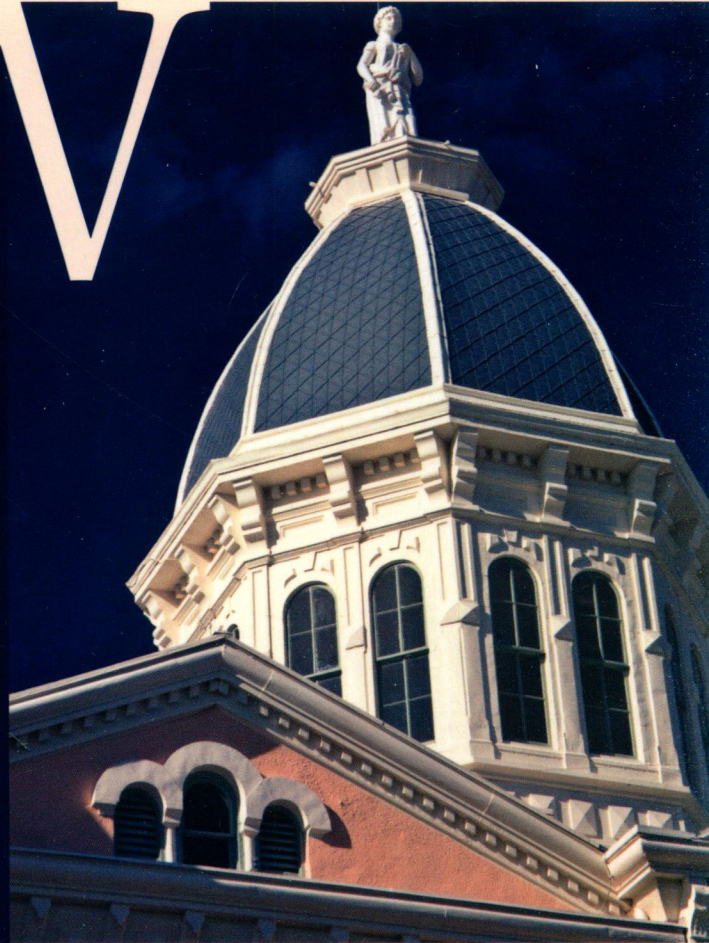


ASPEN COLLEGE SERIES

# Business LAW

*Principles and Cases  
in the Legal Environment*



Daniel V. Davidson  
Lynn M. Forsythe  
Brenda E. Knowles



Wolters Kluwer  
Law & Business

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## Principles and Cases in the Legal Environment

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**Wolters Kluwer**

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# **Business Law**

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## About Wolters Kluwer Law & Business

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With thanks (and love), as always, to my wife and best friend, Dee Davidson. And a special thanks to my co-author, Lynn Forsythe. It's been great working together once again.

—Dan Davidson

I want to thank my family for their love, support, and encouragement, especially Jim, Mike, and Mary Helen Poptanich and Aileen and Robert Zollweg. It was a pleasure to work with Dan Davidson again. His positive attitude makes the process more enjoyable and his suggestions greatly improve our book.

—Lynn M. Forsythe

## A BUSINESS-ORIENTED TEXT

*Business Law: Principles and Cases in the Legal Environment* provides students with a business-oriented introduction to the legal and ethical topics that affect business. This perspective may seem obvious. However, not all business law textbooks focus on the practice of business. Some fail to show students how the law will affect their future careers as business people. Our goal as business law and legal environment instructors is not to train lawyers, but to train future business people. The book is not organized along the lines of law school classes—for example, administrative law, agency, and remedies. Instead it is organized along the lines of how business people think about the law. For example, torts material may be in the agency chapters and remedies material may be in the contracts chapters.

Business people need to be able to anticipate and avoid legal problems. If legal problems occur, business people need to know how to recognize the nature of these problems and how to work with lawyers to achieve solutions. Legal problems, including lawsuits, are business problems that can and should be managed.

