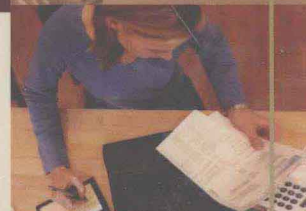
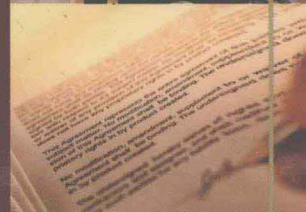


Business Law

With UCC Applications

ELEVENTH EDITION

Gordon W. Brown
Paul A. Sukys



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Preface

The eleventh edition of *Business Law with UCC Applications* reflects the many changes that have taken place in the law over the past four years. As in previous editions, we've taken care to present business law concepts in the most coherent and accessible way, and to provide up-to-date coverage of business law topics that are essential to today's students.

All of the chapters for this edition have been updated, and we have continued to enhance our coverage of the important topics of e-commerce, limited liability companies (LLC), ethics, and Alternative Dispute Resolution.

The popular format of the tenth edition has been enhanced with a new and accessible design. Each chapter begins with an outline followed by The Opening Case and Chapter Outcomes. Major headings and chapter summaries continue to be numbered following the chapter outline. The popular case illustrations, presenting either hypothetical or actual situations based on well-founded court decisions, have been retained and updated. Our QuickQuiz feature appears in each chapter and allows students to test their knowledge of the chapter topics while they are actively studying the text. We also retained case studies pertaining to each of the nine parts of the book, which summarize an actual litigated case, present a lengthy extract from the judge's decision, and provide follow-up questions that are pertinent to the cases and which are appropriate as a review of the legal concepts involved. Activities at the end of each chapter, including Key Terms, Questions for Review and Discussion, Investigating the Internet, and Cases for Analysis, help students self-check their understanding of the terms and concepts presented in the chapter.

The U.S. Constitution is given in Appendix A. Included in Appendix B are four articles of the Uniform Commercial Code. Marginal references within the student chapters tie these specific documents to the content.

We are happy to introduce a new feature called Business Law in the News, which takes excerpts from current news stories from a variety of sources and ties them directly to chapter material. Discussion questions for each article are also included.

The eleventh edition of *Business Law with UCC Applications* offers a comprehensive package of materials to meet both instructor and student needs.

A Guided Tour

Business Law with UCC Applications, 11/e, is full of useful chapter features to make studying productive and hassle-free. The following pages show the kind of engaging, helpful pedagogical features which complement the accessible, easy-to-understand approach to teaching business law.

Chapter Outline

Each chapter features an outline that allows students to recognize the organization of the chapter at a glance. For reinforcement, the outline's numbering system is used throughout the body of the chapter and is repeated in the end-of-chapter Summary.

Chapter 2

Sources of the Law

2-1 The Purpose and Operation of the Law

Complex Adaptive Systems • The Law as a Complex Adaptive System • Complex Adaptation and Cyberlaw

2-2 Constitutional Law

The Articles of Confederation • The Principles of the United States Constitution • The Structure of the United States Constitution • The Question of Democracy • State Constitutions



The Opening Case

"The 9-11 Commission"

Shortly after the horrific attacks by Al Qaeda on Center and the Pentagon on September 11, 2001 requesting the appointment of an independent events leading to that fateful day. The independent determine not only whether the tragedy could have but also how to deter similar attacks in the future. Bush responded by stating that no investigative formed by the government. He added that no public be conducted and that none of his staff member

Complex Adaptive Systems

The law acts as a constantly changing complex adaptive system. A **complex adaptive system** is a network of interacting conditions which reinforce one another while, at the same time, adjusting to changes from agents both outside and inside the system. The entire



The Opening Case Revisited

"The 9-11 Commission"

When the 9-11 Commission issued its findings in the summer of 2004, many government officials found that they could no longer conduct business as usual. Their professional and personal lives were disrupted by the commission's recommendations for reform in the executive branch, especially as those proposals affected the intelligence-gathering agencies of the government. The recommendations had the potential to cause disorder within those agencies, thus leading to a period of instability within the government. Nevertheless, any other ruling would have been unfair to the people of the United States who depend on these agencies for their safety and security and for the overall stability of the entire nation. This situation reveals the balancing act that the law and the government must engage in on a daily basis. In this case, the orderly lives of certain government officials had to be disrupted in order to be fair to the rest of the people and to restore stability to the social structure. The actions of the commission also



The Opening Case

A brief case opens each chapter and introduces the chapter concepts.

