





A monthly newsletter from McGraw-Hill Education

November 2020 Volume 12, Issue 4

Contents

Hot Topics	2
Video Suggestions	8
Ethical Dilemma	11
Teaching Tips	14
Chapter Key	15

Dear Professor,

Happy Holidays! Welcome to McGraw-Hill Education's November 2020 issue of Proceedings, a newsletter designed specifically with you, the Business Law educator, in mind. Volume 12, Issue 4 of Proceedings incorporates "hot topics" in business law, video suggestions, an ethical dilemma, teaching tips, and a "chapter key" cross-referencing the November 2020 newsletter topics with the various McGraw-Hill Education business law textbooks.

You will find a wide range of topics/issues in this publication, including:

- 1. A long-awaited House of Representatives report suggesting that the United States Congress should consider breaking up "Big Tech";
- 2. A federal appeals court's rejection of President Trump's request to block access to his financial records;
- 3. Restaurant chain Ruby Tuesday's recent filing for Chapter 11 bankruptcy protection;
- 4. Videos related to a) former Federal Bureau of Investigation (FBI) agents alleging discrimination against the Bureau; and b) Derek Chauvin, the exofficer infamous for the George Floyd case, and his release after posting a \$1 million bail;
- 5. An "ethical dilemma" related to Google and Oracle's intellectual property (copyright) clash in the United States Supreme Court; and
- 6. "Teaching tips" related to Article 3 ("Ruby Tuesday Files for Chapter 11 Bankruptcy Protection: 185 Restaurants Closed") and the Ethical Dilemma ("Google, Oracle Meet in Copyright Clash at Supreme Court") of the newsletter.

I wish all of you a safe and joyous holiday season!

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A monthly newsletter from McGraw-Hill Education

November 2020 Volume 12, Issue 4

Of Special Interest

This section of the newsletter covers three (3) topics: 1) A longawaited House of Representatives report suggesting that the **United States Congress** should consider breaking up "Big Tech"; 2) A federal appeals court's rejection of President Trump's request to block access to his financial records; and 3) Restaurant chain Ruby Tuesday's recent filing for Chapter 11 bankruptcy protection.

Hot Topics in Business Law

Article 1: "Long-Awaited House Report Says Congress Should Consider Breaking Up Big Tech"

https://www.forbes.com/sites/rachelsandler/2020/10/06/long-awaited-house-report-recommends-breaking-up-big-tech/#356cdab85c83

According to the article, as Washington continues to scrutinize Big Tech, the House Judiciary Antitrust Subcommittee recently released a long-awaited investigation into Amazon, Apple, Google and Facebook, recommending that the United States Congress take aggressive action and consider breaking up "certain dominant platforms."

The House panel found that Facebook and Google have "monopoly power" while Apple and Amazon have "significant and durable market power."

The report says Congress should "consider legislation that draws on two mainstay tools of the antimonopoly toolkit: structural separation and line of business restrictions."

The report also recommended nondiscrimination rules that would prohibit companies from preferencing of their own products or services, such as Amazon-branded products or Apple Music, over third party competitors on their platforms.

Lawmakers slammed the Federal Trade Commission and the Justice Department for failing to prevent anticompetitive mergers, and proposed a shift in how regulators look at potential acquisitions: Any merger by a dominant platform would be presumed anticompetitive unless it could show the transaction was in public interest and similar benefits couldn't be achieved through internal growth and expansion.

Though the subcommittee investigation was started by members of both parties, Republicans didn't sign onto the final report and instead released their report opposing "onerous and burdensome regulation."

The report will not result in fines or other legal consequences, and it is up to Congress to ultimately take up the recommendations of the subcommittee.

"As demonstrated during a series of hearings held by the Subcommittee and as detailed in this Report, the online platforms' dominance carries significant







A monthly newsletter from McGraw-Hill Education

November 2020 Volume 12, Issue 4

costs. It has diminished consumer choice, eroded innovation and entrepreneurship in the U.S. economy, weakened the vibrancy of the free and diverse press, and undermined Americans' privacy," the report says.

