



Dynamic Business Law, 5th edition

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What's New in the 5th edition

New Topical Coverage

The 5th edition of Kubasek Dynamic Business Law addresses immigration law and privacy issues in greater detail with expanded coverage of both those areas of law. In the section in the front matter where changes to the text for the fourth edition are enumerated, readers can see several specific chapters where these topics have been introduced and explained.

Changes to the Chapters

The following list of changes and improvements is a testament to users of this book and their commitment to making *Dynamic Business Law* the best content of its kind.

Every chapter has new cases in the Questions & Problems section in response to suggestions from adopters and reviewers of the fourth edition.

Each chapter contains the following:

- A new feature in the final pages called “Practical Tips for Business Managers.” The idea of the feature is to emphasize that our book is a BUSINESS Law book, full of helpful ideas for modern business leaders.

- Either a new major case or a new Point/Counterpoint. Reviewers consistently applauded the freshness of our cases, and we want to continue to earn their applause in this regard.
- Three new case problems at the conclusion of the chapter.

Chapter by Chapter Changes

CHAPTER 1: An Introduction to Dynamic Business Law

- Clarified the meaning of “commercial” and “supreme law of the land” because reviewers said their students were not familiar with the terms.
- Broadened the treatment of the boundaries of “criminal law” in response to reviewer’s concern that the previous discussion of criminal law had focused too much on insider trading.
- Revised the discussion of the importance of comparative law by replacing the outdated material based on Google’s conflicts with China by discussing the restrictions on American firms resulting from the new 2017 cybersecurity law. This addition contributes to our expanded treatment of cyberlaw.
- Expanded the discussion of the ways in which critical thinking enhances creative business leadership and effectiveness.
- Explained in the description of critical thinking the significance of the “But What If” feature in DBL5 for being alert to the impact of single facts on success or failure in a legal dispute.

CHAPTER 2: Business Ethics

- Made explicit the open-ended nature of ethical decisions. In other words, we should never expect universal agreement about how to answer ethical questions. But by learning the various ways that thoughtful people have learned to talk about ethical dilemmas, businesspeople can play a leadership role in sustaining an ethical market system.
- Enlarged the discussion of social responsibility of business, including a description of Friedman’s view that the only social responsibility firms have is to maximize profits, as well as critiques of his argument. That inclusion was in direct response to reviewers’ suggestions.
- Introduced the history and rationale of the Foreign Corrupt Practices Act in response to a reviewer’s suggestion.
- Revised and simplified the WH approach to Business Ethics in response to reviewers’ requests.
- Expanded coverage of the ethics of care and used that material to demonstrate just how challenging it is to reach a satisfactory ethical decision.

CHAPTER 3: The U.S. Legal System

- Added a new case nugget illustrating how the courts handle the increasing problem of defining when activities on the internet can constitute sufficient minimum contacts to give the court jurisdiction over an out of state defendant. This change is part of our effort to increase the coverage of cyberlaw issues.
- Removed discussion of quasi-in rem jurisdiction in response to reviewer comments that the concept is really an unnecessary concept for business students.
- Added a brief discussion of the doctrine of exhaustion of remedies in response to a reviewer

request.

- Added a sentence clarifying that the map of the Circuit Courts of Appeal did not include the DC Circuit in response to a reviewer's concern about a potential conflict between the text, which correctly specifies that there are 12 Circuit Courts of Appeal, and the map, that showed only 11 circuits.
- Replaced the 1996 J.E.B. case with a 2016 case to provide a more current illustration of the concept of the Bateson challenge.
- Inserted new point-counterpoint, "Should all states copy the federal system and appoint state judges for life?"

CHAPTER 4: Alternative Dispute Resolution

- Added a list of states that have adopted the Uniform Mediation Act in response to reviewers' suggestions.
- Inserted a new 2016 case, *Maribel Baltazar v. Forever 21*, illustrating an unconscionable binding arbitration clause.
- Added a new point counter-point, "Should court annexed ADR be mandatory in certain cases?"
- Added a discussion of *Epic Systems Corp v Lewis Corporation*, the controversial 2018 Supreme Court case holding that companies may require workers to settle employment disputes through individual arbitration rather than joining together in class actions. This case follows an earlier Supreme Court case holding that corporations could similarly force consumers to settle claims through individual arbitration rather than class actions.