Every Opening Case is re-examined throughout the chapter in The Opening Case Revisited.

Both our government and our legal system are designed to respect to the will of the people. Our government is also a system of checks and balances. This is why the President could not ignore the vote of the Senate but instead had to go forward and appoint the 9-11 Commission. As you read this chapter, revisit these issues in an attempt to see how the system works.

Chapter Outcomes

Succinct, crisply written objectives follow The Opening Case at the beginning of each chapter. The objectives describe what the students can expect to learn as a result of completing the chapter.

Chapter Outcomes

1. Enumerate the objectives of the law.
2. Clarify the operation of the law as a complex adaptive system.
3. Outline the content of the U.S. Constitution.
4. Explain the role of statutory law in the legal system.

Several boxed features elaborate on the chapter topics at hand and facilitate further research and understanding:

New to the eleventh edition!

Business Law in the News

uses articles from *BusinessWeek* and other news sources and ties today's headlines with business law concepts. Each article is enhanced with Questions for Discussion.



Business Law in the News

Disconnected: Lawyers and the Public Learn to Live Without Cellphones in the Courthouse

Most federal courthouses prohibit two items: weapons and cellphones.

Electronic devices are like a plague that has descended upon courts, and, like the most virulent germs, they survive by morphing into ever more sophisticated forms.

Pagers became cellphones and then picture phones. Laptops were trumped by PDAs (personal digital assistants, such as a BlackBerry). Both often have recording capabilities. And now stun guns come disguised as cellphones—but it is safe to assume that these fall into the weapons category and are banned.

When it comes to nonweapon electronic devices, lawyers and their clients had better check the local rules.

work to do, but they understand the ramifications of breaking the rules." Taking a picture or sound is an ethical violation, Dodge said.

A now-retired traffic court judge in Duval County is reputed to have jailed three cell phone offenders for contempt—one over a text message.

Besides protecting witnesses and prisoners, federal marshals have added cellphone vigilance to their mission of protecting federal courts.

Billy Walker, judicial court security officer for the Middle District of Florida, a deputy U.S. District Judge, said rules are consistent in four of the districts in Fort Myers, Orlando, Ocala and Jacksonville. No cellphones.

In Tampa, though, there's an experiment in progress that allows lawyers to check cellphones in the courtroom.

About the Law

In federal court, if even one defendant is a citizen of the same state as one of the plaintiffs, diversity cannot be established. In such a case, the law says that "diversity is not complete."

About the Law boxes provide additional clarification of chapter concepts.

Did You Know? boxes are interesting factoids directly linked to the chapter concept being discussed.

Did You Know?

Roman law was first codified into The Law of the Twelve Tables in 450 B.C. The Twelve Tables declared that all free citizens had certain fundamental rights.

	Identifies the president	Gives the president power
Article III	Establishes the Supreme federal courts	Provides for trial by jury
Article IV	Defines interstate relations	Sets up the full faith and credit clause
Article V	Defines public acts and procedures	Provides for extradition
Article VI	Outlines the method of impeachment	
Article VII	Establishes the Constitution as the supreme law of the land	
Article VIII	Provides for the original jurisdiction of the Supreme Court	

A Question of Ethics boxes challenge the student's understanding of previously discussed chapter examples by asking questions specifically relating to ethical dilemmas.