Our goals in this text are:

- To present in a student-friendly fashion a current and comprehensive introduction to the legal topics relevant to business;
- To demonstrate how these topics apply to business enterprises;
- To provide approaches for analyzing legal topics encountered in the practice of business; and
- To develop critical thinking skills and habits.

We also support the students and instructors using this text. Wolter Kluwer Law & Business offers a wide variety of supplementary materials for students and instructors.

## *eClass Business Cases*

We have included an integrated, continuous business case or scenario. The eClass case is threaded throughout the text. The individual threads profile the experiences of a hypothetical business, eClass, owned and operated by a “local” group of student entrepreneurs. The entrepreneurs are introduced in Chapter 1. Each chapter begins with an Agenda that highlights some major legal issues from the chapter that are likely to be relevant to eClass. Within each chapter there are three eClass application boxes that address particular legal issues and call for students to offer guidance to the firm. Each application box is categorized by the relevant functional area of business—finance and accounting, international business, management, manufacturing, marketing, personal law, and sales. Application boxes pose questions including Business Considerations and Ethical Considerations. These questions ask students to go beyond the text and apply the concepts to a business entity. Many of the questions ask students to make

business decisions informed by their knowledge of the law. The web materials that accompany the text also include International Considerations for the eClass thread cases for those seeking an international perspective.

Students in business schools often focus on one subject at a time. When they are in accounting class they think about accounting problems and when they are in business law they focus on business law. However, problems in a business generally overlap more than one functional area. A problem can be both a business law problem and a marketing problem. The problems are interdependent and not separate. In addition, business problems do not arise with labels attached. Business people need to be able to identify the subjects that are involved. Working with the eClass thread case helps students recognize the interdependent nature of business problems and business decision making. Students may not be able to provide a full answer to some of the questions posed. Some questions might require additional information or research to fully respond.

eClass thread cases are not intended to encourage business students to practice law without a license. It is illegal to practice law without a license and we are not advocating that students break the law in this regard. However, application is an important aspect of mastering material. Knowledge of the law is of little use if students do not know how or when to apply the knowledge. College students should ask themselves “how can I use this information?” The eClass case provides an opportunity for students to practice applying their knowledge of the law. Like our eClass entrepreneurs, business people do not call their attorneys to discuss every decision that may have legal ramifications. They often rely on their own knowledge and the information they gain from their friends and the Internet. (As we know, not all friends and Internet sites are well informed and provide reliable information.)

## *Exhibits*

There are numerous exhibits in the text. These exhibits assist students in comprehending the material, but they are not intended to replace the text. They provide a visual aid to comprehension and learning. There are additional exhibits on the Web site.

## TOPICAL COVERAGE

Our first goal is to present a current and comprehensive introduction to the legal topics relevant to business in a readable, accessible style. To achieve this goal, the book is divided into nine parts based on the typical topical coverage of undergraduate business law courses.

**Part 1: Foundations of Law and the U.S. Legal System** Part 1 presents an overview of law and the legal system. Chapter 1, Introduction to Law, includes a discussion of ways to look at the law. It includes a discussion of theories of jurisprudence and how the law is viewed in different countries. Chapter 2, Business Ethics, focuses on how business people might apply ethical theories in making business decisions. Chapter 3 examines the U.S. court system and how courts obtain jurisdiction over cases. Chapter 4 examines a civil trial through a hypothetical accident involving our eClass entrepreneurs. It also discusses alternatives to the court system that business people can use. Chapter 5 discusses the constitutional bases for government regulation of business. Chapter 6 examines potential liability for torts. Chapter 7 addresses business crimes including



computer crimes, espionage, and the Racketeer Influenced and Corrupt Organizations Act (RICO). Chapter 8 deals with international law.

**Part 2: Contracts** Part 2 examines contract law and its importance in business transactions. The material includes an in depth discussion of the common law of contracts and information about how contract law is changing in response to the increase in e-commerce. Chapter 9 is an introduction to the law of contracts. Chapter 10 covers offer, acceptance, and consideration. Chapter 11 deals with capacity to contract, the reality of consent, and illegal contracts. Chapter 12 examines contract writings, including techniques courts use to interpret contracts. Chapter 13 discusses the rights and obligations of third parties. The section concludes with Chapter 14, Discharge, Breach, and Remedies.

