

January 5, 2020

The Legal Environment of Business
Business Finance 3500
Spring 2020, Session 1, Credits: 1.5
Professor John David Blackburn
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Office Hours: Thursday 1:30 am - 3:30 pm

Course Description: This course introduces you to the American legal institutions, sources of law, and an analysis of basic concepts of private and public law related to business decisions.

Recommended Book: *Essentials of the Legal Environment of Business: Applications and Ethical Considerations* (ISBN 13: 978-1-97507-686-3) (XanEdu 2020) by Blackburn and Klayman (hereinafter *B&K*), available at Barnes & Noble-OSU Bookstore.

Instruction Method: Lecture & Discussion. It is important that you read the assigned material ***before*** coming to class. Come to class prepared to discuss the topic and assigned reading. You may be called on during class. Bring your book to class. Our time together every class will be much more interesting if we're all conversant with the material being discussed, and are all willing to speak our minds.

Cell Phones & Laptops: Turn off your cell phone when you enter the classroom. Under no circumstances should you be texting, playing games, surfing the web, or talking on the phone during class. The use of **cell phones, laptops, or any other electronic devices is not allowed during this class.** Violation of this policy is loss of class credit, up to and including all credit for the course. You are expected to take pen and paper notes using a notebook. Research studies involving college students show why using pen and paper, not laptops, boosts memory See: <https://www.wsj.com/articles/can-handwriting-make-you-smarter-1459784659>

Grading: The course grade will consist of: class participation (50%) and a final exam (50%). Your course grade is determined by converting the average of the numerical values of the letter grades for class participation and the final exam to its letter grade equivalent. For example, if you receive an A for class participation and a B on the final exam, the course grade is an A-. ($4.0 + 3.0 = 7$, which divided by 2 = 3.5, which rounds to a 3.7, an A-.)

Class participation: Your grade for class participation will be an A, provided you meet one condition: You must attend class and participate (described in the next sentence) in a discussion of the day's assigned topic. ***To participate you have to (1) attend class, and when called on during class, (2) provide an opinion informed by what you have read, experienced, or thought about the scheduled topic.*** You are allowed two free passes and still get an A. After that, a grade level deduction will be made for every occurrence of nonparticipation. A deduction will be made if you are either absent, either physically or mentally (unable to provide the sort of opinion described in the italicized sentence that just appeared in this paragraph). Follow? Here's an example: You miss one class. After that, you are unprepared when called on in class. Then you missed a second class. And after that, you were unprepared yet again. Your class participation grade would be a B+. You cashed in your two free passes, the first when you were physically absent; and the second, when you were unprepared when called on in class. So, the missed class after that took your A down to an A-. And, the day you could not again answer when called on took your class participation grade down to a B+. So, the first two occurrences of some combination of absence or

unpreparedness when called on are your free passes. After that, it's a grade letter deduction for any further absence or unpreparedness

If you have any doubt about the quality of your oral participation in any given class, you can check with me after class or during office hours. You can also check with me during office hours (preferably) or after class to see what my gradebook shows as your class participation grade.

Note that attendance is taken using a seating chart, which I will post in the classroom early in the session. (You should check the chart and be sure you sit in the right seat. Sitting in the right seat is your responsibility; it's what you want to do to get counted as physically present.)

Final Examination: The final examination covers the entire course. There will be practice questions from time to time during class to give you an idea of the format of the exam questions.

Examination Policy: In addition to the instructions that appear on the exams and on the screen in the classroom: (1) No communication of any kind is permitted between students during the examination. This includes all forms of verbal and nonverbal communication, and electronic communication. (2) Collaboration with other persons during the examination is prohibited. (3) All electronic devices, such as cellphones, must be turned off before the exam, kept off during the exam, and may be turned on only after you have submitted your exam and answer sheet, and left the classroom.

A missed final exam can only be made up in rare and extreme cases (e.g. death of a family member, personal hospitalization, etc.) with proper documentation (e.g., a physician's note, ER paperwork, copy of a death certificate in the case of a funeral—the funeral director can usually make you a copy. Each decision of granting/not-granting a make-up exam is made on a case-by-case basis. Additionally, you **MUST** contact me as soon as you know of a potential problem or conflict with the exam date. Alternate methods (e.g., oral exam, essay) of testing may be used for make-up exams. If you are experiencing an extreme situation or emergency, please attempt to notify me by email ASAP. Failure to show up for the exam without prompt notice will result in a zero for the exam.

You may review your examination answer sheet (Scantron) during office hours and by appointment after the session has ended, through March 23, 2020. Because of the number of students that I teach each session (approximately 240), it is impracticable to store the paper Scantrons; therefore, they will be disposed of on or soon after March 23rd.