In a statement, Apple said is vehemently disagrees "with the conclusions reached in this staff report with respect to Apple," adding that it "does not have a dominant market share in any category where we do business."

Amazon published a blog post saying "fringe notions on antitrust would destroy small businesses and hurt consumers." The company especially took issue with the notion that it shouldn't be allowed to sell its own Amazon-branded products alongside third-party sellers. "What these misguided notions from some subcommittee staff misunderstand is the fact that third parties having the opportunity to sell right alongside a retailer's products is the very competition that most benefits consumers and has made the marketplace model so successful for third-party sellers," the post reads.

Facebook argued in a statement that its acquisition of Instagram and WhatsApp made those apps even more successful. "A strongly competitive landscape existed at the time of both acquisitions and exists today. Regulators thoroughly reviewed each deal and rightly did not see any reason to stop them at the time," a spokesperson said.

A Google spokesperson said the company disagrees with both reports, "which feature outdated and inaccurate allegations from commercial rivals about Search and other services."

Discussion Questions

1. Do you agree with the House Judiciary Antitrust Subcommittee that Facebook and Google have "monopoly power" while Apple and Amazon have "significant and durable market power?" Explain your response.

Although this is in some respects an opinion question and student responses may therefore vary, all will likely agree that Facebook, Google, Apple, and Amazon have a significant ability to control their respective markets. Control of market is one of the hallmarks of monopoly power.

2. Explain the two (2) mainstay "tools" of the antimonopoly "toolkit": structural separation and line of business restrictions.

The terms "structural separation" and "line of business" restrictions refer to regulating the type(s) of business functions and products in which a company can engage. If a court invokes the structural separation and/or "line of business" restriction remedies, the court is essentially trying to limit the monopoly power of the business. The nature of the structural separation and line of business restrictions invoked by a court will depend on the particular business that is the subject of monopoly scrutiny, the product(s) the business produces, and the industry in which it operates.







A monthly newsletter from McGraw-Hill Education

November 2020 Volume 12, Issue 4

3. Do you agree with the recommendation of the House Judiciary Antitrust Subcommittee that the United States Congress should take aggressive action and consider breaking up "certain dominant platforms" like Facebook and Google? Why or why not?

This is an opinion question, so student responses will likely vary. Some students may favor vigorous enforcement of antimonopoly law in order to foster competition. Other students may oppose such enforcement, viewing it as essentially a form of punishment for business success.

Article 2: "Federal Appeals Court Rejects Trump Effort to Block Access to Financial Records"

https://www.cbsnews.com/news/trump-financial-records-appeals-court-manhattan-da/

According to the article, a federal appeals court panel in New York ruled recently that the Manhattan district attorney can enforce a subpoena to President Trump's longtime accounting firm for troves of his business records and tax returns, the latest setback in the president's efforts to block a New York grand jury from obtaining his financial information.

The unanimous ruling from a three-judge panel on the 2nd United States Circuit Court of Appeals paves the way for a potential second United State Supreme Court showdown in the yearlong dispute over the subpoena to Mazars USA, Mr. Trump's accounting firm. The 2nd Circuit upheld a lower court's decision dismissing Mr. Trump's effort to block Manhattan District Attorney Cyrus Vance from obtaining the president's financial records, but the court put enforcement of the subpoenas on hold to allow the president to appeal the ruling.

The U.S. Justice Department said it is reviewing the decision.

The dispute before the 2nd Circuit marks the second attempt by the president and his legal team to stop Manhattan investigators from gaining access to his business information. Vance is seeking Mr. Trump's financial records, including his tax returns, dating back to 2011 as part of a criminal investigation into the president's business dealings and hush-money payments made to two women who claimed they had affairs with Mr. Trump years before he was elected.

