

Contemporary Business and Online Commerce Law



Henry R. Cheeseman

Fifth Edition

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Contemporary Business and Online Commerce Law

Legal, Internet, Ethical, and Global Environments,

Fifth Edition

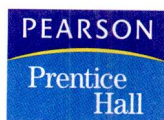


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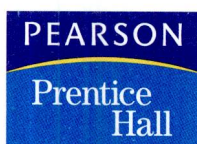
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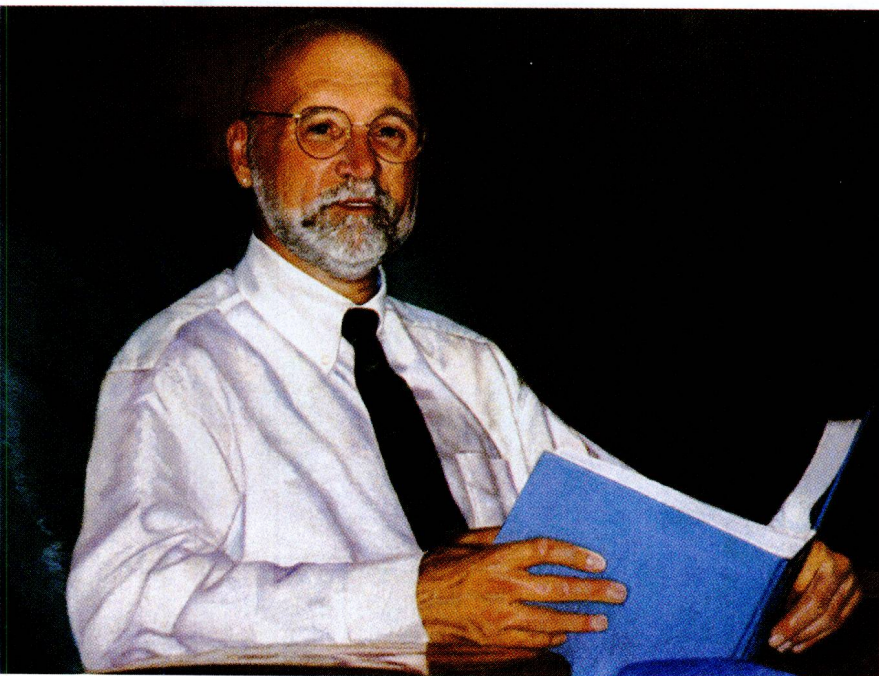
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Autumn breezes toss
Magnolia fragrances
through my bedroom window.

What right do they
have to enter
when you are not here.

About the Author



Henry R. Cheeseman is Clinical Professor of Business Law and Director of the Legal Studies Program at the Marshall School of Business of the University of Southern California (USC), Los Angeles, California.

Professor Cheeseman earned a Bachelor's degree in Finance from Marquette University, Masters of Business Administration (MBA) and Masters of Tax degrees from the University of Southern California, a Juris Doctor (J.D.) degree from the University of California at Los Angeles (UCLA) School of Law, a Masters of Business Administration with emphasis on Law and Economics from the University of Chicago, and a Masters in Law (L.L.M.) degree from Boston University.

Professor Cheeseman earned the "Golden Apple" Teaching Award on many occasions by having been voted the best professor at the Marshall School of Business of the University of Southern California.

He has been named a Faculty Fellow at the Center for Excellence in Teaching at USC by the Dean of the Marshall School of Business. USC's Torch and Tassel Chapter of the Mortar Board has named Professor Cheeseman Faculty of the Month of USC.

Professor Cheeseman writes leading business law and legal environment textbooks that are published by Prentice Hall Publishing Company. These include: *Business Law: Legal, E-Commerce, Ethical and International Environments*; *Contemporary Business and Online Commerce*; *The Legal Environment of Business and Online Commerce*; *Essentials of Contemporary Business Law*; and *Introduction to Law: Its Dynamic Nature*.

Professor Cheeseman is an avid traveller and amateur photographer. The cover and all interior photos for this book have been taken by Professor Cheeseman.