CHAPTER 5: Constitutional Principles

- Inserted a new 2016 case, *Direct Marketing Association V. Barbara Broh*, to provide a more current illustration of a challenge to a state law as imposing an undue burden on interstate commerce.
- Added a new case nugget discussing the 4th Amendment implications of the use of drones by law enforcement to conduct searches. This issue is important in our attempts increase coverage of privacy issues.
- Updated the case wrap up to reflect the change that was made to the ACA, removing the mandate to purchase health insurance that had been the focus of the court's decision.

CHAPTER 6: International and Comparative Law

- Added section of treaties and executive agreements in the United States
- Added section relating to labor and human rights in ethics section
- Updated Exhibit 6-1 - Summary of the "FCPA Top Ten" list.
- Updated membership in the WTO
- Added section dealing with the controversies regarding NAFTA and Brexit
- Added new Case Nugget addressing force majeure clauses in contracts
- Updated number of states parties in NY Convention

CHAPTER 7: Crime and the Business Community

- Added a new Supreme Court case, *Salman v. United States*, clarifying how the recipient of a tip

can be held liable for insider trading,

- Expanded the discussion of embezzlement in response to reviewer comments.
- Added a new point counter-point raising the question of whether we should make insider trading legal. The issue addressed in the previous edition's point-counterpoint was no longer a controversial issue.

CHAPTER 8: Tort Law

- Added new Case Nugget, *Jacobus v. Trump*, in response to a reviewer suggestion that we expand discussion of the distinction between fact and opinion. The case involves actions taken on Twitter, and thus is in line with our increased emphasis on cyber law.
- Added a new case 8-1, *Mazda Motor Corporation v. Hurst*, providing a more updated scenario that shows the application of the Gore guideposts.
- Added a discussion about the innovative attempt by five California cities to use the tort of public nuisance sue the Big 5 oil companies for damages caused by climate change, arguing that these firms created a public nuisance by misleading the public as to the effects of using fossil fuels.
- Added a new Point-Counterpoint that asks the following question: Should a percentage of each punitive damages award be given to the state?

CHAPTER 9: Negligence and Strict Liability

- Updated the discussion of the case against Peanut Corporation of America.
- Added a new case 3-3, *Swigart v. Bruno*, providing a more updated illustration of the use of the comparative negligence defense.
- Added a new Point-Counterpoint, Should the U.S. Enforce a Duty to Rescue?

CHAPTER 10: Product Liability

- Added case discussing the standards for foreseeability in design defect cases.
- Reduced the size of all 3 cases in the chapter in response to requests of reviewers.
- Added a case emphasizing the importance of foreseeability for duty to warn and design defect cases.
- Added a discussion of the efforts of toy manufacturers to avoid a duty to warn regarding fidget spinners by arguing that the spinners are for general use, not children specifically.

CHAPTER 11: Liability of Accountants and Other Professionals

- Added a new case 11-2, *Michael Williamson v. Recovery Limited Partnership*, demonstrating an unsuccessful attempt at using the accountant-client privilege.
- Added a new point-counterpoint, Should Accountants be Held Liable for Negligence to "Reasonably Foreseeable Third Parties?"

CHAPTER 12: Intellectual Property

- Extended the discussion of copyrights.
- Added an important 2017 US Supreme Court case, *Star Athletica, LLC, v. Varsity Brands, Inc.* et

al, that clarified the test for when a copyright can be issued for designs.

- Added a new point-counterpoint, Should the Law Allow Disparaging Trademarks to be Registered?

CHAPTER 13: Introduction to Contracts

- Added new case 13-2, Trapani Const. C. v. Elliott Group, Inc., which is a more current and somewhat better reasoned case illustrating how the court may find an implied in fact contract.
- Added a new point-counterpoint, “Should the Business World Embrace Smart Contracts?” that furthers our emphasis on e-commerce.

