod when necessary. Their patience has been an important factor in the creation of this book and we appreciate their encouragement and assistance. We'd like to thank the following colleagues for their thoughtful reviews of our manuscript:

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Fort Wayne***Ken Taurman***Indiana University–New Albany***Maurice Tonissi***Quinsigamond Community College***Tom Tuytschaevers***Northeastern University*

The faculty reviewers have been brutally honest in their assessments and ultimately very complimentary. We have worked with a belief that business law and the legal environment are interesting and even humorous. A number of our reviewers have endorsed this view and have tremendously assisted us in writing and rewriting the chapters in this book as well as pointing out numerous opportunities to eliminate errors and improve our exposition.

## ANCILLARY MATERIALS

### Instructor's CD-Rom (007-244119-4)

This is state-of-the-art technology that provides a single resource for faculty to customize in-class presentations. It includes

1. *Instructor's Manual*. Developed by Michael Katz, Delaware State University. The Instructor's Manual includes many valuable tools for teaching a legal environment course, including expanded chapter outlines and teaching suggestions, answers to case questions and discussion questions, "hypotheticals," additional scenarios for further illustrations of topics, and much more.
2. *Test bank and computerized testing*. Written by Judy Spain, Eastern Kentucky University, the Testbank includes a minimum per chapter of 75 questions. The question format incorporates multiple choice, true/false, short answer "fact patterns," and essay problems.
3. *PowerPoint presentation slides*. Developed by David Baumer, the PowerPoint slides are derived directly from the directives of his course. Baumer has been teaching business law, legal environment, sports law, and cyberlaw courses for 23 years. He has compiled his lecture notes for this book on PowerPoint slides. He has erred on the side of too much inclusiveness, recognizing that many who teach this course will not need to rely so heavily on these PowerPoint slides. Regardless of how heavily instructors rely on PowerPoint, it is believed that these slides will dramatically reduce preparation time. Experienced teachers can review the book and be assured that the main points in each chapter will appear in the PowerPoint slides. Over the years, Baumer has had to hire a number of part-time instructors on short notice who were able to step in and do a

credible job with the aid of PowerPoint slides. He believes that adopters of this textbook, armed with these PowerPoint slides, will have a similar experience.

### **Videos (007-288543-2)**

The videos provide current footage to enhance chapter topics.

### **Student Print Study Guide (007-288542-4)**

Available for packaging with the text, the Study Guide includes an outline with tips for understanding difficult topics and quiz questions. Evan Sheffel of California State University–Northridge developed the material.

### **Online Learning Center with PowerWeb**

The OLC is a warehouse of information and activities for both professors and students. The Instructor's area includes electronic versions of the Instructor's Manual, PowerPoint presentations, and other teaching aides. Students have the ability to test their vocabulary knowledge with flash cards, topic knowledge with quizzes, and much more. With the latest addition of direct feeds from PowerWeb and *The New York Times*, current articles and information are available at the touch of your mouse. Ask your McGraw-Hill/Irwin sales representative for ISBN: 007-294-313-0 if you want your students to have access to these features within their OLC.

# Student-Focused Learning Features

Baumer/Poindexter is not about throwing legal environment terms and topics at the student to juggle and understand. It's about helping students grasp the legal environment within the scope of business, and the changes that technology is thrusting upon it daily.

“In this textbook, and in real life, law is a cross-functional factor that affects the decision-making environment of managers in every functional area.”

*David Baumer and J. C. Poindexter*

## Text Written with Your Student in Mind

I like the authors' writing. They seem to have a sense of humor and seem to want to be more in touch with the reader than other books I have examined.

*Karen Barr  
Pennsylvania State University,  
Beaver Campus*

You doubtless already have experience with *negotiation*—negotiation of how you will divide the telephone bill with your roommates, negotiation of who prepares what for the party you're having this weekend, and negotiation of the price of a used computer you've bought or sold. Negotiation, as you know, involves the presentation of information, the delivery of offers and counteroffers, and any other activity that leads to an agreement. In a business setting, virtually all contracts are formed after negotiations. Our immediate negotiations focus, however, is on reaching agreements (settlements) when there is a legal conflict to be resolved without resort to the courts.

