

Preface

WELCOME TO BUSINESS LAW, FIFTH EDITION

We believe this edition of the text is worthy of the trust you have placed in us to clearly deliver contemporary aspects of business law and the legal environment of business in a comprehensive, dynamic manner appropriate for a variety of learning styles.

The reader should note at the outset that *Business Law* was created, not only to present traditional principles of legal studies as it relates to business, but also to delve into new arenas pertaining to the interaction of law and business appropriate for business leaders of the twenty-first century. Some legal topics covered in the text have changed little in decades—and some topics have changed little over centuries. Other topics are new to business law and are evolving at a quick pace in order to meet the changing needs of society. We strive to accurately present important legal principles that have weathered successful use in the business environment for many years while also stating popular precepts of law that are forming as yet unsettled areas of jurisprudence. This combination of age-old principles and cutting-edge developments is a characteristic of our legal system that makes its study exciting.

The text has a distinguished and long history, with the first edition being published twenty years ago by two faculty from the University of Georgia, Professors Peter Shedd and Robert Corley. The current author, Professor James F. Morgan, was brought on board to contribute to the second edition, using the firm foundation provided by Shedd and Corley. Each successive edition has embraced the original goal of creating a textbook of the highest quality in terms of scholarship and readability. We believe that the *Business Law*, fifth edition continues that tradition.

Business Law, fifth edition contains five major enhancements:

- A new characteristic—termed “Touchstone”—is used liberally throughout the book. A Touchstone could be based on a newspaper article, law review article, legislation, or other item. Each chapter includes three Touchstones. This unique characteristic of the fifth edition is presented to provide the reader with additional examples of situations where the law is being applied or to engage the reader with an aspect of the law that is controversial. It is hoped that the Touchstones offered will serve as starting places for in-class or Internet-based discussions of important legal points included in each chapter.
- Basic aspects of legal reasoning are presented for the first time in this edition. Anytime a student undertakes the study of law, he/she will be exposed implicitly to the legal reasoning process; however, in *Business Law*, fifth edition we undertake to explicitly explain the legal reasoning process. Chapter 2 contains numerous sections devoted to exploring this fascinating subject.
- The area of ethics and social responsibility is now the major focus of an entire chapter (Chapter 2). Aspects of philosophy and jurisprudence are presented as part of this fascinating subject area.
- Intellectual property, previously covered as part of a chapter on the law of property, has now morphed into a separate chapter (Chapter 12), with considerable attention paid to cyber law and Internet-related aspects of intellectual property law.
- Global aspects of the legal environment of business are emphasized to a much greater degree than in the previous edition. For example, all three chapters within the law of sales (Chapters 21, 22, and 23) contain materials specifically focused on global aspects of the law of sales.

As with previous editions, *Business Law*, fifth edition details major activities of government which impact business, particularly judicial decisions, legislative pronouncements, and agency actions. This edition includes many new principal cases. Often these new cases are ones that have just been decided, so students have the opportunity to see the current state of the law. Sometimes, however, we employ older cases that articulate particularly well a rule of law and the rationale supporting the decision of a judge or justice. Recently-passed legislation is also explored in this edition. For example, the Affordable Care Act is presented in Chapter 26. Finally, cutting-edge administrative agency developments are covered, including the impact of the Consumer Financial Protection Bureau (Chapter 43).

A SPECIAL NOTE TO STUDENTS

I remember being seated where you are now—a student in a Business Law/Legal Environment of Business class. The thought that I would be on the “other side”—teaching courses in legal studies—never entered my mind when I was a student. Much less did I ever contemplate being involved in writing a business law textbook! However, I want to share with you two perspectives as the principal author of this text.