CHAPTER 14: Agreement

- Replaced the old Case 14-2 with a more current case illustrating a contract containing terms that were not sufficiently definite and certain to constitute valid terms of an enforceable agreement.
- Added a new Point-counterpoint, “Should Offers Made through Electronic Communications, Such As Text Messages And E-Mail, Use The Normal Mailbox/Dispatch Rule Or A Receipt Rule?”

CHAPTER 15: Consideration

- Added new Case Nugget in “Promissory Estoppel” section in response to reviewers’ request for more coverage of privacy issues: *Ruzicka v. Conde Nast Publishing*.
- Included new Case in “Preexisting Duty” section: *Margeson v. Artis*, in response to multiple reviewers who wished to see a case on preexisting duty. Generally, reviewers also requested more coverage of small business issues. This case deals with the sale of a small business.
- Added a Point/Counterpoint: Should Past Consideration Be Acceptable Consideration for a Contract?

CHAPTER 16: Capacity and Legality

- Replaced the old Case 16-3 with Riley V. Iron Gate Self Storage, a more current case illustrating how a court analyzes when an exculpatory clause is enforceable.
- Added a new Point-counterpoint, “Should Minors Have Full Capacity to Enter into Binding Legal Contracts at the Age of 15?”

CHAPTER 17: Legal Assent

- Added new case 17 – 3, Garage Solutions, LLC, v. Monty J. Person, to provide a current example of the use of the affirmative defense of duress.
- Added a new point-counterpoint, “Should Browse Wrap Agreements be Enforceable?” which focuses on another issue related to ecommerce.

CHAPTER 18: Contracts in Writing

- Added new case 17 – 3, Garage Solutions, LLC, v. Monty J. Person, to provide a current example of the use of the affirmative defense of duress.
- Added a new point-counterpoint, “Should Browse Wrap Agreements be Enforceable?” which focuses on another issue related to ecommerce.

CHAPTER 19: Third-Party Rights to Contracts

- Added a 2017 case 19-2, *Tucker v. Tom Raper, Inc.*, to show how a person does not have to be identified in writing to be a legitimate third part beneficiary.
- Changed the point-counterpoint to one that illustrates the importance of identifying whether ne is an intended or incidental beneficiary.

CHAPTER 20: Discharge and Remedies

- Added new case, *Hemlock Semiconductor Operations, LLC v. Solarworld Industries Sachsen GMBH*, which is an updated illustration of the application of the doctrine of commercial impracticability.
- Added a new Point-counterpoint, “Should Punitive Damages be Awarded in Certain Breach of Contract Cases?”

CHAPTER 21: Introduction to Sales and Lease Contracts

- Added a new case opener that focuses on local business activities of “common,” “every-day” business between a supplier of machinery and the business which uses the machinery.
- Included a new case nugget and a new case 21-1 about UCC article 2 contract formation “hot off the presses” from just the past two years.
- Inserted new case focusing on the definition and status of a merchant.
- Included a new Point/counterpoint relevant to the growing issues surrounding the mer- its of global trade: should the US adopt the CISG?

CHAPTER 22: Title, Risk of Loss, and Insurable Interests

- Added case opener that lays out nearly every question posed in this chapter on title, risk of loss and insurable interest.
- Included new case showing the complications of the sale of goods when bankruptcy gets in the way.
- Added case focusing on the difficult concept of “entrustment,” a topic also addressed in the point/counterpoint.
- Wrote new case nugget dealing with merchant-on-merchant transactions.

CHAPTER 23: Performance and Obligations under Sales and Leases

- Added case opener that lays out nearly every question posed in this chapter on title, risk of loss and insurable interest.
- Included new case showing the complications of the sale of goods when bankruptcy gets in the way.
- Added case focusing on the difficult concept of “entrustment,” a topic also addressed in the point/counterpoint.

CHAPTER 24: Remedies for Breach of Sales and Lease Contracts

- Added new case—*Des Moines Flying Servs. V. Aerial Servs.* It addresses whether a seller can be liable for a defective product that it did not manufacture.