## Learning Objectives

A topical guide for the student, Learning Objectives tell them what they should and will know after completing the Chapter.

### Learning Objectives

After completing this chapter, you should

1. Know the basic components and structures of federal and state court systems.
2. Understand the differing roles of trial and appeals courts.
3. Be able to explain the nature and importance of jurisdiction and venue concepts.
4. Know the roles the Supreme Court plays in our legal system.
5. Be able to work with and explain the concepts of standing and justiciability.

## Nutz and Boltz

Nutz and Boltz encompass a wide variety of charts, graphs, and tables expressly singled out to highlight “road maps” for students to easily grasp the topic.

The pedagogical elements of the text are superior. In particular the Nutz & Boltz sections which I believe the students will relate to easily and provide key lynch points for understanding the connections between theoretical and practical applications of legal theory.

*Ronald J. Cereola*  
*James Madison University*

### Nutz and Boltz What Is a Magistrate in the Federal Court System and What Do They Do?

According to the website for the U.S. judiciary (<http://www.uscourts.gov>),

A U.S. magistrate judge is a judicial officer of the district court and is appointed by majority vote of the active district judges of the court to exercise jurisdiction over matters assigned by statute as well as those delegated by the district judges. The number of magistrate judge positions is determined by the Judicial Conference of the United States, based on recommendations of the respective district courts, the judicial councils of the circuits, and the Director of the Administrative Office of the U.S. Courts. A full-time magistrate judge serves a term of eight

years. Duties assigned to magistrate judges by district court judges may vary considerably from court to court.

On the criminal side, one of the main tasks of magistrates is to sign *search and arrest warrants* upon a showing of probable cause by a law enforcement officer. In civil procedure, magistrates perform a number of tasks including conducting a civil trial, if both parties agree. Mainly, magistrates are in a subordinate position relative to federal district court judges and assist as requested. The Federal Rules of Civil Procedure (discussed in Chapter 3) refer to “magistrates” 46 times.

## International Perspectives

With the heightening importance of global issues, the International Perspective boxes highlight the impact of these topics. Again, the text also includes an entire chapter devoted to jurisdiction and enforcement of intellectual property rights.

### International Perspective

The fact that U.S. law under the CDA exempts ISPs from most liability associated with republishing defamatory material does not resolve the issue of ISP liability for defamation. A businessman in Australia alleges he was defamed by the Dow Jones and Co. based on an article that appeared in the business periodical *Barron's* and on the Internet. The highest court in Australia refused to dismiss the case. The defendant, Dow Jones Co., claims that if this suit can go forward, it is possible that it will be liable for defamation [suits in locales spanning the globe] from Afghanistan to Zimbabwe. The fact that the Internet is a worldwide [communications vehicle] may make actions that were formerly local now carry worldwide legal liability throughout 190, and counting, nations.

defamation—could set a precedent and affect publishers and Web sites that post articles in the 190 nations that allow defamation cases.

“This is a significant ruling in that it could push publishers into having to consider every conceivable defamation law in the world before posting something online,” said **CBSNews.com Legal Analyst Andrew Cohen**. “On the other hand, it still is enormously difficult to collect upon a foreign judgment even if these Internet plaintiffs win, so the news isn’t all that dire for online sites.”

The High Court of Australia unanimously dismissed an appeal by Dow Jones & Co. aimed at stopping a defamation suit in Australia by mining magnate Joseph Gutnick.



## Cyberlaw Developments

Cyberlaw Developments spotlight emerging and ongoing legal issues due to the influence of technology and the internet.

## Cyberlaw Developments Electronic Filing

The following is an excerpt of a thought-provoking article by Robert Plotkin on the issue of using online and electronic resources to make more efficient some basic litigation activities.

### ELECTRONIC COURT FILING: PAST, PRESENT, AND FUTURE

by Robert Plotkin, *LexisONE*<sup>SM</sup> Contributor, November 2000

Despite the growing use of computers in the legal profession, authoring and filing legal pleadings remains a labor-intensive process that has yet to fully benefit from the potential for automation offered by recent advances in computer technology. Efforts are underway, however, to computerize virtually every aspect of court filing and case management.