First, make no mistake, this fifth edition of *Business Law* was written from your perspective—from the viewpoint of a student. I thought back to my time in the classroom and attempted to present legal information and perspectives in the manner I would have liked to have had the subject presented to me years ago. I remembered what I liked about the business law class, and what I did not like. I remembered what I liked about the textbook, and what I did not. I paid attention to my perspectives based on memory, but also—and far more important—I have listened closely to the perceptions of my students in my business law classrooms. I have found students generally ready to offer their thoughts on what they liked about previous editions of the textbook ... along with what they would like to see changed. So in preparing this new edition, I remembered aspects of my experience as a student of business law and also incorporated the insights of students I have taught. Thus, this edition is written with you in mind.

I also am able to write this book from the viewpoint of someone who has amassed information and perspectives from my experience as a legal professional. As an attorney, I have appeared in court representing clients and performed transactional work assisting clients in matters that have touched on all subjects covered in textbook. I have worked as a law clerk to a judge, served as a “pro tem” judge hearing cases, and lobbied state legislators—I have an idea of how the legal system works from the “inside.” I have taught at a law school, within a graduate program in the business department, and at the undergraduate level. Finally, I have written articles, published both in the United States and internationally, for audiences of business managers, lawyers, and faculty in law and business schools.

Together, the perspective of the student and the view of the legal professional provide you with a text that is very readable and highly relevant. As you proceed through these pages, my hope is that you not only read but that you also think about the subjects presented. Think about how a particular aspect of the law you are studying impacts individuals and businesses. Think about *why* a specific legal doctrine or rule exists, and what interests are served through its application. Think about whether the specific legal rule being studied well serves the interests of both business and society. And, if those interests are not served well, think about how could the law be changed to do better.

Welcome to the beginning of a truly fascinating voyage!

A SPECIAL NOTE TO FACULTY COLLEAGUES

We hope to provide you a companion to your own classroom instruction that is of high quality. Previous editions have been subject to the eyes of thousands of students and scores of instructors. Moreover, all materials in this text have received editorial review and legal critique. We trust you will share in our belief that *Business Law*, fifth edition continues our efforts to present a textbook that represents well our discipline of legal studies in business. More specifically, we strive to offer to you a business law textbook that is *contemporary, comprehensive, clear, and compelling*.

First, we want to offer a contemporary text. Issues associated with ethics, globalization, diversity, and the Internet, among others, provide tremendous challenges to members of the business community today. Moreover, within the legal studies discipline, significant changes have occurred recently in a variety of areas—including health care law, intellectual property, limited liability business structures, negotiable instruments, to name just a few. Many principal cases were decided within the past few years, and most Touchstones address contemporary issues. Transformation is occurring in business and within the legal studies discipline—we attempt to capture major developments on both fronts within this text.

We also hope to present a comprehensive legal studies book. Offering a far-reaching set of topics, although rather daunting to one who first examines the Table of Contents for this text, truly honors instructors of the course throughout the nation by presenting them a wide array of topics for possible examination with their students.

Why must so many legal topics be included in the text? Because each instructor of a course in business law (or legal environment of business or legal studies in business) has a slightly different (well ... sometimes widely different) group of topics that they may wish to cover in a single quarter, semester, or yearlong class. That is the nature of our discipline, and we view that diversity of subject areas as a strength. We believe the large number of possible topics that might be included in a business law course, the varying emphasis that might be provided to a

specific legal area, subject area, and the degree of instructor passion associated with certain legal topics—all enrich the student learning experience.

So, in writing *Business Law* we embrace this variety of approaches to the discipline because students, ultimately, benefit if the instructor can teach a selection of business law topics with which they have a familiarity and that they believe are most relevant to students of business. For example, many of our colleagues desire that their students be most familiar with private law topics, including contracts, torts, partnerships, and corporations. Others hold the position that matters of public law are most critical, so they focus their course on consumer law, environmental law, employment law, and antitrust law. In addition, a large number of those who teach business law attempt, not surprisingly, to cover in considerable detail both private law and public law topics. The point is, regardless of the topics an instructor selects to cover (in a one quarter course, a one semester course or in a full year course), this text provides comprehensive coverage of the topics generally captured by the terms “business law” and “legal environment of business.”

