

# *Contemporary* BUSINESS LAW

THIRD EDITION



*Henry R. Cheeseman*

Third Edition

# CONTEMPORARY BUSINESS LAW

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*Love measured  
by time  
will not  
cast clouds  
nor paint rainbows*

*Love measured  
by fire  
will not  
sow the season  
nor awaken harvest*

*Love measured  
at the moment  
escapes possession  
and endures  
eternity*

# PREFACE TO THE THIRD EDITION



*Contemporary Business Law (Third Edition)* provides complete coverage of traditional business law topics and addresses the legal environment in which business must operate. Because the study of the legal environment of business is as much a study of history, ethics, social responsibility, policy, diversity, economics, and technology as it is a study of the laws themselves, I have integrated these issues into my presentation of business law topics. Over 100 enrichment boxes throughout the book focus on contemporary, ethical, international, and technological issues. Every case ends with questions about the ethical and business implications of the issue before the court. More space is devoted to the fundamental concepts of ethics, environmental, government regulation, telecommunications, and international topics than in other books, allowing this book to meet the AACSB's standards on ethics and globalization in the curriculum.

*Sine Leges Nulla  
Libertas* ("There is no  
freedom without law.")

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## FOCUSES OF THE BOOK

### *Traditional Business Law*

This book first presents topics used in traditional business law courses. Unit one contains seven chapters that introduce the student to the legal environment of business. The first chapter discusses American legal heritage and constitutional law. Chapter 2 is a separate chapter on ethics and social responsibility of business. Chapter 3 discusses the litigation process, and alternative dispute resolution.

Chapter 4 covers traditional tort law, including intentional torts, negligence, and strict liability. Chapter 5 covers intellectual property rights laws and telecommunications law. Chapter 6 covers crimes, including white collar and business crimes. A chapter devoted exclusively to international law, "International Law and Dispute Resolution" (chapter 7), completes this unit.

Unit two contains six chapters that cover the common law of contracts. This is traditional contract law, modernized with recent cases.

Unit three, titled "Commercial Transactions," includes eight chapters. The primary focus of this unit is the Uniform Commercial Code (UCC). Two chapters focus on sales and lease contracts, one on warranty and product liability law, and three on negotiable instruments, checks, and the banking system. The final two chapters of this unit discuss secured transactions, lender liability, credit, and bankruptcy.

Unit four, "Business Organizations," begins with a chapter on agency, and also one on sole proprietorships and franchises. The third chapter covers partnerships, both general and limited partnerships, limited liability partnerships, and limited liability companies. The following four chapters cover the formation and financing of corporations, rights and liability of corporate officers and directors, mergers and acquisitions, and the issuance of securities by corporations and other businesses.

Unit five consists of five chapters that deal with government regulation. Consumer protection and environmental protection are covered in the first two chapters. The next two chapters

are employment related, dealing with labor law and equal opportunity in employment. The last chapter in this unit covers antitrust law.

Unit six, entitled “Property,” is a three-chapter unit that includes a chapter on personal property and bailments, another chapter on real property and landlord-tenant relationships, and a final chapter on insurance, wills, and trusts.

From the preceding materials a professor can design a business law course that fits the needs of the school and students.

### *The Legal Environment and Government Regulation*

The AACSB’s accreditation standards also require that the *legal environment of business* and *government regulation* be included in the business school curriculum. This book includes the following chapters that specifically cover government regulation of business.