Several courts and government agencies have already begun to supplement or replace their paper-based filing systems with electronic filing systems that allow pleadings to be filed over the Internet. Some systems also allow parties to access their case files and the court's docket over the Internet. These early systems, although rudimentary, are already facilitating interactions with the courts and are allowing attorneys and courts to recognize significant cost savings. The electronic filing systems of tomorrow will further automate the filing process and integrate computer systems for filing, case management, docketing, storage, and security.

## Ethical Challenges

### Ethical Challenges Should Settlements Be Secret?

#### CONFIDENTIAL SETTLEMENTS

In the year 2000, the Firestone/Bridgestone Tire Company engaged in a massive recall of tires it had manufactured and sold for several years prior to the recall. This was a consequence of a tire separation problem that had resulted in a large number of accidents, which in turn had resulted in many serious injuries and deaths. Firestone/Bridgestone was the target of numerous suits over this problem, producing litigation that is still ongoing, with the public widely informed of the defective tire problems this manufacturer was experiencing. A not surprising result of this information was a dramatic decline in tire sales enjoyed by this manufacturer.

Later in the year, there were indications that Goodyear Tire Company had experienced some of the same problems that Firestone/Bridgestone had, but that Goodyear had quietly settled the cases that resulted from its tire failures, including in all settlements confidentiality requirements that prevented any release of information on a tire failure, a resulting accident, or any settlement reached. Goodyear also had been successful in having court records sealed and kept secret in the few tire failure cases that had not settled but had gone to court.

Goodyear was accused of engaging in a "secret recall" of its allegedly defective tires, with generous replacement policies on those tires, and of hiding from the public information on dangers from certain

of its tires. Near the end of the year (2000), two groups, the Trial Lawyers for Public Justice (TLPJ) and Consumers for Auto Reliability and Safety (CARS), sought public access to sealed records on Goodyear tire failure cases. A TLPJ spokesman said that "This is the latest disturbing example of court secrecy being used to hide potential dangers to the public" and "Dozens of people were killed or maimed before Firestone's and Bridgestone's tires were recalled because protective orders prevented the public and the government from learning the truth." TLPJ's challenge to make sealed records of cases public was part of its "Project ACCESS," a campaign against court secrecy.

1. How do you suppose Goodyear sales fared in 2000 relative to those of Firestone?
2. What role would confidentiality clauses have played in protecting Goodyear's market position?
3. Is it fair to the public to restrict the availability of information on potentially dangerous conditions by requiring confidentiality in settled cases involving products that could be safety threats?
4. Explain the difference in what you may think is legal for a firm in requiring confidentiality and what is ethical.
5. Is it possible that outlawing secrecy in settlements would result in fewer voluntary settlements and more trips to court? Explain.

Although one entire chapter is devoted to the subject of ethics, these boxes are interspersed throughout each chapter to bring the issue home within the context of the chapter discussion.

Almost every one is a great addition to the chapter. I began to look forward to them at the end of the chapter.

Linda Christiansen  
Indiana University Southeast



## Key Terms and Marginal Definitions

The key terms of the chapter can be found in the margins defined, and listed at the end of the chapter with page numbers signifying their placement in the chapter.

### Key Terms

act of interstate commerce, 128	executive, 121	rational basis test, 138
Bill of Rights, 122	federalism, 122	reasonable expectation of privacy, 148
Commerce Clause, 123	First Amendment, 141	roughly apportioned, 128
consent is given, 148	Fourth Amendment, 147	self-incrimination, 148
discriminates against interstate commerce, 128	government takings, 133	strict scrutiny, 136
eminent domain, 133	intermediate scrutiny, 138	Supremacy Clause, 122
equal protection, 136	judicial, 121	Tenth Amendment, 124
excessive burden on interstate commerce, 128	legislative, 121	veto, 121
	preemption, 130	
	procedural due process, 135	
	random searches, 148	

### Power of Eminent Domain

**government takings**  
An action of the government in which private property is taken from a citizen.

**eminent domain**  
The power of government to take private land for public use upon paying fair compensation.

Both state and federal governments have the power to take property from citizens, but only if the **government taking** is for public use with just compensation provided to the property owner. At the federal level, the Fifth Amendment states, "... nor shall private property be taken for public use without just compensation." A state or the federal government can force property owners to part with their property in a condemnation, or **eminent domain**, proceeding, but there are constitutional constraints to ensure that

1. The acquisition of property is for the public good.
2. The property owner is not individually oppressed by, in effect, having to pay for public improvements.