Mr. Trump suffered a string of losses in his first effort to block Vance from obtaining his records, with the Supreme Court in July rejecting claims he has "absolute immunity" from state criminal subpoenas, but sending the case back to the lower courts for further proceedings.

The president's lawyers then challenged the subpoena again on different grounds, arguing it was overbroad and issued in bad faith.

In its opinion, the 2nd Circuit panel rejected Mr. Trump's claims.







A monthly newsletter from McGraw-Hill Education

November 2020 Volume 12. Issue 4

"It is neither uncommon nor unlawful for grand jury subpoenas to seek categories of documents that may include some documents that ultimately prove to be unhelpful to the grand jury's investigation," the judges said.

In addressing Mr. Trump's argument the subpoena was issued in bad faith and with retaliatory intent, the court said "the fact that the Mazars subpoena was issued to a third-party custodian adds nothing to the President's bad faith claim. Such subpoenas are routine."

"The direction of the subpoena to the President's accountant, rather than to the President himself, does not prevent the President from objecting to the subpoena," the 2nd Circuit said. "On the other hand, it relieves the President of the burden of supervising and being responsible for compliance, thus freeing the President from obligations that might otherwise interfere with his duties of office."

Discussion Questions

1. What is a grand jury? What is the primary function of the grand jury?

A grand jury convenes in order to determine whether there is sufficient evidence in a particular case to justify carrying the case forward to trial. Typically, grand juries convene for prolonged periods of time to make this judgment regarding numerous criminal cases. During a grand jury hearing, the defense attorney does not appear; instead, the prosecutor appears in order to convince the grand jury that the evidence is sufficient to justify trying the witness. It is form of due process for the defendant, since a grand jury can terminate a case well before trial if the prosecutor does not present sufficient evidence.

2. What is the primary argument of the Trump administration in this case? What is the primary argument of Manhattan District Attorney Cyrus Vance?

The Trump administration's primary argument is that meeting such demands interferes with the performance of his duties of office as president of the United States. Manhattan District Attorney Cyrus Vance's best argument is that no one, not even the president, is "above the law."

3. In your reasoned opinion, who should win this case? Are you able to provide an opinion free from political bias, or does your political affiliation affect your opinion?

This is an opinion question, so student responses may vary. Students may confess that political affiliation can affect their opinion regarding this matter. It is interesting to note that during President William (Bill) Clinton's administration, Paula Jones' sexual harassment case against him did proceed, and his deposition response regarding sexual relations ultimately led to his impeachment (although he was not removed from office.)







A monthly newsletter from McGraw-Hill Education

November 2020 Volume 12, Issue 4

Article 3: "Ruby Tuesday Files for Chapter 11 Bankruptcy Protection: 185 Restaurants Closed"

https://www.usatoday.com/story/money/2020/10/07/ruby-tuesday-closing-185-restaurants-chapter-11-bankruptcy/5907136002/

According to the article, hobbled by the pandemic and facing the same long-term challenges as other casual dining chains, Ruby Tuesday recently filed for Chapter 11 bankruptcy protection.

The company hopes to use the debt-cutting process to improve its finances and stay in business, saying in a statement that it had "reached an understanding with its secured lenders to support its restructuring."

But chief executive officer (CEO) Shawn Lederman said in a court filing the company has permanently closed 185 restaurants that had shut their doors during the coronavirus pandemic. That leaves the chain with 236 company-owned and operated locations, as well as an undisclosed number of locations run by 10 franchisee groups.

"We do not anticipate any additional restaurant closures at this time," Ruby Tuesday chief marketing officer Jenifer Boyd Harmon said in an emailed statement. "We remain committed to providing our guests with safe, quality experiences at all our current locations."

The move comes as sit-down restaurants have been battered by the pandemic, which has reduced their seating capacity and scared away many patrons.