Communication: The best way to reach me is by email. Unfortunately, I cannot guarantee that I will remember everything I am told before or after class, especially when I have two classes in a row: that's why I require an email. Your email should contain both the course number and the time of the class in the subject line so that it gets to the proper mailbox. Emails not containing the course number and time may be disregarded. If you email me and have not received a response within 24 hours, assume the email was not received and either resend it or contact me by phone. If you leave a voicemail, please state clearly your full name and phone number *at the beginning* of your voice mail message.

Tentative Course Schedule

<u>Date</u>	<u>Topic</u>	<u>Required Reading</u>
1/6	Course Introduction	Syllabus
1/8	Law & Ethics	Be&K, Chapter 1
<p>Read over the material on the interconnected relationship of law and ethics at pp. 4-5 of Chapter 1. Use this link to go to the Kroger Company's Ethics Policy: http://ir.kroger.com/Cache/1001217967.PDF?O=PDF&T=&Y=&D=&FID=1001217967&iid=4004136 Read the U.S. Equal Employment Opportunity Commission's Sexual Harassment Guideline by going to this link: https://www.govinfo.gov/content/pkg/CFR-2016-title29-vol4/xml/CFR-2016-title29-vol4-part1604.xml and then scroll down and read Section 1604.11. Compare and contrast the Kroger Ethics Policy and the EEOC Guideline for similarities and differences. Be able to answer question 1 for this chapter on the <u>Study Question Handout</u>, which is the separate handout of study questions. (I know, it may seem inefficient to have separate documents for the syllabus and study questions, but I think you will appreciate having the separate document for questions when you review for the final exam.)</p> <p>Next, focus your attention on pp. 6-8 of Chapter 1. Allow plenty of time to read closely and carefully the <u>Design Strategies v. Davis</u> case at pp. 7-8. Be prepared to be called on to explain that case, stating what is the issue involved, the court's decision (called the holding), and the facts that operated on the court's decision. It's not easy reading, but if you try hard, you can do it. Be able to answer question 2 for this chapter on the <u>Study Question Handout</u>, and the Business Application question at the bottom of page 8 of the text.</p>		
1/10	Law & Ethics, continued	Be&K, Chapter 1
<p>Read closely the conflict of interest discussion at p. 9 of Chapter 1. Be able to answer and explain your answer completely and concisely to review problem 3 at pp. 17 in the textbook. Be able to answer question 3 for this chapter on the <u>Study Question Handout</u>.</p> <p>Continue reading to the end of the section entitled, "Fundamental Ethical Principles Reflected In Law," which will bring you to the top of p. 14 of the text. Be able to state the case of <u>Knudsen v. Lax</u> in the same manner as described previously for <u>Design Strategies v. Davis</u> (issue, holding, facts), and answer the Business Application question on pp. 13-14.</p> <p>Finish reading the chapter content, which concludes with the section entitled, "Ways Businesses Address Ethics." Be able to answer question 4 for this chapter on the <u>Study Question Handout</u>.</p>		
1/13	Nature of Law and Legal Reasoning	Be&K, Chapter 2
<p>Read pp. 21-25 of Chapter 2. Be able to answer question 1 for this chapter on the <u>Study Question Handout</u>. Note that this also includes review problems 2, 5 & 6 at pp. 37-38 of Chapter 2. This part of today's assignment relates to the material on conceptions of law at pp. 22-25 of the chapter. We need to go quickly through this material, so be able to give you answer in class without having to reread the review problem or think over your answer for the first time in class. Read the textual material on sources of law, covered at pp 25-28 of Chapter 2. Be able to answer questions 2-4 for Chapter 2 on the <u>Study Question Handout</u>. The links in the margin on pp. 26-27 should all work. Use them to go the websites for Congress, the White House, and the Supreme Court, and look around. I'll present quickly this material and, I hope, have enough time to entertain your questions and comments.</p>		

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Nature of Law and Legal Reasoning

Be&K, Chapter 2

Read the material on legal reasoning, covered on pp. 28-37 of Chapter 2, and be prepared to answer questions 5 and 6 for this chapter on the Study Question Handout. Be careful to recognize that Justice Kagan's opinion in Knick v. Township of Scott is the dissenting opinion in the case; and her opinion in Abramski v. United States is the Supreme Court's opinion. Her dissenting opinion in Knick is not precedential (not law); her opinion for the Court in Abramski is precedential (that is, it is law). Justice Scalia's opinion in Abramski is a dissenting opinion, which is not law, but the opinion reflects his disagreement with the Court's approach to interpreting legal documents. Why should we care about dissenting opinions? One of the greatest justices on the U.S. Supreme Court, Oliver Wendell Holmes, Jr. is referred to (favorably) as "The Great Dissenter."