A Question of Ethics

In Example 5-10, when the Transglobal mechanics failed to prepare the landing gear properly, they could not foresee that the fire truck would have a blowout, smash into a light pole that would hit Carbonari's car, and damage both the car and the DVD player in the trunk. Therefore, legally, their conduct was not the proximate cause of the damage to the car and the DVD player. However, would Transglobal owe an ethical duty to reimburse Carbonari for the damages that were inflicted on his car and his DVD player? Explain.

must always be present. If the actions of the tortfeasor are not the actual cause of the accident, they cannot be the proximate cause.

Actual Harm The injured party in a lawsuit for negligence must show that actual harm was suffered. In most cases, the harm suffered is a physical injury and is, therefore, visible. Harm suffered due to fright or humiliation is difficult to demonstrate. Courts often deny damages in actions for negligence unless they can see an actual physical injury. Actual harm can also come in the form of property damage.

Examples are numbered throughout each chapter and use short vignettes to explain how concepts can be applied in real-life situations.

Example 4-4

The question of competency to stand trial was a key factor in a case in which Harold Gunther was prosecuted for the murder of one person and the attempted murder of two others. Listening at the door of an apartment, Gunther believed he heard three co-workers plotting against him. Convinced that he was about to be attacked, Gunther entered the apartment and assaulted his three co-workers, killing one and severely injuring the other two. Gunther consistently maintained that he was the intended target of a plot to destroy him. No evidence was ever presented that such a plot existed. In contrast, expert testimony indicated that Gunther was paranoid and delusional. Consequently, his defense attorney moved for a competency hearing. Despite the expert testimony, the judge in the case found Gunther competent to stand trial. The competency ruling was based on the fact that, despite Gunther's mental problems, he was capable of understanding the charges against him and was able to assist in his defense. Under state law, these were the only qualifications needed for a competency finding by the court. Gunther met these qualifications and was found competent to stand trial.

Part One Ethics, Law, and the Judicial System

and movies, is that motive is an element of criminal liability. Such is not the case. Establishing motive may help the prosecution persuade the jury that the accused is guilty, but proving an evil motive is not necessary for a criminal conviction.

Quick Quiz 4-2 True or False?

1. The two elements needed to create criminal liability are a criminal act and the requisite state of mind.
2. Individuals act with negligence when they act with the intention to cause the result that does in fact occur.
3. Motive is an element of criminal liability.

QuickQuiz boxes follow each numbered section and give students the chance to test themselves with three true/false questions. Answers are provided at the end of each chapter.

4-3 Specific Crimes

Statutory definitions and classifications of crimes vary from jurisdiction to jurisdiction.

service of process, 55
summary judgment, 57
special jurisdiction, 47
surrebuttal, 60
specific performance, 61
writ of certiorari, 50
writ of execution, 61

Questions for Review and Discussion provide a means for students and the instructor to re-examine and discuss the key points of law. All objectives listed at the beginning of each chapter are also reviewed.

Questions for Review and Discussion

1. What is the difference between original jurisdiction and appellate jurisdiction? Between general jurisdiction and special jurisdiction?
2. Explain the basic structure of the federal court system. Over what two types of cases do the federal trial courts have jurisdiction?
3. Under what circumstances might the U.S. Supreme Court grant a writ of certiorari?
4. What is the extent of cyberspace jurisdiction?
5. What is the structure of a typical state court system?
6. What are the steps in the litigation proceeding with the commencement of the trial through the execution of judgment?
7. What is the difference between a direct and a set of interrogatories?
8. What is the nature of cyberspace jurisdiction?
9. What is involved in an appeal?
10. What are the steps in a criminal proceeding with the arrest up through the sentencing of the defendant?

Summary

4-1 A crime is an offense against the public at large. As such, a crime threatens the peace, safety, and well-being of the entire community. For this reason, crimes are punishable by the official governing body of a nation or state. A felony is a crime punishable by death or imprisonment in a federal or a state prison for a term exceeding one year. Some felonies are punishable by fine. A misdemeanor is a less serious crime, generally punishable by a prison term of less than one year.

robbery, and arson are the most common crimes involving property committed in the United States. In general, business crimes are those carried out by a business or individual in the course of doing business to obtain a business-related advantage.