- Created new Point/Counterpoint: Is the economic loss doctrine a legitimate concept that is needed?

CHAPTER 25: Warranties

- Added new case—*Cannon v. Bodensteiner Implement Co.* considers whether a salesman’s puffing statements constitute an express warranty.
- New Point/Counterpoint: Do the Implied Warranties Diminish the Fundamental Free Market and the Right to Contract?

CHAPTER 26: Negotiable Instruments: Negotiability and Transferability

- Added a new 2017 case *Amplify Federal Credit Union v. Garcia, Tex.*, discussing whether a particular instrument is a contract or a negotiable instrument and therefore which statute of limitations applies.
- Created a new Point/Counterpoint: Should your business use contracts rather than negotiable instruments to set payment?

CHAPTER 27: Negotiation, Holder in Due Course, and Defenses

- Inserted new 2017 case *Dennis Walker v. John Probandt and John Raynor* that discusses the criteria for being a holder in due course.
- Wrote new Point/Counterpoint: Should holder in due course laws be revised?

CHAPTER 28: Liability, Defenses, and Discharge

- Added new case, *IGS Industries, Inc. v. Discover Financial Services, Inc.* discussing whether a party exercised care and whether doing so discharged its liability.
- Created new Point/Counterpoint: Should employers be held responsible when their employees forge a signature on a check?

CHAPTER 29: Checks and Electronic Fund Transfers

- Added 2018 major case analyzing the criteria for wrongful dishonor of a check.
- Created new Point/Counterpoint: Should your business start accepting Bitcoin?

CHAPTER 30: Secured Transactions

- Added new major case *1st Source Bank v. Wilson Bank & Trust* that discusses whether a secured party can have a secured interest in the products of collateral.
- Added another new case *The Four County Bank v. Tidewater Equipment Co.* analyzing whether a party that acquires property has a duty to investigate whether a secured interest exists on that property.

CHAPTER 31: Other Creditors’ Remedies and Suretyship

- Included a new case *Alcantar v. Sanchez* providing an argument about the nature of conversion when a firm attempts to garnish funds.
- Added a second major case *Sharp v. Horton*, focusing on the procedural criteria required for a

successful writ of execution to recover a debt.

CHAPTER 32: Bankruptcy and Reorganization

- Updated numerous bankruptcy filing statistics.
- Created new Chapter opener: Student Loans and Bankruptcy
- Added Case Nugget: DISCHARGE OF CLAIMS FOR WILLFUL OR MALICIOUS CONDUCT Townsend v. Ganci U.S. District Court for the Eastern District of New York 566 B.R. 129 (E.D.N.Y.2017)
- Updated Exhibit 32-4 Federal Bankruptcy Exemptions
- Updated Exhibit 32-8 and accompanying text.

CHAPTER 33: Agency Formation and Duties

- Added new major case: CITY OF BINGHAMTON v. WHALEN APPELLATE DIVISION OF THE SUPREME COURT OF NEW YORK 141 AD 3D 145 (2016) discussing the impact of the agent's failure to fulfill the duty of loyalty.

CHAPTER 34: Liability to Third Parties and Termination

- Added new major case: DOE v. UBER TECHNOLOGIES, INC. UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 184 F. SUPP. 3D 774 (2016). This case examines the scope of the employment relationship.
- Created new Point/Counterpoint—Should Independent Contractors Be Able to Recover Damages from Their Employers Resulting from Injuries on the Job?

CHAPTER 35: Forms of Business Organization

- Made a major expansion of the treatment of LLP's in response to reviewers' requests.
- Updated the data in Exhibit 35-8, the list of the largest franchises.
- Added new major case: LIVE CRYO, LLC V. CRYOUSA IMPORT AND SALES, LLC, UNITED STATES DISTRICT COURT, E.D. MICHIGAN, SOUTHERN DIVISION (2017). This case looks at how courts make the choice of forum to hear disputes between the franchisee and franchisor and consider the elements required in a franchise agreement.