But Ruby Tuesday had been struggling for years with increased competition from fast-food and fast-casual companies, as well as reduced traffic to its mall-based locations and the rise of new food delivery options, Lederman said.

The company specializes in ribs, steaks, seafood, chicken, appetizers and a garden bar. Based in Maryville, Tennessee, the company has about 7,300 employees, including 7,000 who have been temporarily furloughed.

"This announcement does not mean 'Goodbye, Ruby Tuesday," Lederman said in a statement.

"Today's actions will allow us an opportunity to reposition the company for long-term stability as we recover from the unprecedented impact of COVID-19."

Ruby Tuesday traces its roots back to its founding in Knoxville, Tennessee, in 1972 near the campus of the University of Tennessee.

In 2017, with about 541 restaurants, the company went private in a sale to private-equity firm NRD Capital Management.







A monthly newsletter from McGraw-Hill Education

November 2020 Volume 12, Issue 4

It quickly ran into trouble as sales suffered. Ruby Tuesday defaulted on its debts in the two quarters before the COVID-19 pandemic erupted in March.

In recent months, Ruby Tuesday has renegotiated leases and loan agreements and slashed corporate costs in an attempt to avoid bankruptcy according to a court filing.

But the company, which relied on sit-down dining for more than 90% of its sales, was not able to adapt quickly enough to the pandemic despite moves to expand delivery and takeout, launch "virtual kitchens" and sell raw food through its website.

Discussion Questions

1. What is Chapter 11 bankruptcy?

Chapter 11 bankruptcy is reorganization bankruptcy for a business. Primarily, debt restructuring is the ultimate goal of Chapter 11 bankruptcy, although there may be some debt forgiveness involved as part of the overall Chapter 11 bankruptcy plan.

2. In your opinion, should debt forgiveness be a substantial part of Chapter 11 bankruptcy, or do you favor an emphasis on debt restructuring? Explain your response.

This is an opinion question, so student responses may vary. As indicated previously, debt restructuring is the primary goal of Chapters 11 bankruptcy, although debt forgiveness may be a secondary goal of the Chapter 11 reorganization plan. Ultimately, the details of the Chapter 11 bankruptcy reorganization plan are subject to final approval by the presiding bankruptcy court judge.

3. In your reasoned opinion, will Ruby Tuesday's successfully emerge from Chapter 11 bankruptcy? If not, what is the alternative?

This is an opinion question, so student responses may vary. Some businesses emerge from Chapter 11 bankruptcy successfully, while others do not. If a business does not successfully emerge from Chapter 11, it may have no choice but to file for Chapter 7 and cease to exist as an ongoing business concern.







A monthly newsletter from McGraw-Hill Education

November 2020 Volume 12, Issue 4

Video Suggestions

Video 1: "Former FBI Agents Allege Discrimination, Push for More Diversity in Ranks"

https://www.cbsnews.com/video/former-fbi-agents-allege-discrimination-push-for-more-diversity-in-ranks/

Discussion Questions

1. Describe Title VII of the Civil Rights Act of 1964. Does Title VII apply to federal government employees?

Title VII of the Civil Rights Act of 1964 is the landmark federal antidiscrimination legislation that prohibits employment discrimination based on race, gender, national, culture, and religion. Recently, in its <u>Obergefell v.</u> <u>Hodges</u> decision, the United States Supreme Court concluded that Title VII of the Civil Rights Act also prohibits discrimination based on LGBTQ status.

Title VII of the Civil Rights Act applies to private employers, and it also applies to the federal government.

2. Describe the difference between "disparate treatment" discrimination and "disparate impact" discrimination. Which form of discrimination are the former FBI agents in the video alleging?

Disparate treatment discrimination refers to intentional discrimination against the plaintiff, while disparate impact discrimination refers to policies and/or practices of an employer that may result in discrimination. Both constitute violations of Title VII of the Civil Rights Act.