Preface

To the Students

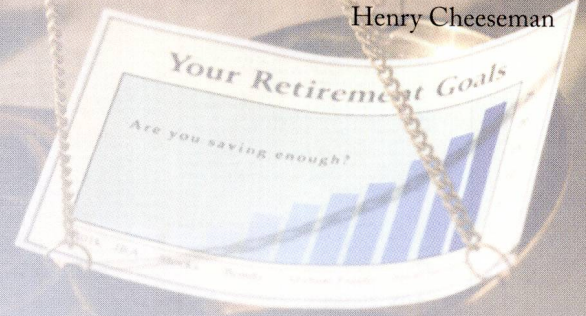
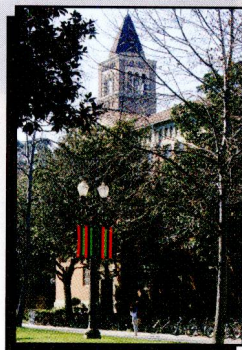
Each semester, as I stand up in front of a new group of business majors in my business law class I am struck by the thought that, cases and statutes aside, I know two very important things that they have yet to learn. The first is that I draw as much from them as they do from me. Their youth, enthusiasm, 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 legal and ethical environment 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 specific language of cases or 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 woman who sued McDonalds for serving her coffee that was too hot and caused her injuries. 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 *Contemporary Business and Online Commerce Law* as well. My goal is to present law and ethics 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 *Contemporary Business and Online Commerce Law*, this fifth edition emphasizes coverage of e-commerce and the Internet as two vital catalysts to the law and a key part of its environment.

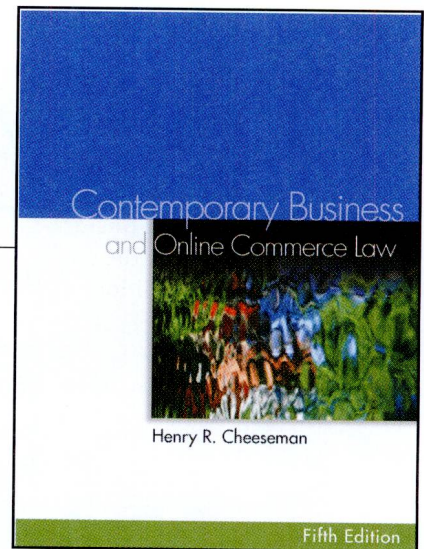
It is my wish that my commitment to these goals shines through in this labor of love, and I hope you have as much pleasure in using it as I have had in creating it for you.

Henry Cheeseman



Making the Most of the Fifth Edition

These cases and boxes focus on the legal and ethical issues businesses, managers, and entrepreneurs face as they start businesses, operate existing enterprises, launch new Internet ventures, and incorporate on-line technologies into their current businesses.



Cases

Cases—Over 75 new cases have been added to the Fifth Edition. Each chapter includes 3 to 6 interesting and lively cases presented in an edited format. The format of each case: Background and Facts, Issue, Language of the Court, Decision and Remedy. Three questions follow each case to promote active learning.



Newton v. Beastie Boys
349 F.3d 591, 2003 U.S. App. Lexis 22635 (2003)
United States Court of Appeals, Ninth Circuit

Background and Facts

James W. Newton, Jr., is an accomplished avant-garde jazz composer and flutist. In 1978, Newton wrote a composition for the song "Choir," a piece for flute and voice that incorporated elements of African-American gospel music. Newton owns the copyright to the composition "Choir." In 1992, the Beastie Boys, a rap and hip-hop group, used six seconds of Newton's "Choir" composition in their song "Pass the Mic" without obtaining a license from Newton to do so. Newton sued the Beastie Boys for copyright infringement. The Beastie Boys defended, arguing that their use

of six seconds of Newton's song was fair use. The district court found that the Beastie Boys' use of Newton's composition was de minimis and therefore fair use. The district court granted summary judgment in favor of the Beastie Boys, and Newton appealed.

Issue

Does the incorporation of a short segment of a copyrighted musical composition into a new musical recording constitute fair use, or is it copyright infringement?

Case 5.3 Fair Use



U.S. SUPREME COURT CASE
Grutter v. Bollinger and the University of Michigan Law School
539 U.S. 306, 123 S.Ct. 2325, 2003 U.S. Lexis 4800 (2003)
Supreme Court of the United States

Background and Facts

Barbara Grutter, a Caucasian resident of the state of Michigan, applied to the Law School of the University of Michigan, a state government-supported institution, in 1996 with a 3.8 undergraduate grade point average and a 161 LSAT score. The Law School received 3,500 applications for a class of 350 students. The Law School used race as one of the factors in considering applicants for admission to law school. The race of minority applicants, defined as blacks, Hispanics, and Native Americans, was considered as a "plus factor" in considering their applications to law school. Caucasians and Asians were not given such a plus factor. Evidence showed that the Law School accepted approximately 35 percent of minority applicants, but that if race was not considered in admissions, only 10 percent of those applicants would have been admitted.