Key Terms

4-2 The two elements necessary to create criminal liability are (a) an act and (b) a mental state. Generally speaking, a crime is committed unless the criminal act is performed with the requisite state of mind. Criminal codes include four parts:

American Law Institute (ALI) test, 83
arson, 76
assault, 75
battered spouse syndrome, 86
battery, 75
bribery, 76
burglary, 76
crime, 69
defense of others, 85
embezzlement, 76
entrapment, 83
extortion, 76
felony, 71
forgery, 77
homicide, 74
irresistible impulse test, 83
kidnapping, 75
knowledge, 72

Summary Numbered to match the outline at the beginning of the chapter and the main heads within each chapter, the Summary provides an encapsulated review of the chapter's content.

Key Terms Each key term is printed in boldface and defined when introduced in the text. A list of key terms and the page number of first usage appears at the end of each chapter. A glossary of the key terms is provided at the back of the text.

Supplements

Student Study Guide (ISBN: 0-07-296058-2)

Each chapter in the Study Guide begins with an outline to be completed by the student. Corresponding with the outline at the beginning of each text chapter, this learning activity reinforces the subject matter being studied. When completed, it also serves as a study aid to the student. The outline is followed by true/false questions covering important legal concepts. Next, a section entitled "Language of the Law" gives students practice in matching key legal terms with their definitions. Finally, ten hypothetical cases give students an opportunity to apply the law to cases. Answers to the objective questions and hypothetical cases are found in the back of the Study Guide.

Instructor's Edition (ISBN: 0-07-296059-0)

This instructional tool features teaching tips, answers to end-of-chapter questions, analyses of chapter cases, and solutions to case studies. In addition, annotations on text pages provide background information, related cases, state variations of specific laws, vocabulary terms, methods of getting students involved, interesting quotes, and suggested further readings.

For the eleventh edition, five segments from the "You Be the Judge DVD" are included with the Instructor's edition.

This exclusive DVD features interactive case videos that showcase courtroom arguments of business law cases. This interactive DVD gives students the opportunity to watch profile interviews of the plaintiff and defendant, read background information, hear each case, review the evidence, make their decision, and then access an actual, unscripted judge's decision and reasoning.

For your students, you may order the full eighteen-segment DVD packaged with the student text at a discount.

For more information on how to package this, please contact your sales representative.

Instructor's Manual (ISBN: 0-07-296060-4)

Printed Instructor's Test Bank (ISBN: 0-07-296061-2)

Instructor's Resource CD-ROM (0-07-296065-5)

Instructors are now able to choose between printed supplements or CD-ROMs. The Instructor material includes Lesson Plans, Lecture Notes and Outlines, Sample Syllabi, Test Bank (CD-ROM test bank written in ExamViewPro), and Conducting a Mock Trial. PowerPoint slides are also available on the Instructor's Resource CD-ROM.

Cases for Analysis

When the trial of Martha Stewart began, her attorney and the attorney for codefendant, Peter Bacanovic, asked that *voir dire* be conducted in private. The court granted the request, so only the judge, the defendants, their attorneys, and the prosecutors were present. Reporters were supplied with transcripts of the *voir dire* proceedings, which were available on the day following the examination of the jurors. However, the identities of the jurors along with any individual items concerning those jurors were erased from the transcripts. In response, seventeen news companies asked the appellate court to reverse the order. The news agencies argued that the ruling made little sense since the court had excluded the press

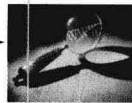
from a case that had a great deal of publicity at its core. They also argued that closing it was an additional step down a slippery slope; they envisioned as eventually resulting in complete closure of American courts to the other side argued that there was a compelling reason to close the *voir dire* process to make the prospective jurors would be open to about questions concerning high-profile Martha Stewart. Should the appeals court the closing of *voir dire* in this case? The answer. *In re Application of ABC Inc.*, (2d U.S. Cir. Ct. of App.). See also *Yurisdiction and special jurisdiction?* "The Closed Voir Dire for Martha Stewart," *National Law Journal*, January 26, 2005.