So, if a government decides to build a public road or highway and someone's property is in the way, the government can condemn the property and build the road over the property. Landowners can challenge condemnation proceedings on either of two grounds: first, that

I do like the "Sidebar Terms" at the end of the chapter. Students are more apt to read these than go to the glossary if they don't understand a certain term.

*Kenneth Taurman*  
*Indiana University Southeast*

## Questions for Review and Analysis

A useful review tool, students can use these for review purposes, or professors can assign them as homework, or even to initiate class discussion.

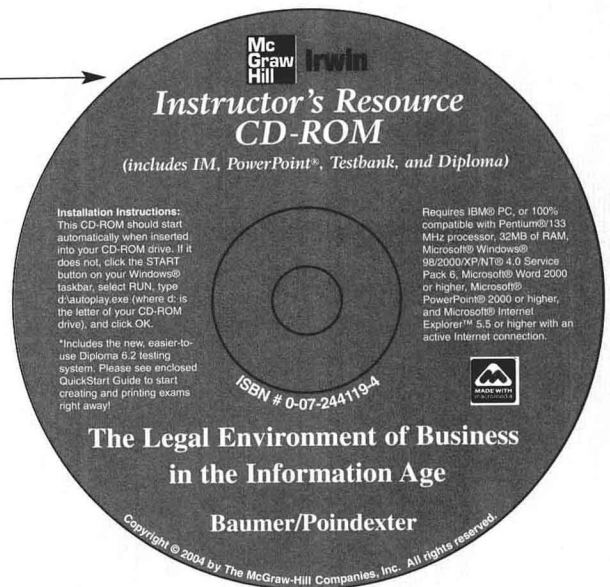
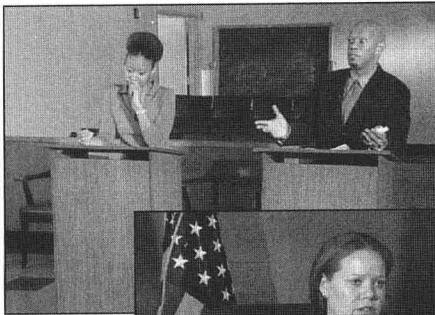
### Questions for Review and Analysis

1. Discuss the economic factors that increasingly cause firms to make use of ADR relative to court litigation.
2. Why does the act of structuring negotiations often create a climate conducive to achieving a settlement?
3. Explain how the line can get blurred between assisted settlement negotiations and outright mediation?
4. Explain why it is both good and bad that (a) arbitrators are not bound by precedent and (b) their decisions are not appealable in many situations.

# Instructor Supplements

## Instructor's Resource CD-Rom

Contains everything you need to organize an effective classroom experience—Instructor's Manual, Computerized Testbank, and PowerPoint slide presentation. See the Preface for further information on what's inside these supplements.