CHAPTER 36: Partnerships: Nature, Formation, and Operation

- Included new major case: FLOYD FINCH v. BRUCE WAYNE CAMPBELL, COURT OF APPEALS OF MISSOURI, WESTERN DISTRICT (2017) WD 80283 Cons WD 80317. This case discusses the intricacies present when both parties to a dispute believe the other violated his fiduciary duty to the partnership.
- Created a new Point/Counterpoint: Are Proportional Partnerships a Good Idea?

CHAPTER 37: Partnerships: Termination and Limited Partnerships

- Added major new case: WILLIAM C. STYSLINGER III V. BREWSTER PARK, LLC, ET AL. SUPREME COURT OF CONNECTICUT, 138 A.3D 257 (2016). This case discusses whether an assignee of a partnership interest can require a winding up when not granted an accounting from the LLC.

CHAPTER 38: Corporations: Formation and Financing

- Added new major case: PROTECT MY CHECK, INC. V. CRAIG C. DILGER, JOHN, UNITED STATES DISTRICT COURT, E.D. KENTUCKY, CENTRAL DIVISION. FRANKFORT 176 F.SUPP.3D 685 (2016). In this case the Court discusses whether Kentucky's ban on direct corporate contributions to influence elections is an unconstitutional limit on speech.
- Created new Point/Counterpoint: Should the Citizens United Ruling Be Overturned?

CHAPTER 39: Corporation: Directors, Officers, and Shareholders

- Created a major exhibit exploring the relationship between corporations and privacy rights in response to an explosion of interest in this issue. So extensive is the scope of this issue that many corporations now employ a CPO, a Chief Privacy Officer.
- Added new major case: GEORGE T. KOSHY v. ANUPAM SACHDEV, SUPREME JUDICIAL COURT OF MASSACHUSETTS, MIDDLESEX 477 MASS. 759 (2017). This case provides an analysis of the criteria used in seeking dissolution.
- Included a new Point/Counterpoint: Is Shareholder Activism Good for Business?

CHAPTER 40: Corporations: Mergers, Consolidations, Terminations

- Added new major case: Parshall v. HCSB FINANCIAL CORPORATION United States District Court, D. South Carolina LEXIS 114948 (2017). This case analyzes the attempt of a shareholder to prevent a vote on a merger that had been approved by the Board of Directors.
- Wrote a new Point/Counterpoint: Are Mergers Good for the Economy?

CHAPTER 41: Corporations: Securities and Investor Protection

- Expanded Exhibit 41-1 to include a discussion of the impact of Dodd-Frank on the SEC.
- Replaced the older case 41-1 that provided an illustration of the application of the Howey Test with a 2016 case, Securities And Exchange Commission, V. Arcturus Corporation, fulfilling that same function.
- Changed point-counterpoint to, "Should the requirement for the disclosure of the ratio of CEO to employee pay be rescinded?" This change is timely as 2018 is the first year the disclosures have been mandated.

CHAPTER 42: Employment and Labor Law

- Updated the FLSA regulations concerning pay for full-time salaried executive, administrative and professional employees.
- Added major new case about privacy rights: Ehling v. Monmouth-Ocean Hosp. Serv. Corp., 961 F. Supp. 2d 659 (Delaware 2013). This case discusses an employee suit against her employer for violation of the ECPA based on the employer's reprimand for a Facebook post.
- Greatly expanded the treatment of employee privacy rights.
- Included new case nugget: SOCIAL MEDIA POLICIES: Boch Honda and International Association of Machinists & Aerospace Workers, District Lodge 15, Local Lodge 447.

CHAPTER 43: Employment Discrimination

- Created new Point/Counterpoint: Should Employers Be Permitted to Use Social Media in Hiring and/or Firing Decisions?

CHAPTER 44: Administrative Law

- Added new Case Nugget: NOTICE AND COMMENT RULE MAKING Open Communities Alliance v. Carson U.S. District LEXIS 21131 (2017).
- Included another Case Nugget to expand our treatment of privacy rights: INFORMATIONAL PRIVACY—NASA v. Nelson, 562 U.S. 134 (2011).
- Included a new Point/Counterpoint: Is Administrative Regulation of Business a Good Thing?