Chapter 5 Intellectual Property Rights—Describes patent, trademark, and copyright laws, and discusses the government regulations of telecommunications, the Internet, and cyberspace

Chapter 21 Bankruptcy and Reorganization—Discusses how the law of bankruptcy regulates creditors’ and debtors’ rights in a bankruptcy proceeding

Chapter 27 Mergers and Acquisitions—Describes how the government regulates hostile takeovers of companies and protects shareholder rights during the merger process

Chapter 28 Securities Regulation and Investor Protection—Discusses federal and state securities laws that (1) mandate disclosure by companies to shareholders and prospective shareholders and (2) prohibit securities fraud

Chapter 29 Consumer Protection—Describes government statutes and regulations that protect consumers from dangerous products and services and fraudulent consumer transactions

Chapter 30 Environmental Protection—Discusses major federal and state laws that protect the environment from harmful air, water, hazardous wastes, and toxic pollution

Chapter 31 Employment and Labor Law—Describes government regulations that protect employee safety and security, including worker compensation laws, labor law, immigration law, and so forth

Chapter 32 Equal Opportunity in Employment—Describes federal and state laws that prohibit discrimination against persons in protected classes by employers

Chapter 33 Antitrust Law—Discusses government regulation of the economy that prohibits certain forms of anticompetitive behavior and unfair methods of competition

Based on the materials presented in this book, the professor can use the book for a traditional business law course or a legal environment course, or both.

### *Ethics and Social Responsibility*

Ethics is integrated throughout the book in three ways: (1) by discussing ethics frequently in the text itself, (2) by asking ethics questions after every case, and (3) by having special boxes entitled “Ethical Perspective” located in all chapters.

Chapter 2 is devoted exclusively to *ethics and social responsibility of business*. The moral theories of Kant and other philosophers are discussed, and then applied to actual cases.

The ethics boxes set forth the facts of real court cases and ask the reader to consider the ethical issues raised in the case. This is the format of *applied ethics*—asking probing ethics questions pertaining to real business situations, rather than using hypothetical cases. For example, in “Joe Camel Exhales” (p. 42), students are asked to apply their understanding of *equity* to a dispute over a controversial advertising campaign. The answer requires students to consider the bounds of fairness in a particular situation.

### *Contemporary Business Law*

One of the primary goals of this book is to review *contemporary* business law concepts and topics. This is done by presenting modern statutory and regulatory law and recent court decisions in (1) the cases and (2) the Contemporary Business Environment boxes. The choice of cases balances contemporary cases against more traditional cases usually taught to illustrate specific concepts.

The Contemporary Business Environment boxes highlight modern legal issues faced by business and also indicate how the law evolves as new business-related issues arise. There is at least one Contemporary Business Environment box in almost every chapter. For example, in “The Reasonable Woman Standard” (p. 797), the court adopted a new legal standard to be applied in sexual harassment cases brought by female plaintiffs.

### *International Law*

Because of the importance placed on international issues in today’s business education, I thoroughly integrate international issues into the presentation in three ways. First, the major legal systems of the world are discussed in chapter 1.

Second, a chapter devoted exclusively to international law (chapter 7) introduces international law, courts, and organizations. This chapter also discusses the U.S. government’s role in foreign affairs, sources of international law, and how international business disputes are resolved.

Third, every chapter has at least one International Perspective box. These boxes focus on specific international issues relevant to the chapter. For example, the intellectual property rights chapter (chapter 5) includes the International Perspective box “International Protection of Intellectual Property Rights” (p. 131).

### *Business Application*

Many of today’s Business Law and Legal Environment textbooks take a too “legalistic” approach to presenting legal topics to business students. This book recognizes that what is important to business students is the *application* of court decisions, statutes, and government regulation to business. In addition to the cases and Contemporary Business Environment boxes presented in the book, I have included two new features in this book that clearly demonstrate the application of law and government regulation to the business environment.

The first new feature is a special box titled, “Business Application.” In these boxes I have taken a modern business law topic and shown how it affects business and business managers and owners. For example, the box entitled “Superfund Low Cleans Carwash Owner” (p. 754) in chapter 30 discusses how a federal court ordered an owner of real property to pay for the cleanup of environmental pollution. Almost every chapter features a Business Application Box.

The second new feature is a box titled “Business Checklist” which appears in each chapter. These boxes are designed to show a business person the laws and regulations she or he should consider when making a business decision and the steps to take to comply with the law. For example, the box entitled “Policies Against Sexual Harassment” (p. 797) sets out an example of a company’s policy against sexual harassment.