When the Law School rejected Grutter's application, she brought a class action lawsuit against the Law School of the University of Michigan, alleging that its use of a minority's race as a plus factor in admissions violated the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. The district court held in favor of plaintiff Grutter, finding that the Law School's use of race as a factor in admissions violated the Equal Protection Clause. The court of appeals reversed. The U.S. Supreme Court granted certiorari to hear the appeal.

Issue

Does the University of Michigan Law School's use of race as a plus factor in accepting minority applicants for admission to the Law School violate the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution?

Court's Reasoning

The Equal Protection Clause of the Fourteenth Amendment states "no State shall . . . deny to any person within its jurisdiction the equal protection of the laws." The Supreme Court applies a strict scrutiny test whenever the government treats a person differently because of his or her race. To withstand such scrutiny, the government must prove a compelling state interest for such different

treatment of persons based on race. The Supreme Court held that having a diverse student body in an educational institution was a compelling state interest sufficient to justify using a minority applicant's race as a plus factor in selecting a student body.

The Supreme Court held that once a state has demonstrated a compelling state interest for treating persons differently because of their race, the state's action must be narrowly tailored to accomplish this state interest. The Supreme Court stated, "A university may consider race or ethnicity only as a 'plus' in a particular student's file. . . . Here, the Law School engages in a highly individualized, holistic review of each applicant's file, giving serious consideration to all ways an applicant might contribute to a diverse educational environment. The Law School affords this individualized consideration to applicants of all races. . . . The Law School's race-conscious admissions policy does not unduly harm nonminority applicants. We expect that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today."

Decision and Remedy

The U.S. Supreme Court held that the University of Michigan Law School's policy of using race as a plus factor in admitting minority applicants furthers a compelling state interest and is narrowly tailored to accomplish that interest. The Supreme Court affirmed the decision of the court of appeals that held that the Law School's race-conscious admissions policy does not violate the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.

Case Questions

Critical Legal Thinking What is the difference between the U.S. Supreme Court's decision in this case and its decision in the *Gratz v. Bollinger* and the *Regents of the University of Michigan* case? Explain.

Business Ethics Is it socially responsible for the University of Michigan Law School to consider a minority applicant's race as a plus factor in its admissions decisions?

Contemporary Business Is anyone hurt by the University of Michigan Law School's race-conscious admissions policy? Explain.

Case 1.2 Affirmative Action

United States Supreme Court Cases—Over 70 cases of the United States Supreme Court are presented throughout the book. These are the most important and modern cases affecting business that have been decided by the Supreme Court.

Business Ethics

The *ethical environment* of business is covered in many ways in the Fifth Edition. **Chapter 7** “**Ethics and Social Responsibility of Business**,” is just the beginning of the ethics coverage in the fifth edition.

Ethics and Social Responsibility of Business

“Ethical considerations can no more be excluded from the administration of justice, which is the end and purpose of all civil laws, than one can exclude the vital air from his room and live.”

—John F. Dillon
Laws and Jurisprudence of England and America Lecture I (1854)

Chapter Objectives

After studying this chapter, you should be able to:

7. Describe how law and ethics intertwine.

Business Ethics

Sarbanes-Oxley Act Prompts Public Companies to Adopt Code of Ethics

In the late 1990s and early 2000s, many large corporations in the United States were found to have engaged in massive financial frauds. Many of these frauds were perpetrated by the chief executive officers and other senior officers of the companies. Financial officers, such as chief financial officers and controllers, were also found to have been instrumental in creating these frauds. In response, Congress enacted the **Sarbanes-Oxley Act of 2002**, which makes certain conduct illegal and establishes criminal penalties for violations.

In addition, the Sarbanes-Oxley Act prompts companies to encourage senior officers of public companies to act ethically in

their dealings with shareholders, employees, and other constituents. **Section 404** of the Sarbanes-Oxley Act requires a public company to disclose whether it has adopted a **code of ethics** for senior financial officers, including its chief financial officer and principal accounting officer. In response, public companies have adopted codes of ethics for their senior financial officers. Many public companies have included all officers and employees in the coverage of their codes of ethics.

A typical code of ethics follows.

Big Cheese Corporation Code of Ethics

Big Cheese Corporation's mission includes the promotion of professional conduct in the practice of general management worldwide. Big Cheese's Chief Executive Officer (CEO), Chief Financial Officer (CFO), corporate Controller, and other employees of the finance organization and other employees of the corporation hold an important and elevated role in the corporate governance of the corporation. They are empowered and uniquely capable to ensure that all constituents' interests are appropriately balanced, protected, and preserved.