CHAPTER 45: Consumer Law

- Added Exhibit 45-3 Consumer Privacy and Internet Advertising as yet another element in our expanded concern about privacy rights.
- Inserted new major case: UNITED STATES OF AMERICA v. MICHAEL STANLEY KAPLAN, MD UNITED STATES COURT OF APPEALS, NINTH CIRCUIT US V. KAPLAN, 836 F. 3D 1199(2016).
- Included a new Point/Counterpoint: Should the Dodd-Frank Act be repealed?

CHAPTER 46: Environmental Law

- Updated the status of the Acid Rain Trading Program.
- Updated section discussing the responsibilities of the EPA and updated changes under the Trump administration.
- Described the new e-manifest system that is coming into effect in June of 2018.
- Replaced the old case 46-3 with a new case, Elvis Mirzaie, Edison Mirzaie, Romi Mirzaie, V. Monsanto Company, which addresses the same issue, but is more current.
- Added information that shows students how they can search to see whether they live by a Superfund site.
- Updated United States' ranking on the Environmental Performance Index to show the latest result from 2018.
- Updated the section discussing international environmental treaties to include the United States' pulling out of the Paris climate accord.
- Added a new point-counterpoint, "What Role Should the EPA Play in Enforcing Environmental Regulations?" This issue is extremely timely as the enforcement budget of the EPA is being slashed and therefore the EPA is not able to bring as many enforcement actions as it has in the past.

CHAPTER 47: Antitrust Law

- Added new major case: FEDERAL TRADE COMMISSION v. PENN STATE HER- SHEY MEDICAL CENTER, THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, 838 F.3D 327 (2016). This case demonstrates shows how a court decides whether to grant a preliminary injunction against a merger under Section 7 of the Clayton Act.
- Included a new Case Nugget— MERGERS AND ACQUISITIONS U.S. v. AB Electrolux, Electrolux North America, Inc. and General Electric Company; United States District Court for the District of Columbia (2015)

CHAPTER 48: The Nature of Property, Personal Property, and Bailments

- Replaced the old case 46-3 with a 2017 case, *In Re: Nelson T. Rodriguez, Belinda Georgeson V. Nelson T. Rodriguez*.
- Replaced the previous edition's Case Nugget with a more recent illustration of the same point in the case of *Arguello v. Sunset Station, Inc.*

CHAPTER 49: Real Property

- Replaced the old case 46-3 with a new case, *Douglas Stolipher V. Estate of Charles A. Rocheleau*, to provide a more current illustration of an attempt to prove waste.
- Added a new point-counterpoint, "Should the federal government sell national park land to private interests?" This issue is one that periodically arises, and is more likely to arise in the next few years as the current administration is interested in reducing the size of the government.

CHAPTER 50: Landlord-Tenant Law

- In response to a reviewer suggestion, corrected the description of tenant's interest in a leasehold.
- Replaced the old Case 50 -3 with a newer case, *Linda K. Miller V. William Burnett* that not only explores the meaning of the covenant of quiet enjoyment, but looks at how that covenant interacts with other rules governing the landlord-tenant relationship.
- Replaced the old point counterpoint with: *Should Landlords Be Barred from Asking Potential Tenants about Their Criminal Records?*

CHAPTER 51: Insurance Law

- Created new chapter opener: *The Obligation of Insurance Companies to Restore Property.*

CHAPTER 52: Wills and Trusts

- Added new case *Pace v. Steele*, addressing incompetency and undue influence in the execution of a will.
- Included new case *Bogar v. Baker*, regarding the interpretation of a will in order to determine what property was included and excluded from its operation.
- Added new Case Nugget *Merrick v. Helter*, addressing public policy reasons for a court to disregard a provision in a will specifically disinheriting a surviving child.
- Added new Case Nugget *Milbourne v. Milbourne*, addressing requirements necessary to revoke a previously-executed will.