Next, we desire to present the subject matter clearly. While the law is certainly complicated, that characteristic does not mean that the subject cannot be offered to the reader unambiguously. The reader will note that plain language is the norm; and where legal terms are employed, they are defined. Fact-based examples of legal doctrines are used liberally. Also, each chapter has, on average, at least one visual depiction of the specific subject area being addressed, with the hope of being able to assist those who learn more easily through a diagram, table, or other visual form of presentation.

In terms of readability, we recognize that this text is aimed at students of various academic levels within a campus community. Some students will be studying selected chapters within the context of a business law or legal environment class as part of the general business curriculum at a community college or university. For the chapters most often used in such a course of study (e.g., Chapter 14 “Agreement: Offer and Acceptance”), we write at a level that respects the preliminary stage of business education for the most typical reader of such a chapter. For those students near the end of their four-year degree or in graduate school, we offer a more sophisticated presentation for chapters that are often read by those students (e.g., Chapter 37 “Secured Transactions”). For all readers, though, we trust you will find the material presented in a clear fashion.

Lastly, we believe you will find the material compelling. The study of law within the business environment is an exciting enterprise that requires the student to do far more than memorize rules. In point of fact, rules are just the beginning of our system of justice. Within this text you will explore the almost endless number of interests within a vibrant society, particularly within the realm of business, which must be addressed. Often these interests compete with one another. For example, within the realm of bankruptcy, the law must strike a balance between allowing a debtor hope for a new financial life while at the same time holding the debtor for past financial obligations made to creditors. Sometimes interests within a particular relationship are treated differently by the law because of the status of the parties. Within the employer-employee relationship, for example, an employee may quit working for an employer for no reason. An employer, however, may have to possess a reason to legally terminate certain types of employees. The employer and employee are both parties within the same relationship, yet the law imposes different obligations. Or, take a third example. As a general rule, the law attempts to provide a system characterized by both structure and fairness. However, structure and fairness cannot always co-exist. A variety of strident rules govern the formation of a contract. The law recognizes certain promises may fall short of meeting the formal requirements of a contract, but those very same promises will be enforced by a court in order to prevent unjust enrichment of one of the parties. These are just three scenarios that illustrate the dynamic nature of law where the law is recognized as a complex mechanism for expressing societal interests; the law is so much more than simply a set of rules. There is considerable depth in the law, and that richness should be part of any study of law. We write the text in a manner that attempts to capture this fascinating aspect.

PEDAGOGICAL DESIGN

The chapters in *Business Law*, fifth edition consist of three basic parts: text, cases, and problems. First, the text is written in a style designed for business students and students in related disciplines. We have composed the text of this book without much of the legalese to which law school students become so familiar. The textual material is crafted to present both the richness of the law and the dynamic interaction between law and business. To the extent possible, the focus of the writing is directed toward introducing students of today to the legal issues they will face throughout their careers.

Second, each chapter contains three edited cases. These case opinions, presented in the judge's actual language, illustrate a point of law discussed in the text. In order to improve readability, we have lightly edited the prose in the official opinion of the court, particularly regarding the elimination of citations to many cases and statutes not important for our purposes. The reader will discover each case consists of basic facts (set forth in italics for ease of understanding). This portion of the case provides a true-to-life view of business, almost always in a fairly contentious setting. Each case then presents the legal analysis of a judge or justice, allowing the student to experience the legal process as the law is explained and applied.

A further comment or two about the cases included in *Business Law*: While almost all of the cases were decided recently, a small number of judicial opinions are classic cases from prior decades. These cases are featured in order to illustrate the rich history associated with many legal doctrines we take for granted today. Also, the cases come from both state and federal courts and from all reaches of the United States (there is even an occasional case from outside the United States to illustrate how other countries make legal decisions).

Third, review problems, including questions and factual scenarios, are included at the end of each chapter. Many students learn best by being able to apply what they have read in a chapter, so we have crafted various types of learning exercises to allow students to use the legal principles explained in the text.