This Code of Ethics embodies principles to which we are expected to adhere and advocate. The CEO, CFO, finance organization employees, and other employees of the corporation are expected to abide by this Code of Ethics and all business conduct standards of the corporation relating to areas covered by this Code of Ethics. Any violation of the Code of Ethics may result in disciplinary action, up to and including termination of employment. All employees will:

- Act with honesty and integrity, avoiding actual or apparent conflicts of interest in their personal and professional relations.
- Provide stakeholders with information that is accurate, fair, complete, timely, objective, relevant, and understandable, including in our filings with and other submissions to the U.S. Securities and Exchange Commission.
- Comply with rules and regulations of federal, state, provincial, and local governments and other appropriate private and public regulatory agencies.

the photographs, JPI produced a line of children's clothes for Wal-Mart that copied the designs, colors, and patterns of Samara's clothing. Wal-Mart then sold this line of children's clothing in its stores, making a gross profit of over \$1.15 million on these clothes sales during the 1996 selling season.

Samara discovered that Wal-Mart was selling the knock-off clothes at a price that was lower than Samara's retailers were paying Samara for its clothes. After sending unsuccessful cease-and-desist letters to Wal-Mart, Samara sued Wal-Mart, alleging that Wal-Mart stole Samara's trade dress (i.e., look and feel) in violation of Section 43(a) of the Lanham Act. Although not finding that Samara's clothes had acquired a secondary meaning in the minds of the public, the district court held in favor of Samara and awarded damages. The court of appeals affirmed. Wal-Mart appealed to the U.S. Supreme Court.

Issue: Must a product's design have acquired a secondary meaning before it is protected as trade dress?

Decision and Remedy

The U.S. Supreme Court held that a product's design has to have acquired a secondary meaning in the public's eye before it is protected as trade dress under Section 43(a) of the Lanham Act. The Supreme Court reversed the decision of the court of appeals.

Case Questions

Critical Legal Thinking What is trade dress? Should it have been protected in this case?

Business Ethics Even though Wal-Mart's conduct was ruled legal, was it ethical?

Contemporary Business Before reading this case, had you heard or read about Samara's children's clothing?

More than 35 “**Business Ethics**” boxes use issues from real companies to highlight the importance of ethics in making business decisions.

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

Business Ethics Cases

7.1 Business Ethics The Warner-Lambert Company has manufactured and distributed Listerine antiseptic mouthwash since 1879. Its formula has never changed. Ever since Listerine's introduction, the company has represented it as being beneficial in preventing and curing colds and sore throats. Direct advertising of these claims to consumers began in 1921. In 1971, Warner-Lambert spent \$10 million advertising these claims in print media and in television commercials.

In 1972, the Federal Trade Commission (FTC) filed a complaint against Warner-Lambert, alleging that the company engaged in false advertising in violation of federal law. Four months of hearings were held before an administrative law judge that produced an evidentiary record of more than 4,000 pages of documents from 46 witnesses. In 1975, after examining the evidence, the FTC issued an opinion which held that the company's representations that Listerine prevented and cured colds and sore throats were false. The U.S. court of appeals affirmed.

Did Warner-Lambert act ethically in making its claims for Listerine? What remedy should the court impose on the company? Would making Warner-Lambert cease such advertising be sufficient? (*Warner-Lambert Company v. Federal Trade Commission*, 562 F.2d 749, 1977 U.S. App. LEXIS 11599 (D.C. Cir. 1977))

7.2 Business Ethics Stanford University is one of the pre-eminent research universities in the country. Stanford has an operating budget of approximately \$400 million a year and receives about \$175 million in direct research funding from the federal government. In addition, the government reimburses the university for certain overhead and indirect costs associated with the research. This amounts to about \$85 million a year.

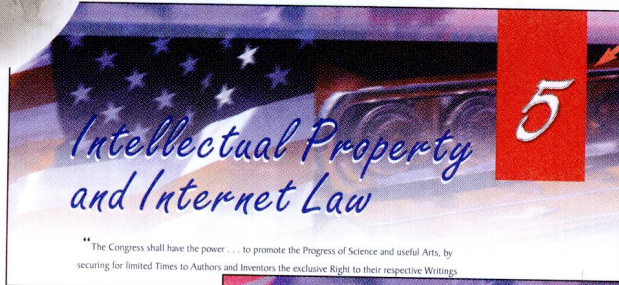
In 1990, a navy accountant took a close look at Stanford's books and alleged that the university may have overstated overhead and indirect costs associated with research by as much as \$200 million during the 1980s. The university provided a house for its president, Donald Kennedy. Some of the expenses charged against overhead for research were (a) \$3,000 for a cedar-lined closet at the president's home, (b) \$4,000 for the president's 1987 wedding reception, (c) \$7,000 in bed sheets and table linens, and (d) \$184,000 in depreciation on a yacht donated to Stanford's sailing program. Did the administration of Stanford act ethically in charging these expenditures as overhead against research? What penalty should be assessed?