Although the video does not point to specific, "smoking gun" references to disparate treatment discrimination (for example, a supervisor telling a subordinate "I am not promoting you because you are Black"), it does include some "eye-catching" statistics that can help prove a disparate impact case—the fact that of the 13,000 FBI employees, only four (4) percent are Black (Blacks represent approximately thirteen (13) percent of the overall United States population), and that of the agents running the FBI field offices, only three (3) are black. Even without evidence of disparate treatment discrimination, plaintiffs can win cases based on convincing evidence of disparate impact discrimination alone.







A monthly newsletter from McGraw-Hill Education

November 2020 Volume 12, Issue 4

3. In your reasoned opinion, are the allegations in this video supported by the evidence? Explain your response.

This is an opinion question, so student responses may vary. In your author's opinion, there are some disparate impact cases that are almost as strong from an evidentiary standpoint as a disparate treatment case.

Video 2: "Derek Chauvin, Ex-Officer Seen Kneeling on George Floyd's Neck, Released after Posting \$1 Million Bail"

https://abcnews.go.com/US/derek-chauvin-officer-kneeling-george-floyds-neck-released/story?id=73478445&cid=clicksource 4380645 15 comic strip sq hed

Note—In addition to the video, please see the following article included at the above-reference internet address:

"Derek Chauvin, Ex-Officer Seen Kneeling on George Floyd's Neck, Released after Posting \$1 Million Bail"

According to the article, Derek Chauvin, the ex-Minneapolis Police officer accused of killing George Floyd, has been released from jail on \$1 million bond.

Chauvin is charged with second and third-degree murder and manslaughter in Floyd's death. He was recently released from a state prison.

All four accused officers are now out of jail as they await the start of their trial next March.

Floyd died on Memorial Day after he was pinned down by Chauvin. Body camera footage shows Chauvin kneeling on Floyd's neck.

The three other officers who were at the scene of Floyd's death have been charged with aiding and abetting second-degree murder and aiding and abetting manslaughter. All four were fired after Floyd's death.

Chauvin's bail conditions were set in June and included surrendering guns; not working in law enforcement or security; no contact with the victim's family; and not leaving the state without permission.

Floyd's death sparked countrywide protests over the killing of Black men and women by law enforcement.







A monthly newsletter from McGraw-Hill Education

November 2020 Volume 12. Issue 4

Discussion Questions

1. Define second-degree murder, third-degree murder, and manslaughter.

Second-degree murder is the unlawful, intentional taking of the life of another human being without premeditation and deliberation. Third-degree murder is defined by the state of Minnesota (where the case against Derek Chauvin will be tried) as follows:

Whoever, without intent to effect the death of any person, causes the death of another by perpetrating an act eminently dangerous to others and evincing a depraved mind, without regard for human life, is guilty of murder in the third degree and may be sentenced to imprisonment for not more than 25 years.

2. In your reasoned opinion, did former Minneapolis police officer Derek Chauvin exercise reasonable force in this case, or is he responsible for second-degree murder, third-degree murder, or manslaughter (If so, which one?) Explain your response.

This is an opinion question, so student opinions may vary. Also, this case has been highly politicized and has received a great deal of media attention, and student opinions may already be formulated based on what they have already seen and heard.

3. Is it possible to provide a reasoned opinion of guilt or innocence in this case, or has the case been too politicized and/or covered by the media? In your reasoned opinion, will it be possible for Mr. Chauvin to receive a fair trial in this case? Explain your response.

Please refer to the response to Video 2, Discussion Question 2 above.







A monthly newsletter from McGraw-Hill Education

November 2020 Volume 12, Issue 4

Of Special Interest

This section of the newsletter addresses Google and Oracle's intellectual property (copyright) clash in the United States Supreme Court.

Ethical Dilemma

"Google, Oracle Meet in Copyright Clash at Supreme Court"

 $\frac{https://abcnews.go.com/Politics/wireStory/google-oracle-meet-copyright-clash-supreme-court-73466371$

According to the article, the topic was high tech: the code behind smartphones.