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American Legal System

Be&K, Chapter 3

Read pp. 41-59 which is all the material up to alternative dispute resolution (ADR). Be able to answer questions 1-3 for Chapter 3 on the Study Question Handout. All the web links in the margins of this chapter should work. Use the link at p. 45 of Chapter 3 to help answer question 1 for Chapter 3 on the Study Question Handout. Use the Table 3-1 on p. 50, to answer question 2 for Chapter 3 on the Study Question Handout. After reading the textual material on civil process at pp. 49-59, review carefully Figure 3-3 on p. 50 of Chapter 3 to answer question 3 for Chapter 3 on the Study Question Handout. Read carefully Freidig v. Target at p. 53, and answer question 4 for Chapter 3 on the Study Question Handout. Also answer the Business Application question on p. 56. I know this material is procedural and full of jargon, but you should be familiar with it for that time when you face potential or actual litigation. Answer the study questions, and don't be afraid to ask me questions during class.

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American Legal System

Be&K, Chapter 3

Read the material on alternative dispute resolution (ADR) on pp. 59-62. Be able to answer questions 5 & 6 for Chapter 3 on the Study Question Handout. ADR, more specifically, arbitration, is the trend. There are important and interesting public policy considerations with the prevalence of arbitration clauses in contracts. Here is a link to a bill pending currently in Congress that would change the law with regard to arbitration clauses:

<https://www.congress.gov/bill/116th-congress/house-bill/1423/text?q=%7B%22search%22%3A%5B%22arbitration%22%5D%7D&r=6&s=1>

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Law of Contractual Relations

Be&K, Chapter 5

Read the material on the sources of contract law and the objective theory of contracts on pp. 93-95 of Chapter 5, and be able to answer Questions 1-2 for this chapter on the Study Question Handout. Then read the material from pp. 95-99 of Chapter 5, on offer and acceptance, two of the three elements of the bargain theory of contracts, and be able to answer questions 4-5 for this chapter on the Study Question Handout.

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Law of Contractual Relations

Be&K, Chapter 5

Read the rest of the material on the bargain theory of contracts covered on pp. 99-103 of Chapter 5. This material covers (1) the doctrine of consideration, and (2) the Statute of Frauds. I will emphasize the material on consideration. Read Forbes v. Showmann, Inc. DBA The Woodhouse Day Spa, and be able to answer the Business Application question at the bottom of p. 101. Be able to answer questions 6-7 for this chapter on the Study Question Handout.

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Law of Contractual Relations

Be&K, Chapter 5

After the bargain theory of contracts, which is traditional contract law, we come to the alternatives to the bargain theory. Read the material on the alternatives to the bargain theory, pp. 103-104, and be able to answer question 8 for this chapter on the Study Question Handout. Also, read the material from pp. 104-106 on policing the bargain, and be able to answer question 9 for this chapter on the Study Question Handout.

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Law of Contractual Relations

Be&K, Chapter 5

Finish reading the rest of Chapter 5, pp. 107-113. Be able to answer question 10 for Chapter 5 on the Study Question Handout. That includes a question regarding He&R Block v. Morris, which involves a non-compete agreement. Non-competes are an important issue right now. I will spend some time on this, so read carefully the textual material on pp. 107-108 and He&R Block v. Morris on pp. 108-109. You can read about the economic effects of non-competes in the following report published by the U.S. Treasury Department in March, 2016: <https://www.treasury.gov/resource-center/economic-policy/Documents/UST%20Non-competes%20Report.pdf> In May, 2016, the Obama White House issued a report that drew upon the Treasury Department's report and presented it in an easy to read document, which you can find here: https://obamawhitehouse.archives.gov/sites/default/files/non-competes_report_final2.pdf In October 2016, in the waning months of the Obama Administration, the Obama White House issued a press release containing the following two-page "call to action," calling on state policy makers to reform state contract law with regard to non-compete agreements: <https://obamawhitehouse.archives.gov/sites/default/files/competition/noncompetes-calltoaction-final.pdf>

Finally, answer question 11 on the Study Question Handout. Some of what this class does is dispel myths and misconceptions about the law. The answer to question 11 on the Study Question Handout usually does that for one misconception about contract law.

2/3

Law of Injuries (Tort Law)

Be&K, Chapter 6

Read the material introducing tort law on pp. 117-118 of Chapter 6, and be able to answer questions 1-3 for Chapter 6 on the Study Question Handout. Next, read the material on pp. 118-124, and the section on defenses to intentional torts at pp. 129-30. Be able to answer question 4 for Chapter 6 on the Study Question Handout. Read closely the Nelson case (pp. 120-122), and be able to state why the appellate court set aside the trial court's order to quash Nelson's subpoena; and, be able to answer the Business Application question at the bottom of p. 122.