Numerous aspects of this text were designed to help enhance the "reader-friendly" and "student-centered" nature we hope is conveyed throughout the book. Of particular interest, in this pedagogical sense, are the following items:

- A Chapter Outline provides a detailed list of the subject matter covered.
- A Chapter Preview serves as an introductory statement to help students understand how the chapter's topic fits into the overall business transaction.
- A Business Management Decision whets students' appetites for the chapter's discussion.
- Marginal definitions reinforce the meaning of key terms and phrases.
- New to the fifth edition, "Touchstones" are presented in each chapter. A Touchstone may consist of an edited case, newspaper article, law review article, or other source of legal information. The purpose of the "Touchstone" feature is to highlight interesting aspects of the legal subject being presented.
- A Case Concepts Review follows every case with questions to assist students in their comprehension of the case's major points.
- A Chapter Summary assists in the review process.
- A Matching Problem at the outset of the review questions provides students with a quick method to test their knowledge of key terms and phrases.
- Numerous factual-oriented Review Problems allow students to become comfortable in applying their understanding to business transactions.
- Strategic Focal Points provide students an opportunity to review an extended fact situation, consider relevant legal factors, and then see how business responds.

For further ease of learning, the reader will quickly discover two characteristics of this textbook. We have italicized significant words, phrases, and sentences throughout the text in an effort to assist the reader in recognizing particularly important aspects of the text. Also, as commented previously, we have added a large number of visual depictions of legal principles—sometimes in the form of a diagram showing the relationship between and among principles, sometimes in the form of a chart geared at comparing principles, and sometimes in other forms aimed at further enhancing the learning process.

In addition to these pedagogical devices, *Business Law*, fifth edition includes a detailed set of appendices. A glossary for student referral also is provided.

TOPICS COVERED

The forty-six chapters in *Business Law*, fifth edition are divided into ten distinctive parts. These parts permit the reader to view chapters within a broader context as represented by the term chosen to describe the part. That is, this structure allows students to have a logical skeleton with which to see the “big picture” of business law, consisting of the major parts of the discipline along with specific chapters presented in each part of the text.

Most instructors will wish to cover all chapters within a particular division, but there is sufficient flexibility in this scheme of organization to allow an instructor to select only specified chapters within a particular part. Further, we believe that dividing the text into ten parts provides maximum flexibility for ease of coverage regardless of whether one is structuring a course for a single quarter, one semester, or an entire academic year.

Part I serves as an *introduction* to our legal system. Chapter 1 presents the importance of studying the legal environment of business, the purpose of law, and the principal sources of law. Chapter 2 approaches three closely-related topics: legal reasoning, ethics, and social responsibility. Addressing the area of procedural law, the text includes material explaining the structure of the court system (Chapter 3), litigation procedure (Chapter 4), and alternatives to litigation as a dispute resolution system (Chapter 5). The Constitution is the focus of Chapter 6, with a specific emphasis on the constitutional grounds available for government to regulate business.

Part II consists of six chapters discussing *foundational legal concepts* that are essential for students to understand prior to their coverage of the remaining topics in this text. Chapter 7 covers criminal law since society is increasingly holding business owners and managers, as well as business entities, responsible for criminal violations. Chapters 8 and 9 place special emphasis on the various theories that are used to impose tort liability on businesspeople and their organizations. Chapters 10, 11, and 12 provide a treatment of the law of property. Chapter 10 delves into basic aspects of property law, the nature of personal property, and the transfer of property upon death. Chapter 11 is devoted to real property. The last chapter in Part II, Chapter 12, explores the fascinating topic of intellectual property, with particular attention paid to cyber law.

Part III, dealing with *contract law*, is designed to give students an understanding of the basic and traditional concepts of contracts as well as of recent developments from the closely related topic of sales under the Uniform Commercial Code. Pertinent parts of the Code are included as an appendix, and appropriate sections are referred to in brackets within the text. Also, the impact of the digital age on traditional notions of contract law is explored within Part III. After an introductory chapter that includes extensive coverage of contract remedies (13), the next four chapters (14 through 17) discuss the essential requirements for every valid contract. Chapter 18 involves issues of form and interpretation of contracts, whereas issues created when third parties become involved in contracts are discussed in Chapter 19. Chapter 20 includes a discussion of contractual performance, along with a presentation of the methods of discharging or excusing the performance of promises.