These two new features further enhance this book’s underlying pedagogy or showing students how the law affects business and business decision-making.

### *Diversity*

The new AACSB accreditation standards require that issues concerning *diversity* be included in the business school curriculum. This book accomplishes this goal in two ways. First, specific boxes located throughout the book address diversity issues. For example, the box “Feminist Legal Theory” appears in chapter 1 (p. 4).

Second, this book contains a separate chapter that covers equal opportunity in employment. This chapter (chapter 32) discusses the major statutes and court decisions that outlaw discrimination in employment. This chapter discusses Title VII of Civil Rights Act of 1964, the Civil Rights Act of 1991, the Americans With Disability Act of 1990, and other federal and state laws that guarantee equal opportunity to all protected classes. The topics of sexual harassment in the workplace and affirmative action/reverse discrimination are thoroughly covered.

### *Internet and Cyberspace Law*

In recognition of the importance and problems that advances in telecommunication present to business, a new feature titled “Internet and Cyberspace Law” has been added to this book. These cyberspace boxes discuss the enactment of new statutes and the application of existing laws to

such developing fields as intellectual property, computer law, free speech rights, and criminal law. For example, the featured box titled “Broad Free Speech Rights Granted in Cyberspace” in chapter 1 (p. 19) discusses how a federal court granted the highest possible free speech protection under the Constitution to communications over the Internet. These boxes are interspersed throughout the book.

### *Working the Web*

The Internet has become an important and valuable tool in education. Applications have developed over the last few years in education that put more information in the hands of professors and students than at any other time in our history. This book includes Internet materials in the text itself and in the supplements package (more on that later in the preface). Each chapter of the text has a Working the Web section. Working the Web contains URLs and descriptive information about the Web sites. All of the Web sites selected are relevant to the particular chapter. Five or six exercises are also included so that students have the opportunity to apply some of what was learned by exploring the Web sites. These exercises can be used for in-class or homework assignments.

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## DEVELOPMENT OF THE TEXT

Our goal in developing this text has been to provide professors with the kind of business law and legal environment text they are seeking, one that gives students the clearest, most relevant explanation of the fundamental principles of business law and at the same time conveys the fascinating interplay of ethical, social, environmental, and global issues and emerging trends in the law.

To ensure that the text would meet the needs of the students for whom it was written, Prentice Hall assigned a developmental editor, Marsha Leest, to work with me as I was writing the text. Marsha and I labored over each of the 36 chapters of this book and fine-tuned draft after draft until we were sure that each chapter was the best that it could be. As a result, readers of this book will find each chapter interesting and fully comprehensible.

To ensure that the text would be totally accurate and up-to-date, dozens of reviewers read each draft and made hundreds of helpful suggestions for improvement. In addition to the written reviews, a reviewer conference and focus group was held not only to look at the text itself but to focus on broader issues—current trends in the teaching of business law, the strengths and weaknesses of current teaching tools, and the expectations and special needs of today’s students. This input was a major factor in the shaping of this book.

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## PEDAGOGICAL FEATURES

### *Cases*

Cases are the examples in a business law course. They show how the abstractions of the law are actually applied to disputes. For students, cases must clearly illustrate points of law. For professor, cases can be the basis of student exercises that involve the student in the thought process behind the rules of law. In this book and in the supplements that accompany it, Prentice Hall and I have kept these two goals in mind. Approximately 150 cases in the book clearly identify the issue under question, yet retain the voice of the court in the opinions. Each case provides (1) the facts, (2) the issues, (3) the decision, (4) the opinion, and (5) case questions that explore the critical legal thinking, ethical, and business implications of the case.

### *Exhibits*

Because the law has its own forms and documents that are perhaps foreign to the student, this book includes many illustrations of these items. For example, on p. 693 there is a tombstone advertisement of the Walt Disney Company from when it sold debt securities. Most of the exhibits are available to the instructor in the Transparency Masters supplement.