**Part 3: Sales and Leases** Part 3 addresses the law of sales and leases. Each of the first three chapters examines aspects of Article 2 of the Uniform Commercial Code (UCC), dealing with the Law of Sales. Each chapter includes coverage of Article 2A, the Law of Leases, and compares it to Article 2. Finally, each of these chapters compares the law of the international sale of goods, as embodied in the United Nations Convention on the International Sales of Goods (CISG), to the UCC. Warranties and Product Liability is the final chapter in this part. It highlights the potential impact that breach of warranty cases can have on a business. In contrast to a “mere” breach of contract, a breach of warranty case may result in substantial damages.

**Part 4: Negotiables** Part 4 discusses Articles 3, 4, 4A, and 7 of the UCC. It includes a discussion of bank-customer relations, electronic funds transfers, and how the UCC revisions have changed the law of negotiable instruments.

**Part 5: Debtor-Creditor Relations** Chapters 24 and 25 examine debtor-creditor relations by looking at secured transactions under revised Article 9 of the UCC with its significant revisions. Next is Chapter 26 dealing with Other Credit Transactions. This discussion includes payday loans, credit a business may extend to its customers, and credit a business may use to acquire assets or inventory. Chapter 27 examines the federal protections available for honest debtors under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. The discussion compares Chapters 7, 11, and 13 of the Bankruptcy Act.

**Part 6: Agency** Part 6 explains the agency relationship and its importance in conducting a business enterprise. It emphasizes the liability of the principal and agent for contracts entered into by the agent. It also focuses on the liability of masters and servants for torts and crimes committed by servants. Policies underlying the rules are also addressed. Protection of the business’s confidential information and covenants not to compete are also discussed.

**Part 7: Business Organizations** Part 7 treats the various types of business organizations in a unique manner. Rather than have separate chapters dealing with each business form, the text treats the types of organizations in a compare-and-contrast fashion within the chapters. The focus is on the advantages and disadvantages of the different structures for the operation of a business. The coverage includes the more traditional business forms, such as sole proprietorships, partnerships, and corporations. It also includes the newer business forms such as limited liability companies, limited partnerships, limited liability partnerships, and limited liability limited partnerships. This section also includes a discussion of securities regulation in Chapter 34.

**Part 8: Government Regulation of Business** Part 8 addresses the regulatory issues regularly faced by businesses. Antitrust law is addressed in Chapter 35. Chapter 36, Consumer Protection, is devoted to consumer law and stresses concepts that relate back to Chapter 26, Other Credit Transactions. Chapter 37, Environmental Protection, addresses many of the major environmental statutes. Chapter 38, Labor and Fair Employment Practices, examines the rights and responsibilities of businesses and their employees.

**Part 9 Property Protection** Chapter 39 addresses the types of property, property ownership, and the rights that owners have. It also discusses government regulation of real property. It includes a discussion of the forms of joint ownership and transfer on death ownership. It also addresses bailments of personal property. Chapter 40 addresses types of intellectual property, including copyrights, patents, trademarks, and trade secrets. It also includes a discussion of computers and the law.

## APPLICATIONS

Our second goal is to demonstrate how the legal topics presented in the text apply to the practice of business. In addition to the thread case, *Business Law* includes the following features:

### *Court Cases*

With the exception of Chapter 1, each chapter contains two court cases. After the chapter outline and eClass Agenda, each chapter begins with a Classic Case. This is an older court case, often a landmark legal decision. Each chapter then ends with a Contemporary Case, a more recent decision showing how courts today are applying concepts to recent legal disputes.

All the court cases show how the courts apply chapter concepts to actual disputes between litigants. Many of them are also illustrative as to how the parties could have avoided the dispute in the first place.