7.3 Business Ethics The Johns-Manville Corporation was a profitable company that made a variety of building and other products. It was a major producer of asbestos, which was used for

Each chapter ends with additional business ethics case questions.

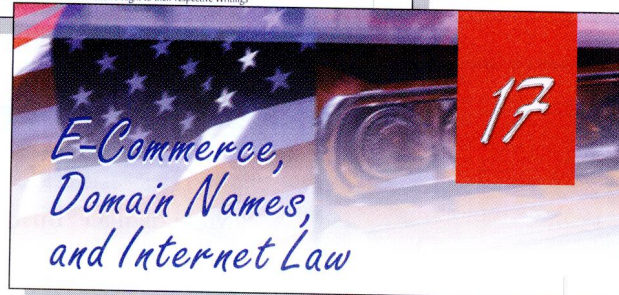
E-Commerce & Information Technology

WWW



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

- Chapter 5 "Intellectual Property and Internet Law"
- Chapter 17 "E-Commerce, Domain Names, and Internet Law"



Over 45 "Online Commerce & Internet Law" boxes focus on the 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.

Online Commerce & Internet Law *Electronic Signatures Recognized by Federal Law*

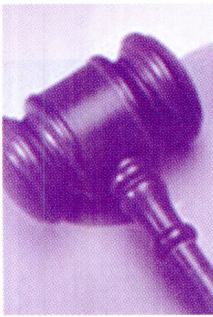
In the past, signatures have been hand-applied by the person signing the document. No more. In the electronic commerce world, it is now "What is your mother's maiden name?" "Slide your smart card in the sensor" or "Look into the iris scanner." But are electronic signatures sufficient to form an enforceable contract? In 2000, the federal government stepped into the breach and enacted the **Electronic Signature in Global and National Commerce Act**.

One of the main features of this federal law is that it recognizes an electronic signature, or e-signature. The act gives an e-signature the same force and effect as a pen-inscribed signature on paper. The act is technology neutral; however, in that the law does not define or decide which technologies should be used to create a legally binding signature in cyberspace. Loosely defined, a digital signature is some electronic method that identifies an

individual. The challenge is to make sure that someone who uses a digital signature is the person he or she claims to be. The act provides that a digital signature can basically be verified in one of three ways:

1. By something the signatory knows, such as a secret password, pet's name, and so forth.
2. By something a person has, such as a smart card, which looks like a credit card and stores personal information.
3. By biometrics, which uses a device that digitally recognizes fingerprints or the retina or iris of the eye.

The verification of electronic signatures is creating a need for the use of scanners and methods for verifying personal information. ■



Contemporary Environment

The 45-plus “**Contemporary Environment**” boxes recognize that not all of the modern challenges facing businesses are Internet-related. These boxes explore other types of legal issues currently confronting businesses.

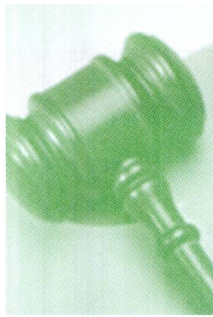
Contemporary Environment Department of Homeland Security

On September 11, 2001, the World Trade Center buildings in New York City were destroyed and the Pentagon in Washington, D.C., was damaged by terrorist attacks. After the attacks, President George W. Bush issued an executive order creating the Office of Homeland Security. The president called for the office to be made into a Cabinet-level agency. Congress responded by enacting the **Homeland Security Act of 2002**, which created the Cabinet-level **Department of Homeland Security (DHS)**. The creation of the DHS is the largest government reorganization in over 50 years.

The act placed 22 existing federal agencies with more than 180,000 employees under the umbrella of the DHS. The DHS is the second largest government agency, after the Department of Defense. The DHS contains the Bureau of Customs and Border Protection, the Bureau of Citizenship and Immigration Services, the U.S. Secret Service, the Federal Emergency Management Agency, the Federal Computer Incident Response Center, the National Domestic Preparedness Office, the U.S. Coast Guard,

and portions of the Federal Bureau of Investigation, Treasury Department, Commerce Department, Justice Department, and other federal government agencies.