Cases for Analysis have been updated extensively for the eleventh edition and were chosen for their relevance, case-of-understanding and interesting fact patterns. Many are abridgements of actual court decisions; others are hypothetical situations written to emphasize legal issues and concepts presented in the text.

1. What is the difference between a set of interrogatories?
2. What is the nature of cyberspace?
3. What is involved in an appeal?
4. What are the steps in a criminal proceeding with the arrest up through the defendant?
5. What is the structure of a typical state court system?
6. What is the structure of the federal court system. Over what two types of cases do the federal trial courts have jurisdiction?
7. Under what circumstances might the U.S. Supreme Court grant a writ of certiorari?
8. What is the extent of cyberspace jurisdiction?
9. What is the structure of a typical state court system?

Investigating the Internet

activities encourage students to seek additional information on the Internet.



Investigating the Internet

The Administrative Office of the United States Courts maintains a website that includes the latest press releases from the federal courts. Access one of the press releases and write a report on the issues contained therein. You may write a report on an article appearing in the *The Third Branch*, the monthly produced by the federal courts and appearing on this website.

Part 1 Case Study

Planned Parenthood of Pennsylvania v. Casey
United States Supreme Court 112 S.Ct. 2791



Summary

The Pennsylvania state legislature passed a statute that limited a woman's right to have an abortion. Specifically, the statute included three provisions that made it more difficult for a woman to obtain an abortion than it had been prior to the enactment of the statute. The first provision required a woman to give her "informed consent" to the procedure. Informed consent was to be obtained by providing the woman with detailed information concerning abortion and then requiring her to undergo a twenty-four-hour waiting period before the abortion could be performed. A second provision demanded the informed consent of at least one parent of a juvenile seeking an abortion. The third provision compelled a married woman to notify her spouse of her plan to seek an abortion. The statute also allowed these provisions to be circumvented should a "medical emergency"

The **Case Study** at the end of each of the nine parts begins with a summary of the facts of the case, followed by an excerpt from the court's opinion, and concludes with a series of questions.

Two appendices provide critical material for the students: **The Constitution of the United States (Appendix A)** and **Articles 1, 2, 2a, and 3 of the Uniform Commercial Code (Appendix B)**. Marginal references throughout the text refer students to the page of the appendix where the original source of the law being discussed can be found.

Appendix A

The Constitution of the United States

Preamble

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common Defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do hereby constitute and ordain this Constitution for the United States of America.

Article I

Section 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2. [1] The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

[2] No Person shall be a Representative who shall not have attained to the Age of twenty-five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Appendix B

Uniform Commercial Code (Articles 1, 2, 2a, and 3)

Article 1: General Provisions

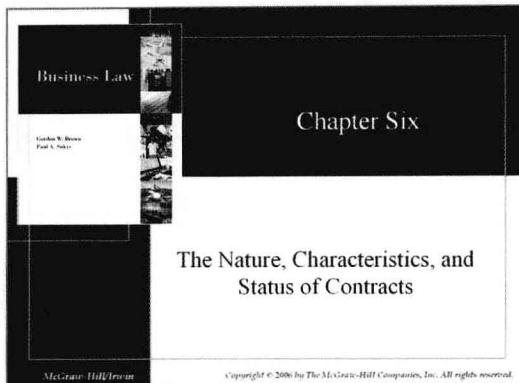
Part 1: Short Title, Construction, Application and Subject Matter of the Act

§1-101. Short Title. This act shall be known and may be cited as Uniform Commercial Code.

§1-102. Purposes; Rules of Construction; Variation by Agreement.