Part IV consists of three chapters that present additional material on the sale of goods. Without repeating the details contained in the chapters on contracts, Chapters 21 and 22 emphasize the provisions of Article 2 of the Uniform Commercial Code, necessary to understand formational and operational aspects of sales and leases of goods. Chapter 23 is an in-depth examination of the law of warranties. Domestic and global aspects are presented in each of these three chapters.

Part V contains four chapters on legal principles directed at dealing with people within a business environment. Chapter 24 covers the creation, termination, and general principles of the agency relationship. Chapter 25 discusses liability principles associated with an agency relationship from the perspective of the law of contracts and the law of torts. Employment-related concepts follow in the next two chapters, with Chapter 26 examining general employment and labor law subjects and Chapter 27 focusing on discrimination.

Part VI surveys laws relating to *business organizations*. We begin with Chapter 28, offering a unique and dynamic presentation comparing various forms of conducting business. Then Part IV discusses selected forms of business organizations using a three-stage model: (1) the methods of creating the various forms of organizations, (2) the legal aspects of operating the various forms of organizations, and (3) the law as it relates to dissolution of business organizations. This material is covered in Chapters 29 through 31. Recognizing the explosion in the use of limited liability companies, most of Chapter 32 is devoted to this exciting mechanism for conducting business.

Part VII consists of four chapters devoted to *negotiable instruments*. Chapter 33 serves as an introduction to terminology and to an understanding of the scope of Articles 3 and 4 of the Uniform Commercial Code. Chapters 34 and 35 discuss the basic elements and advantages of negotiable instruments. Chapter 36 concentrates on potential liability of the parties involved in the commercial paper transaction.

Part VIII contains three chapters dealing with the law as it relates to *creditors and debtors*. The first, Chapter 37, examines Article 9 of the Uniform Commercial Code on secured credit transactions. Chapter 38 presents additional laws assisting creditors, emphasizing the complex area of suretyship. Finally, Chapter 39 discusses bankruptcy.

Part IX contains four chapters on the subject of *government regulation of business*. Chapter 40 covers administrative law, with an emphasis on the operation and impact of administrative agencies. Chapter 41 deals with the regulation of corporate securities. The subject of antitrust law is dealt with in Chapter 42. Two areas of comparatively recent vintage, consumer law (Chapter 43) and environmental law (Chapter 44), conclude Part IX.

Part X presents two subject areas that are more and more relevant to doing business today. Chapter 45 examines legal aspects of *international business*, while Chapter 46 presents important legal subjects that an *entrepreneur* may wish to consider.

SUPPLEMENTS & RESOURCES

➤ *Instructors Supplements*

A complete teaching package is available for instructors who adopt this book. This package includes an online lab, instructor's manual, test bank, course management software, and PowerPoint™ slides.

BVTLab	An online lab is available for this textbook at www.BVTLab.com, as described in the BVTLab section below.
Instructor's Manual	The Instructor's Manual helps first-time instructors develop the course, while offering seasoned instructors a new perspective on the materials. Each section of the Instructor's Manual coincides with a chapter in the textbook. The user-friendly format begins by providing learning objectives and detailed outlines for each chapter. Then, the manual presents lecture discussions, class activities and/or sample answers to the end-of-chapter review questions, along with citations that provide the rationale for the answers. Lastly, additional resources—books, articles, Web sites—are listed to help instructors review the materials covered in each chapter.
Test Bank	An extensive test bank is available to instructors in both hard copy and electronic form. Each chapter has 120 to 150 multiple choice questions ranked by difficulty and style, as well as 20 written-answer questions. Each question is referenced to the appropriate section of the text to make test creation quick and easy.
Course Management Software	BVT's course management software, Respondus, allows for the creation of tests and quizzes that can be downloaded directly into a wide variety of course management environments such as Blackboard, WebCT, Desire2Learn, ANGEL, E-Learning, eCollege, Canvas, Moodle, and others.
PowerPoint Slides	A set of PowerPoint slides includes about 30 slides per chapter, comprising a chapter overview, learning objectives, slides covering all key topics, key figures and charts, as well as summary and conclusion slides.