The mission of the DHS is to prevent domestic terror attacks, reduce vulnerability to terror attacks, minimize the harm caused by such attacks, and assist in the recovery if a terrorist attack occurs. The DHS provides services in the following critical areas: (1) border and transportation security, including protecting airports, seaports, and borders, and providing immigration and visa processing; (2) chemical, biological, radiological, and nuclear countermeasures, including metering the air for biological agents and developing vaccines and treatments for biological agents; (3) information analysis and infrastructure protection, including protection of communications systems, power grids, transportation networks, telecommunications, and cyber systems; and (4) emergency preparedness and response to terrorist incidents, including training first responders and coordinating government disaster relief. ■



International Law

Chapter 39 “**International and Comparative Law**,” is devoted exclusively to coverage of international laws, courts, organizations, dispute resolution, and regional trade agreements.

UNFPA / The Global Environment

39

International and Comparative Law

“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 jural quality.”

—Justice Cardozo
New Jersey v. Delaware, 298 U.S. 361, 54 S.Ct. 407, 834 U.S. L.Ed. 973 (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.

International Law China Joins the WTO

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. Most of China's businesses were state owned, while those in the United States were privately owned under a capitalist system. For over a decade, these two countries engaged in on-again, off-again trade negotiations. Then in November 1999 they formed 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.

The China-U.S. trade agreement was a prelude to China's trade agreements with other countries. These trade agree-

ments supported China's application to join the WTO. In 2002, China became a member of the WTO. China's entry into the WTO makes it a full partner in the world's trading system.


China's entry into the WTO is not without costs. In the United States, labor unions complain that U.S. manufacturing jobs will be lost to China, while environmentalists complain that little is being done to protect the environment from an industrialized economy the size of China's. In China, workers at state-owned enterprises might lose their jobs to foreign capitalist companies that can produce goods and services more efficiently, and China's already impoverished farmers may be harmed by cheap farm products imported from other countries. ■

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



Landmark Case

Landmark Case—“Landmark Case” boxes highlight the most important cases and statutes that have shaped the law in the United States.



Landmark Case

Brown v. Board of Education

When the original 13 states ratified the Constitution of the United States in 1788, it created a democratic form of government and granted certain rights to its people. But all persons were not treated equally, as many people, including drafters of the Constitution such as Thomas Jefferson, owned African American slaves. It was more than 75 years before the Civil War was fought between the northern states and the southern Confederate states over the preservation of the Union and slavery. Slavery was abolished by the **Thirteenth Amendment** to the Constitution in 1865. In addition, the **Fourteenth Amendment** of 1868 provided that no state shall “deny to any person within its jurisdiction the equal protection of the laws.” The original intent of this amendment was to guarantee equality to freed African Americans.

But equality was denied to African Americans for years to come. This included discrimination in housing, transportation, education, jobs, service at restaurants, and other activities. In 1896, the U.S. Supreme Court decided the case of **Plessy v. Ferguson**. In that case, the state of Louisiana had a law that provided for separate but equal accommodations for African American and white railway passengers. An African American passenger challenged the state law. The Supreme Court held that the “separate but equal” state law did not violate the Equal Protection Clause of the Fourteenth Amendment. The “separate but equal” doctrine was then applied to all areas of life, including public education. Thus, African American and white children attended separate schools, often with unequal facilities.

It was not until 1954 that the U.S. Supreme Court decided a case that challenged the separate but equal doctrine as it applied to public elementary and high schools. In **Brown v. Board of Education**, a consolidated case that challenged the separate school systems of four states—Kansas, South Carolina, Virginia, and Delaware—the Supreme Court decided to revisit the separate but equal doctrine announced by its forerunners in another

Text

The text of the fifth edition covers comprehensive legal concepts for a business law and legal environment course. The text is written in clear, understandable language for university and college students.

The World Trade Organization (WTO)

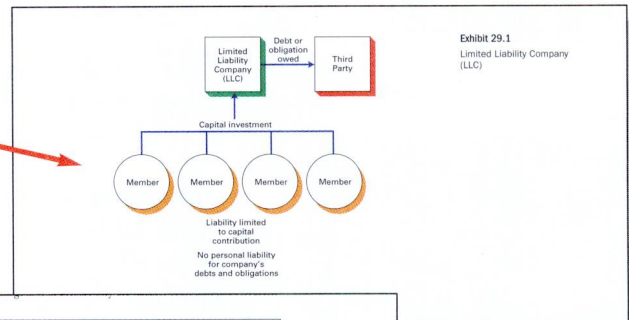
In 1995, the **World Trade Organization (WTO)** was created as part of the Uruguay Round of trade negotiations on the *General Agreement on Tariffs and Trade (GATT)*. GATT is a multilateral treaty that establishes trade agreements and limits tariffs and trade restrictions among its more than 130 member nations.