## Chapter Summaries

At the end of each chapter, students will find a detailed chapter summary of the important topics they have just read. The chapter summaries are well organized as a review of the most important topics covered in each chapter. The chapter summaries contain page references that refer the student to the appropriate page in the text if he or she wishes to review the topic in detail.

## Student Annotations

Students will find the notes placed in the margins helpful as they study each chapter. These annotations draw students to consider important aspects of the topics they are reading—to expand their understanding of the topic and to give study advice. The types of annotations include

- Caution—Notes that alert the reader to a possible misapplication or misperception of the law
- Note—Dates, places, and people important to business law
- Business Brief—Applications that are specific to the functioning of a business

A **running glossary** in the margins helps students learn key terms.

## Critical Legal Thinking Cases

**Critical legal thinking** permeates the book and its supplements. Critical legal thinking is introduced in chapter 1 where the student is presented with a U.S. Supreme Court decision (*Harris v. Forklift Systems, Inc.*) that is analyzed and briefed using the critical legal thinking method. Critical legal thinking questions are posed following each case presented in this book.

Each chapter presents approximately 10 **Critical Legal Thinking Cases** drawn from real-life cases whose facts and situations have been edited and written to test the application of the legal concepts and principles developed in the chapter. These questions can be used for class discussion or as homework assignments. The answers to these questions appear in the *Instructor's Resource Manual*.

## Critical Legal Thinking Writing Assignments

Each chapter ends with a suggested **Critical Legal Thinking Writing Assignment** for the student. The name of the case and the questions the students are to address appear at the end of each chapter. The actual writing assignment cases themselves—which are in the court's language—appear in the Case Appendix to this book and are numbered by chapter. For example, Case A.1 is the writing assignment case for chapter 1.

These writing assignments are designed to teach the student to write better and to apply *critical legal thinking*. The student is to brief the case, including answering the questions posed.

These writing assignments are optional and may be assigned at the discretion of individual professors. The writing assignment cases can be used as homework assignments, group projects, additional cases to cover in class discussions, test questions, or otherwise.

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## TO THE INSTRUCTOR: SUPPLEMENTS

In addition to the text itself, we have assembled a full and dynamic supplements package that is designed to streamline the course preparation and administrative process for instructors and enrich your student's experience and exposure to the ideas and implications of the law for business. The supplements include both print and media components. Contact your Prentice Hall sales representative for examination or desk copies.

## TotaLaw

One thing that you will notice right away is that there is a CD-ROM in the back of this book. Prentice Hall is the first college publisher to include a CD-ROM with every copy of the text for a business law or legal environment of business course. The TotaLaw CD-ROM includes the complete text of 30 of the most important and relevant acts that have made an impact on the

business world. A feature is built in that allows the user to search by keywords. Textbooks have traditionally included appendixes that contain the Constitution, the Uniform Commercial Code, and other important materials, but have always been limited by the amount of space (paper) that this information takes up. TotaLaw is a much deeper resource and will be more convenient for students to use. TotaLaw is free with each new copy purchased! TotaLaw is easy to load and to use, but feel free to contact your Prentice Hall sales representative for a personal demonstration.

### *Custom Video Series*

Starting this fall Prentice Hall will be releasing customized videos that illustrate the important relationship between business, management, and law. The first 10 videos in a series of 15 will be available to adopters of *Contemporary Business Law*. These videos have been carefully planned and developed by a partnership including Prentice Hall Business Publishing's Senior Editor Linda Schreiber and Peter Shedd of the University of Georgia and Prentice Hall's Consulting Editor in Legal Studies in Business. The goal of these videos is to illustrate business law/legal environment concepts in a realistic business setting. The entire series of videos revolves around the activities of a single company and its employees, suppliers, and other associates. Each video is about 10 minutes in length so that they can be easily incorporated in the classroom.