Court cases are organized into the following parts:

- Facts—the facts of the case
- Issue(s)—the question(s) that the court is deciding
- Holding(s)—the court's answer to the issue(s)
- Reasoning—the reasoning the court used in analyzing the question, reaching a decision, and explaining the decision to the public

The reasoning is excerpted from the language of the court. We have summarized the other three parts of the case.

There are Business Consideration questions and Ethical Consideration questions for the cases on the Web site for this book. These questions provide an opportunity for students to analyze business problems and utilize critical thinking skills further supporting our goals for this book. Business Consideration questions illustrate the effect of court cases on businesses and how business decisions may lead to litigation. Ethical Considerations specifically show how ethics constantly affects decision making. Ethics should be an integral part of business decision making.

## *You Be the Judge*

After the Contemporary Case, each chapter has a You Be the Judge box. Many of the You Be the Judge boxes take their materials directly from current events. The boxes ask students to prepare an opinion that applies the law to the facts presented in the “box.” By doing so, students will gain a greater appreciation for the difficulties involved in considering the alternatives and drafting an opinion.

## *Discussion Questions and Case Problems and Writing Assignments*

Each chapter concludes with five Discussion Questions that ask students to test their knowledge of chapter material. The Discussion Questions are followed by three Case Problems and Writing Assignments. These questions ask students to apply ethical and legal concepts to actual situations. All the end-of-chapter materials can be used as study tools in reviewing the material, as class or small-group discussion material, or as writing assignments.

## **SUPPLEMENTAL RESOURCES**

There is a Web site related to this text at [www.aspenlegalcollege.com/davidson\\_business/](http://www.aspenlegalcollege.com/davidson_business/). It has references to Web sites for students who want additional information. It also contains Internet Questions for students to improve their Internet search techniques and Key Terms for students to use in their study and review. For students who want more focus on International Law, it also contains International Considerations questions for the eClass thread case. It contains additional court cases with Business Consideration and Ethical Consideration questions. It includes additional Discussion Questions and Case Problems and Writing Assignments.

A new copy of this text comes packaged with four months of prepaid access to Loislaw’s online legal research database, at <http://www.loislawschool.com/>.

Blackboard and eCollege course materials are available to supplement this text. This online courseware is designed to streamline the teaching of the course, providing valuable resources from the book in an accessible electronic format.

Instructor resources to accompany this text include a comprehensive Instructor’s Manual, Test Bank, and PowerPoint slides. All of these materials are available on a CD-ROM or for download from our companion Web site.

## **AACSB CURRICULAR STANDARDS**

The AACSB curricular standards relevant to business law and the legal environment of business state that the business curriculum should include ethical and global issues; the influence of political, social, legal and regulatory, environmental, and technology issues; and the impact of demographic diversity on organizations.

We believe *Business Law: Principles and Cases in the Legal Environment* uniquely satisfies these standards in a readable yet rigorous format.

Global issues are treated in several areas, beginning with Chapter 1 and its introduction to different legal systems. It continues with Chapter 8, International Law; the discussion of CISG in Chapters 15 through 18; and letters of credit in Chapters 8 and 26.

Chapter 2, Business Ethics, addresses the ethical theories and how they can be applied in business. Ethics questions follow the thread cases. In addition there are ethics questions for the court cases on the Web site.

We have created a text that we hope is intuitive, engaging, and oriented toward providing the legal skills students will need in the business world. Consequently, the contents of the book stretch beyond the mere presentation of “legal topics” to encompass the spectrum of “political, social, legal, regulatory, environmental, and technological issues.” The pedagogical features are designed to support this approach.

The focus on applications, evidenced in the Agenda and the eClass business application thread case, uniquely contributes to showing how demographic diversity affects organizations. In the eClass case, the principals must understand the cultural and political challenges that a larger domestic and international market (and workforce) pose for them. These include issues ranging from employee privacy to labor law, and from employee use of eClass computers to sexual harassment. By following the case, students are immersed in these problems and are asked to offer advice as questions arise. This encourages sensitivity and an understanding of other points of view.