The WTO is an international organization whose headquarters is located in Geneva, Switzerland. WTO members have entered into many trade agreements among themselves, including international agreements on investments, sale of goods, provision of services, intellectual property, licensing, tariffs, subsidies, and the removal of trade barriers.

The WTO, which has been referred to as the “Supreme Court of Trade,” has become the world’s most important trade organization. The WTO has jurisdiction to enforce the most important and comprehensive trade agreements in the world among its more than 130 member nations. Many herald the WTO as a much-needed world court that can peacefully solve trade disputes among nations.

Additional Features

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



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

Concept Summary: Types of Monetary Damages

Type of Damage	Description
Compensatory	Compensates a nonbreaching party for the loss of a bargain. It places the nonbreaching party in the same position as if the contract had been fully performed.
Consequential	Compensates a nonbreaching party for foreseeable special damages. The breaching party must have known or should have known that these damages would result from the breach.
Liquidated	Agreement by the parties in advance that sets the amount of damages recoverable in case of breach. These damages are lawful if they do not cause a penalty.
Nominal	Damages awarded against the breaching party even though the nonbreaching party has suffered no actual damages because of the breach. A small amount (e.g., \$1) is usually awarded.

Working the Web Internet Exercises—at the end of each chapter, these exercises require students to work through interactive web-based activities.

Internet Exercises and Case Questions

Activities

- For a discussion of the Federal Arbitration Act, featuring Barbie, Elvis, and Coca-Cola, see cyberlaw.harvard.edu/property/respect/antibarbie.html.
- For an overview of the Federal Electronic Signatures Act, explore the law review article "Are Online Business Transactions Executed by Electronic Signatures Legally

Binding?" at www.law.duke.edu/journals/dlter/Articles/2001dltr0005.html.

- Domain name dispute resolution procedures are presented in great detail at web.law.harvard.edu/odrp/library.html. Check this site for everything from an overview to sample pleading forms.

Critical Legal Thinking Cases at the end of each chapter encourage the application of students' analytical skills.

Critical Legal Thinking Cases

37.1 Subsurface Rights In 1883, Isaac McIlwee owned 100 acres of land in Valley Township, Guernsey County, Ohio. In that year, he sold the property to Akron & Cambridge Coal Company (Akron & Cambridge) in fee simple but reserved in fee simple "the surface of all said lands" to himself. Over the years, the interests in the land were transferred to many different parties. As of 1981, the Mid-Ohio Coal Company owned the rights originally transferred to Akron & Cambridge, and Peter and Irene Minnich owned the rights reserved by Isaac McIlwee in 1883. The Minnichs claim they possess subsurface rights to the property except for coal rights. Who wins? [Minnich v. Guernsey Savings and Loan Company, 521 N.E.2d 489, 1987 Ohio App. Lexis 10497 (Ohio App. 1987)]

37.2 Life Estate and Remainder Baudilio Bowles died testate. He will devised to his sister, Juliana B. Vigil, "one-half of any income, rents, or profits from any real property located in Bull Creek or Colonia, New Mexico." The will contained another clause that left to his children "my interest in any real property owned by me at the time of my death, located in Bull Creek and/or Colonia, San Miguel de Allende, Mexico, in both devises is the same property."

was probated. Her heirs claim a one-half ownership interest in the real property. Bowles's children asserted that they owned all his property. Who wins? [In re Matter of the Estate of Bowles, 764 P.2d 510, 1988 N.M.App. Lexis 93 (N.M. App. 1988)]

37.3 Reversion In 1941, W.E. and Jennie Hutton conveyed land they owned to the Trustees of Schools of District Number One of the Town of Allison, Illinois (School District), by warranty deed "to be used for school purpose only; otherwise to revert to Grantor." The School District built a school on the site, commonly known as Hutton School. The Huttons conveyed the adjoining farmland and their reversionary interest in the school site to the Jacquins, who in turn conveyed their interest to Herbert and Betty Mahrenholz in 1959. The 1.5-acre site sits in the middle of Mahrenholz's farmland. In May 1973, the School District discontinued holding regular classes at Hutton School. Instead, it used the school building to warehouse and store miscellaneous school equipment, supplies, unused desks, and the like. In 1974, Mahrenholz filed suit to quiet title to the school property to themselves. Who wins? [Mahrenholz v. County Board of

Briefing the Case Writing Assignments at the end of each chapter give students experience in briefing cases.