### *Prentice Hall Custom Video Series for Legal Studies in Business*

1. Litigation Process and Alternative Dispute Resolution
2. Constitutional Authority to Regulate Business
3. Torts
4. Ethics in the Legal Environment of Business
5. Contracts: Offer and Acceptance
6. Contracts: Third Party Rights
7. Sale of Goods
8. Product Liability
9. Suretyship
10. Agency
11. Formation/Dissolution of Business Partnership
12. Securities Regulation
13. Employment Discrimination
14. Labor Relations
15. Anti-Trust/Price Discrimination

### *PHLIP/CW-Web Site Support*

**www.prenhall.com/cheeseman** PHLIP is Prentice Hall's Learning on the Internet Partnership; CW is our companion Web site. PHLIP/CW is a virtual learning community—a Web site built and supported by business faculty, including academics from the Legal Studies community. PHLIP/CW includes on-line quizzes for students, bi-weekly current event updates and downloadable supplements for instructors. Complete and unedited cases are available in the student resources section. Faculty and students are supported by actual instructors, through the Faculty Lounge and Talk to the Tutor.

### *On-line Course (WebCT)*

**www.prenhall.com/webct** Prentice Hall offers an on-line course to provide you with a learning option in legal studies. We have preloaded this content into the popular WebCT course-management software. Interested in learning more about this valuable new on-line tool? Contact your Prentice Hall sales representative.

### *Lexis*

Prentice Hall will provide professors who adopt this book with 10 free hours of Lexis, the legal, on-line 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. You can get the ball rolling on your free Lexis account by contacting your local Prentice Hall sales representative.

### *Instructor's Manual*

The Instructor's Manual contains extensive coverage of chapter objectives, overviews, outlines and answers to critical thinking questions, ethics cases, and critical legal writing assignment questions.

### *Study Guide*

This Study Guide contains a wealth of material reinforcing the information presented in the text, including a macro view with an outline of all major topics and a micro view with a concise summary of all detailed information in each chapter. There are three levels of discussion questions—basic recall, application, and critical thinking questions.

### *Test Item File*

This includes multiple-choice, true/false, and fill-in questions; essay questions; and Internet exercises and questions for every chapter. It is available in hard copy as well as in a computerized format. The computerized testing program allows you to generate an exam, administer it in a traditional fashion or on-line, and then evaluate, track, and analyze results.

### *PowerPoint Slides*

These PowerPoint electronic transparencies can be used as part of a classroom computer presentation or printed out to make traditional overhead transparencies.

### *Surfing for Success in Legal Studies: An Internet Guide*

This concise, discipline-specific guide to the Internet can be packaged with the text at no additional cost. This **free** supplement covers frequently asked questions and offers concrete advice on finding your way along the information superhighway.

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## ACKNOWLEDGMENTS

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 contribution to this project.

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- The following reviewers, whose comments, suggestions, and criticisms are seen in the final product:
 

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Edward J. Gac	University of Colorado at Boulder
Scott Sandstrom	College of the Holy Cross
A. David Austill	Union University
Allen J. Simonson	Montclair State University
- My family: Henry B., Florence, Gregory, and Marcia Cheeseman.
- And thanks to Spinner for his companionship and to Los Angeles, California, where most of this book was written.

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.

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

*Henry R. Cheeseman*



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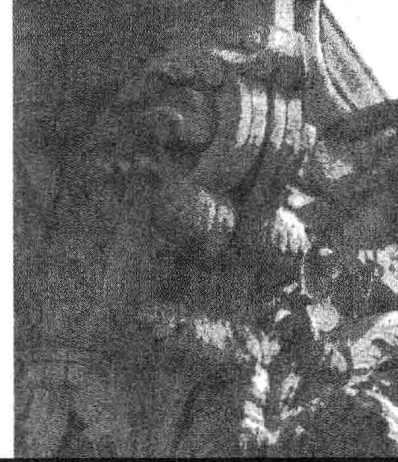
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