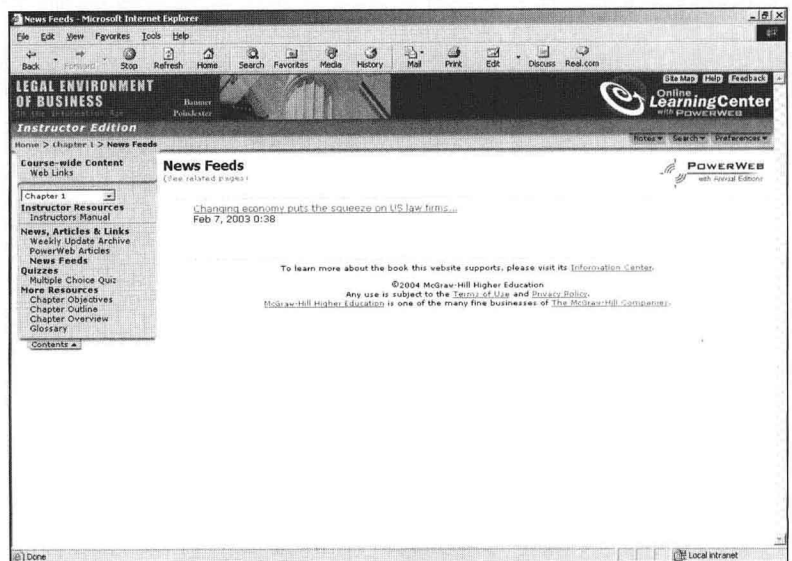


## VHS Video Collection

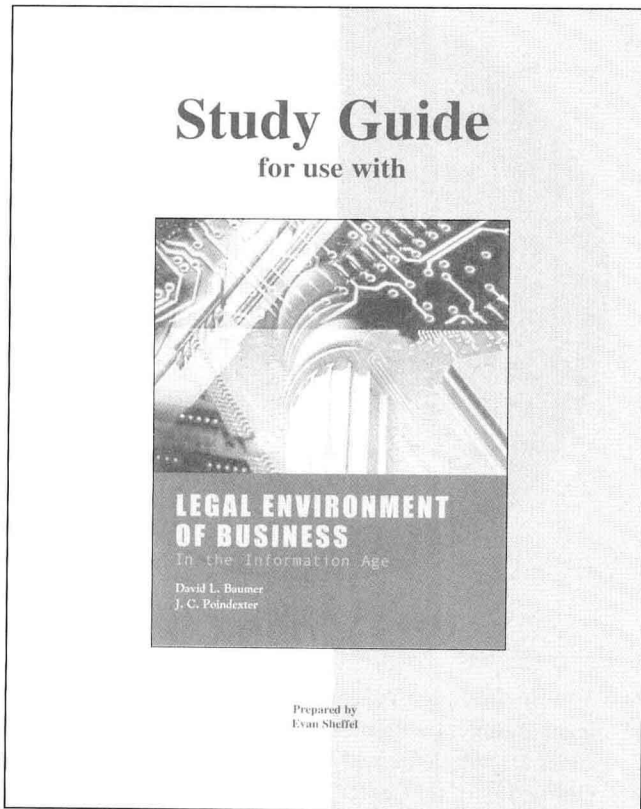
You Be the Judge Videos put your students in a live legal argument with no script. These 10 hypothetical cases are supplemented by additional material on the Online Learning Center where you will find evidence, background, and questions to help you generate a verdict on the case. To get the videos and material as an interactive experience for your student, ask your sales representative about the You Be the Judge DVD.

## Online Learning Center [www.mhhe.com/baumerLEOB](http://www.mhhe.com/baumerLEOB)

A one-stop shopping website with additional course materials, supplements, links, and exercises found chapter-by-chapter. With the addition of our newly-integrated PowerWeb feature, students and professors alike have access to peer-reviewed content, including up-to-date articles from leading periodicals and journals, current news, and weekly updates with accompanying assessments, exercises, and study tips. Ask your sales representative how you can obtain access to the PowerWeb feature for your students.



# Student Supplements



## Student Study Guide

A compelling study tool for your students, the Study Guide revisits the Learning Objectives from the text, offers a chapter outline with tips and questions to highlight certain difficult or confusing topics, and reviews chapter material with multiple choice, fill-in-the-blanks, and “issue development” essay questions.

## Online Learning Center [www.mhhe.com/baumerLEOB](http://www.mhhe.com/baumerLEOB)

As explained before, the OLC is a one-stop shopping website with additional course materials, quizzes, links, and exercises found chapter by chapter. With the addition of our newly integrated PowerWeb feature (a great term project resource), students have access to peer-reviewed content, including up-to-date articles from leading periodicals and journals, current news, and weekly updates with accompanying assessments, exercises, and study tips.