➤ *Student Resources*

Student resources are available for this textbook at www.BVTLab.com. These resources are geared toward students needing additional assistance, as well as those seeking complete mastery of the content. The following resources are available:

Practice Questions	Students can work through hundreds of practice questions online. Questions are multiple choice or true/false in format and are graded instantly for immediate feedback.
Flashcards	BVTLab includes sets of flashcards that reinforce the key terms and concepts from each chapter.
Chapter Summaries	A convenient and concise chapter summary is available as a study aid.
PowerPoint Slides	For a study recap, students can view all of the instructor lecture preparation PowerPoints online.

➤ **BVTLab**

BVTLab is an affordable online lab for instructors and their students. It includes an online classroom with grade book and chat room, a homework grading system, extensive test banks for quizzes and exams, and a host of student study resources. Even if a class is not taught in the lab, students can still utilize the many student resources described below.

Course Setup	BVTLab has an easy-to-use, intuitive interface that allows instructors to quickly set up their courses and grade books, and to replicate them from section to section and semester to semester.
Grade Book	Using an assigned passcode, students register for the grade book, which automatically grades and records all homework, quizzes, and tests.
Chat Room	Instructors can post discussion threads to a class forum and then monitor and moderate student replies.
Student Resources	All student resources for this textbook are available in BVTLab in digital form.
eBook	Students who have purchased a product that includes an eBook can download the eBook from a link in the lab. A web-based eBook is also available within the lab for easy reference during online classes, homework, and study sessions.

➤ *Customization*

BVT's Custom Publishing Division can help you modify this book's content to satisfy your specific instructional needs. The following are examples of customization:

- Rearrangement of chapters to follow the order of your syllabus
- Deletion of chapters not covered in your course
- Addition of paragraphs, sections, or chapters you or your colleagues have written for this course
- Editing of the existing content, down to the word level
- Customization of the accompanying student resources and online lab
- Addition of handouts, lecture notes, syllabus, etc.
- Incorporation of student worksheets into the textbook

All of these customizations will be professionally typeset to produce a seamless textbook of the highest quality, with an updated table of contents and index to reflect the customized content.

ACKNOWLEDGMENTS

A considerable debt of gratitude is owed to the dedicated staff at BVT Publishing, including Jason James, Richard Schofield, Joyce Bianchini, Shannon Waters, Rhonda Minnema and Esther Scannell. These named individuals are responsible for creating the concept for this book and working tirelessly to make that concept the reality you hold in your hands today. Their professionalism is truly peerless.

While writing a textbook is a solitary endeavor, the content explored and approach adopted throughout this book is influenced by the valuable perspectives of former students, friends, campus colleagues, business owners and managers, attorneys, law school professors, legislators, and judges that have been shared with the author over the past thirty years. In that sense, this project is most certainly a “team” effort.

That said, all omissions and errors are mine and mine alone.

DEDICATION

To the Hon. Jean Morony ... the mentorship you provided early in my career is appreciated deeply. I have never met a legal professional who held such reverence for—and love of—the law.

To Ray Morgan and Terry Ryken ... both of you are proof positive that with compassion and high ethical standards one can achieve extraordinary goals in the most competitive of business environments. You show all of us that it is possible to achieve great ends in life, and to achieve them with class.

To my wife, Sheryl, and our boys, Chris and Matt—your support was crucial to the completion of this book and I am forever in your debt.

To my mother and my father—your unwavering confidence in my abilities, regardless of whether grounded in reality or not, is greatly appreciated.

Welcome to *Business Law*, fifth edition!

James F. Morgan