The Raiders played their home games in Oakland, California. The owners of the Raiders decided to move the team from Oakland to Los Angeles, California, to take advantage of the greater seating capacity of the Los Angeles Coliseum, the larger television market of Los Angeles, and other economic reasons. The renamed team was to be known as the Los Angeles Raiders. The city of Oakland brought an eminent domain proceeding in court to acquire the Raiders as a city-owned team. Can the city of Oakland acquire the Raiders through eminent domain? Is it socially responsible for a professional sports team to move to another location? [City of Oakland,

U.S.C. § 700]. Certain individuals set fire to several U.S. flags on the steps of the U.S. Capitol in Washington, DC, to protest various aspects of the federal government's foreign and domestic policy. In a separate incident, other individuals set fire to a U.S. flag to protest the act's passage. All of these individuals were prosecuted for violating the act. The district courts held the act unconstitutional, in violation of the defendant's First Amendment free speech rights, and dismissed the charges. The government appealed to the U.S. Supreme Court, which consolidated the two cases. Who wins? Does the flag burner exhibit any morals? [United States v. Eichman, 496 U.S. 310, 110 S.Ct. 2404, 1990 U.S. Lexis 3087 (1990)]

Chapter Summaries appear at the end of each chapter. These summaries help students reinforce the concepts covered in each chapter.

Chapter Summary

Constitution of the United States of America, p. 25

The U.S. Constitution

The Constitution consists of 7 articles and 26 amendments. It establishes the three branches of the federal government, enumerates their powers, and provides important guarantees of individual freedom. The Constitution was ratified by the states in 1788.

Basic Constitutional Concepts

- Federalism.** The Constitution created the federal government. The federal government and the 50 state governments and Washington, D.C. share powers in this country.
- Delegated powers.** When the states ratified the Constitution, they delegated certain powers to the federal government. These are called *enumerated powers*.
- Reserved powers.** Those powers not granted to the federal government by the Constitution are reserved to the states.
- Separation of powers.** Each branch of the federal government has separate powers. These powers are:
 - Legislative branch—power to make the law.
 - Executive branch—power to enforce the law.
 - Judicial branch—power to interpret the law.
- Checks and balances.** Certain checks and balances are built into the Constitution to ensure that

An Integrated Supplements Package

To ensure consistency of style, approach, and coverage among the key *print* and *online supplements*, these critical pieces were created by an author team working in conjunction with Henry Cheeseman. The supplements include:

Companion Web site Access at www.prenhall.com/cheeseman. This Web site will contain an Online Study Guide, including true/false and multiple choice questions, as well as PowerPoint presentations for each chapter. Also available is the **Business Law Case Library**, featuring regularly updated cases covering the key topics in most business law courses, including consumer protection, cyberlaw, and securities. Cases include actual legal decisions as well as hypothetical legal situations with questions for students. Answers to the hypothetical cases are provided. In addition, the business law timeline places all of the significant legal decisions, legislation, and other legal events on an easy-to-use interface.

Instructor's Manual A comprehensive outline of each text chapter. Also included are terms with definitions, chapter objectives, a key questions checklist, and sample syllabi.

Test Item File A bank of questions specially designed to aid in the preparation of tests. Each question includes a corresponding difficulty level, enabling the easy creation of tailor-made testing material.

TestGen Test management software containing all the material from the Test Item File. This software is completely user-friendly and allows instructors to view, edit, and add test questions with a few clicks of the mouse.

PowerPoints A ready-to-use PowerPoint slideshow, designed for classroom presentation. Use "as-is," or edit content to fit your individual class needs.

Study Guide A student aid designed to facilitate learning by enforcing key concepts. Each chapter contains a chapter overview, a list of objectives, and an explanation of the practical applications of each chapter. Also included is a "helpful hints" section and a sample quiz in addition to several exercises.

Instructor's Resource Center on CD A compilation of instructor's tools, including the Instructor's Manual, PowerPoints, Test Item File, and TestGen.

Enron Case Study This brief case explores the Enron debacle and the legal implications that are surrounding the case. It can be packaged with the text at no additional cost.

Acknowledgments

When I first began writing this book, I was a solitary figure researching cases and statutes in the law library and online, 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.

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

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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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