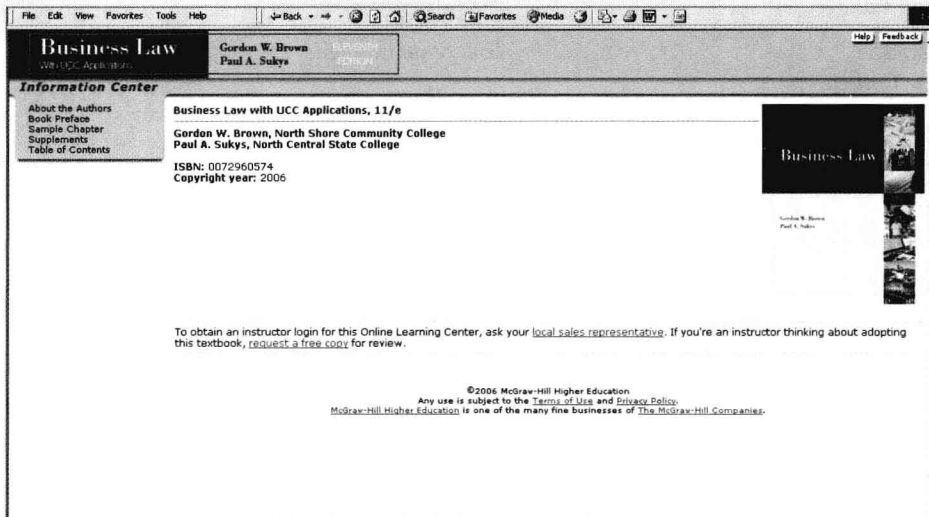
- (1) This Act shall be liberally construed and applied to promote its underlying purposes and policies.
- (2) Underlying purposes and policies of this Act are:
 - (a) to simplify, clarify and modernize the law governing commercial transactions;
 - (b) to permit the continued expansion of commercial practices through custom, usage and agreement of the parties;
 - (c) to make uniform the law among the various jurisdictions.

[5] The Senate shall have the right to ratify or reject, or when he shall be chosen, the United States.



Online Learning Center (OLC)

www.mhhe.com/brown11e



More and more students are studying online. That's why we offer an Online Learning Center that follows *Business Law with UCC Applications* chapter-by-chapter. It doesn't require any building or maintenance on your part—it's ready to go the moment you or your students type in the URL.

A secured Instructor Resource Center stores your essential course materials to save you prep time before class. The Instructor's Manual, Lesson Plans, Lecture Notes and Outlines, PowerPoint slides, and sample syllabi are only a couple of clicks away. You can even access the "Conducting a Mock Trial" feature with ease!

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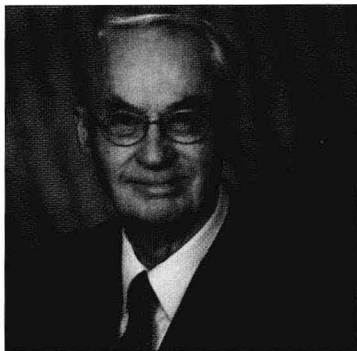
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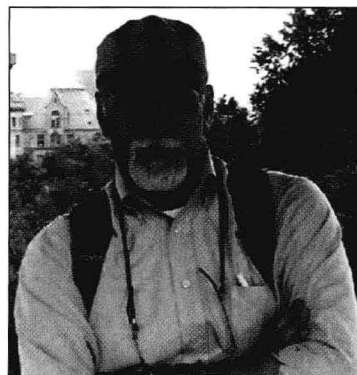
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Dedication

*This book is dedicated with much love and many thanks to our lovely wives,
Jane A. Brown and Susan E. Sukys.*

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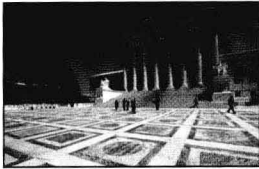
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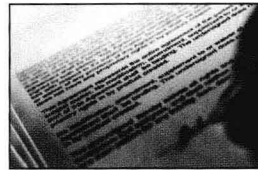
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