But recently, the United States Supreme Court looked to more low tech examples, from the typewriter keyboard to restaurant menus, try to resolve an \$8 billion-plus copyright dispute between tech giants Google and Oracle.

The case, which the justices heard by phone because of the coronavirus pandemic, has to do with Google's creation of the Android operating system now used on the vast majority of smartphones worldwide. In developing Android, Google used some of Oracle's computer code.

Some justices seemed concerned that a ruling for Oracle could stifle innovation.

Chief Justice John Roberts was among the justices who turned to examples beyond technology to try to get a handle on the dispute, asking Oracle's lawyer to imagine opening a new restaurant and creating a menu.

"Of course you're going to have, you know, appetizers first, then entrees and then desserts. Now you shouldn't have to worry about whether that organization is copyrighted," Roberts said, suggesting Oracle's argument went too far.

But Roberts also had strong words for Google's lawyer. "Cracking the safe may be the only way to get the money that you want, but that doesn't mean you can do it," Roberts said, suggesting Google could have licensed what it wanted to use.

To create Android, which was released in 2007, Google wrote millions of lines of new computer code. But it also used 11,330 lines of code and an organization that's part of Oracle's Java platform.







A monthly newsletter from McGraw-Hill Education

November 2020 Volume 12. Issue 4

Google says what it did is long-settled, common practice in the industry, a practice that has been good for technical progress. And it says there is no copyright protection for the purely functional, noncreative computer code it used, something that couldn't be written another way. But Oracle says Google "committed an egregious act of plagiarism" and sued.

Justice Sonia Sotomayor was one of several justices who worried about the consequences of ruling for Oracle. She noted that what Google took was "less than 1% of the Java code" and asked why the justices should "upend" the current understanding of what is able to be copyrighted.

Justice Elena Kagan said that there are "all kinds of methods of organization in the world," from the keyboard to the periodic table, and she said Oracle was suggesting that the person who developed them could have a copyright and "prevent anybody else from using them."

The case has been going on for a decade. Google won the first round when a trial court rejected Oracle's copyright claim, but that ruling was overturned on appeal. A jury then sided with Google, calling its copying "fair use," but an appeals court disagreed.

Because of the death of Justice Ruth Bader Ginsburg, only eight justices are hearing the case. The questions for the court are whether the 1976 Copyright Act protects what Google copied, and, even if it does, whether what Google did is still permitted.

Justice Brett Kavanaugh noted that the justices had been told "the sky will fall" if the court rules against Google. But he also he wanted to know: "You're not allowed to copy a song just because it's the only way to express that song. Why is that principle not at play here?"

Justice Samuel Alito said he was concerned that under Google's argument "all computer code is at risk of losing protection."

Microsoft, IBM and major internet and tech industry lobbying groups have weighed in, in favor of Google.

The Trump administration, the Motion Picture Association and the Recording Industry Association of America are among those supporting Oracle.

The case is Google LLC v. Oracle America Inc., 18-956.

Discussion Questions

1. What is a copyright?

A copyright is the right of exclusivity given to the creator of a literary or artistic work.







A monthly newsletter from McGraw-Hill Education

November 2020 Volume 12, Issue 4

2. In your reasoned opinion, should computer code be copyrightable? Why or why not?

This is an opinion question, so student responses may vary.

3. In your reasoned opinion, who should prevail in this case: Google or Oracle? Explain your response.

This is an opinion question, so student responses may vary.







A monthly newsletter from McGraw-Hill Education

November 2020 Volume 12, Issue 4

Of Special Interest

This section of the newsletter will assist you in addressing Article 3 ("Ruby Tuesday Files for Chapter 11 Bankruptcy Protection: 185 Restaurants Closed") and the Ethical Dilemma ("Google, Oracle Meet in Copyright Clash at Supreme Court") of the newsletter.