On another level, the principals and students learn that successful businesses today are often cross-functional. In this case, Ani, Meg, and Yousef need to recognize how the law applies to finance and accounting, international business, management, manufacturing, marketing, personal law, and sales. They also must be able to act on this knowledge. By assuming an advisory role with eClass, students have a unique glimpse at the cross-functional nature of many business activities today. *Business Law* supports the current trend toward integrating business disciplines.

## ACKNOWLEDGMENTS

Writing a textbook is a rewarding endeavor. However, it is also a significant undertaking. It would not have been possible without the help and support of a number of people along the way. We have enjoyed working together on this project. We each prepared about half the chapters and commented on the drafts prepared by our co-author. We hope that our team effort has been successful and that you will enjoy using this book as much as we have enjoyed preparing it.

We want to thank Louis McGuire whose initial contact led us to Wolters Kluwer Law & Business. This book would not have been possible without the support of David Herzig who saw the need for a readable business law text with practical business applications. We are also indebted to our developmental editor, Betsy Kenny. Betsy’s help and guidance improved the text as it evolved from the first draft to the final product. Troy Froebe and the rest of The Froebe Group carefully supervised the final stages of production. We have sincerely enjoyed working with all of them.

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A sincere thank you to the following reviewers, whose suggestions, criticism, questions, and observations have helped us maintain our focus and write a text that contains the essential material and is user-friendly, readable, and enjoyable:

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Finally, we would like to acknowledge our co-author in previous editions, Brenda Knowles. Brenda did not actively participate in this edition, but many of her contributions remain as integral parts of the book.

*Daniel V. Davidson*  
*Lynn M. Forsythe*

November 2010

# About the Authors

**Dan Davidson** is an alumnus of the Indiana University—Bloomington College of Business and the Indiana University—Bloomington School of Law.

Professor Davidson has been teaching business law and legal environment classes since 1974, with stops at five different campuses over his career. He is currently teaching and serving (for the second time) as Chair of the Department of Accounting, Finance & Business Law at Radford University in Radford, Virginia.

Professor Davidson has previously served as a part of the author team on four other textbooks, and he has authored or co-authored numerous journal articles.

Professor Davidson has been the recipient of numerous teaching awards and several advising awards during his career.

Professor Davidson is married to Dee Davidson, a high school math teacher, and is the proud father of a son, Jaime, who is the marketing director for the Berkshire Theater Company, and a daughter, Tara, who is a high school English teacher.

**Lynn M. Forsythe** received her B.A. from The Pennsylvania State University and her J.D. from the University of Pittsburgh School of Law. She passed the bar examinations in the states of California and Pennsylvania. She is professor of business law at the Craig School of Business at California State University, Fresno.

Professor Forsythe has received numerous Craig School of Business awards, including the Research Award in 2008, and the Service Award in 2003 and again in 2006. She held the Verna Mae and Wayne A. Brooks Professorship of Business Law. She is a Coleman Fellow at the Lyles Center for Innovation and Entrepreneurship at California State University, Fresno. She is also a Craig Faculty Fellow in research for 2010-2012.

Professor Forsythe is the author or co-author of numerous articles on business law and business law pedagogy. She served as a part of the author team on three other textbooks. She has held the positions of editor-in-chief, staff editor, and reviewer for *The Journal of Legal Studies Education*. She is currently advisory editor. She received two recent best paper awards, the 2009 Western Academy of Legal Studies in Business Best Paper Award and the 2007 Allied Academies Conference Distinguished Research Paper Award.

Professor Forsythe is active in the Academy of Legal Studies in Business. She has served as the chair and vice-chair of the Business Ethics Section of the academy. She has served in the officer ranks of the Western Academy of Legal Studies in Business first from 1983-1987 and again from 2006-2009. She is currently the Proceedings Editor for the Western Academy of Legal Studies in Business.

Professor Forsythe is currently the Secretary of the Craig School of Business Chapter of Beta Gamma Sigma. She is also a Life Member of Alpha Kappa Psi.

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