Teaching Tips

Teaching Tip 1: "What is Chapter 11 Bankruptcy?"

For an excellent video describing the "basics" of Chapter 11 bankruptcy, please refer to the following internet address:

https://www.thestreet.com/video/what-chapter-eleven-bankruptcy

Teaching Tip 2: "Copyright Basics"

For an excellent publication from the United States Copyright Office describing the "basics" of copyright law, please refer to the following internet address:

https://www.copyright.gov/circs/circ01.pdf







A monthly newsletter from McGraw-Hill Education

November 2020 Volume 12, Issue 4

Chapter Key for McGraw-Hill Education Business Law Texts:

	Hot Topics	Video Suggestions	Ethical Dilemma	Teaching Tips
Barnes et al., Law for Business	Chapters 4, 44	Chapters 5 and 25	Chapters 3 and 8	Chapters 3, 8 and
burnes et al., Law for Business	and 45	onapters 5 and 25	onapters 5 and 6	44
Bennett-Alexander &	N/A	Chapters 3 and 6	N/A	N/A
Hartman, Employment Law for		·		
Business				
Kubasek et al., Dynamic	Chapters 5, 32 and	Chapters 7 and 43	Chapters 2 and 12	Chapters 2, 12
Business Law	47			and 32
Kubasek et al., Dynamic	Chapters 5 and 19	Chapters 6 and 24	Chapters 2 and 8	Chapters 2, 8 and
Business Law: The Essentials				19
Liuzzo, Essentials of Business	Chapters 5 and 21	Chapters 3 and 33	Chapters 2 and 28	Chapters 2, 21
Law				and 28
Langvardt et al., Business	Chapters 3, 30, 49	Chapters 5 and 51	Chapters 4 and 8	Chapters 4, 8
Law: The Ethical, Global, and	and 50			and 30
E-Commerce Environment				
McAdams et al., Law, Business	Chapters 5, 10, 11	Chapters 4 and 13	Chapter 2	Chapters 2 and 15
& Society	and 15			
Melvin, et al., Business Law		Chapters 12 and 22	Chapters 5 and 24	Chapters 5, 20 and
and Strategy	20			24
Melvin, The Legal Environment	Chapters 3, 26 and		Chapters 2 and 50	Chapters 2, 26 and
of Business: A Managerial	43	45		50
Approach				
Pagnattaro et al., The Legal	Chapters 6 and 16	Chapters 13 and 20	Chapters 2 and 11	Chapters 2 and 11
and Regulatory Environment				
of Business				
Sukys, Business Law with UCC	Chapters 2, 21 and	Chapters 5 and 23	Chapters 1 and 33	Chapters 1, 21 and
Applications	28			33







A monthly newsletter from McGraw-Hill Education

November 2020 Volume 12, Issue 4

This Newsletter Supports the Following Business Law Texts:

Barnes et al., Law for Business, 14th Edition ©2021 (1260354660)

Bennett-Alexander et al., Employment Law for Business, 9th Edition ©2019 (1260031691)

Kubasek et al., Dynamic Business Law, 5th Edition © 2021 (1260354687)

Kubasek et al., Dynamic Business Law: The Essentials, 5th Edition © 2020 (1260354717)

Langvardt et al., Business Law: The Ethical, Global, and E-Commerce Environment, 17th Edition © 2019 (1260118827)

Liuzzo, Essentials of Business Law, 10th Edition © 2019 (1260118819)

McAdams et al., Law, Business, and Society, 12th Edition ©2018 (1260047687)

Melvin et al., Business Law and Strategy, 1st Edition © 2021 (0077614674)

Melvin et al., The Legal Environment of Business, A Managerial Approach: Theory to Practice, 4th edition ©2021 (1260354644)

Pagnattaro et al., The Legal and Regulatory Environment of Business, 18th Edition © 2019 (1260118835)

Sukys, Business Law with UCC Applications, 15th Edition ©2020 (1260204162)





