2/5

Law of Injuries (Tort Law)

Be&K, Chapter 6

Read the material on the rest of the intentional torts, on pp. 124-129 of Chapter 6, as well as Dukowitz v. Hannon Security Services (involving the tort of wrongful discharge) on pp. 127-129. Be able to answer questions 5 & 6 for Chapter 6 on the Study Question Handout.

2/7

Law of Injuries (Tort Law)

Be&K, Chapter 6

Read the material on the tort of negligence on pp. 130-133 of Chapter 6. Be able to answer questions 7-14 for Chapter 6 on the Study Question Handout.

2/10

Law of Injuries (Tort Law)

Be&K, Chapter 6

Read the material on strict liability in tort on pp. 133-134 of Chapter 6. Be able to answer questions 15-17 for Chapter 6 on the Study Question Handout.

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Equal Employment Opportunity (EEO)

Be&K, Chapter 8

Read the material on the coverage of federal EEO law in the first paragraph at the top of p. 174 of Chapter 8, and in Table 8-1 at the top of p. 175 of Chapter 8; and, read the discussion of sexual orientation and gender identity on p. 186 of Chapter 8. Use the link in the left margin of p. 174 to go to the Equal Employment Opportunity Commission (EEOC) website and look around. The EEOC is the federal agency that enforces federal EEO legislation, and its website is a resource for locating information about federal EEO matters and questions you have now or after you leave this course. Be able to answer questions 1-2 for Chapter 8 on the Study Question Handout.

On the Supreme Court's docket this term are three cases that the Court has accepted and consolidated into one appeal for argument this term. The issue in the cases is whether Title VII of the Civil Rights Act's prohibition of employment discrimination "on the basis of sex" includes sexual orientation discrimination. Oral argument was held October 8, 2019, and a decision is expected around June 30, 2020. Use the following link to listen to the oral argument : <https://www.oyez.org/cases/2019/17-1618>

2/14 Equal Employment Opportunity (EEO) B&K, Chapter 8
Read the material on the concept of discrimination on pp. 174-178, and be prepared to answer question 3 for Chapter 8 on the Study Question Handout.

2/17 Equal Employment Opportunity (EEO) B&K, Chapter 8
Read the material on the exceptions in federal EEO legislation on pp. 178-179, and be able to answer question 4 on the Study Question Handout.

2/19 Equal Employment Opportunity (EEO) B&K, Chapter 8
Read the material on special topics in EEO and on the enforcement of EEO laws at pp. 180-192, and be prepared to answer questions 5 and 6 for Chapter 8 on the Study Question Handout.

2/21 Review Session for Final Exam
After I talk about the process for taking the final exam and its format, the review session will consist of going over past exam questions. These questions will show the format of the type of question you can expect on the exam, and they will serve to go over a small sample of the content that you can expect to be covered on the exam.

2/24 11:30 – 12:25pm, SB 320 Comprehensive Final Exam for Section 3500-0010 (3816)

2/24 1:50 – 2:45pm, SB 320 Comprehensive Final Exam for Section 3500-0030 (3818)

2/24 3:00 – 3:55pm, SB 320 Comprehensive Final Exam for Section 3500-0080 (4354)

B.F. 3500
Legal Environment of Business
Professor J.D. Blackburn
Spring 2020, First Session
Study/Discussion/Review Questions

Law and Ethics (Be&K, Chapter 1)

1. How do law and ethics relate to each other? Do you agree with the position taken by the authors of The Essentials of the Legal Environment of Business at pp 4-5? (It's ok to disagree!)
2. In *Design Strategies v. Davis*, what did Marc Davis do that breached his fiduciary obligation to Design Strategies? What remedy did the court award to Design Strategies? Do you think it was fair?
3. When does a conflict of interest exist? What should you do to avoid the appearance of a conflict of interest?
4. Does the company where you work(ed) have an ethics policy? How has the company monitored its policy to ensure compliance?

Nature of Law and Legal Reasoning (Be&K, Chapter 2)

1. What is law? What conceptions of law are reflected in review problems 2, 5 & 6 (pp. 33-35)?
2. How does the legislative branch of government in the U.S. make law? What names are used to describe law made by the legislative branch?
3. How does the executive branch of government in the U.S. make law?
4. Do courts in the United States make law? What is "common law"?

5. What is the doctrine of stare decisis? Why is it important to business? What does *Knick* reveal about the views of the majority and the dissenting U.S. Supreme Court justices on the application of precedent?

6. What is formalist legal reasoning? What is purposive legal reasoning? Which type of legal reasoning, formalist or purposive, did the U.S. Supreme Court use in *Abramski*? With which opinion, Justice Kagan's opinion for the Court, or Justice Scalia's dissenting opinion, do you agree? (Do you know the difference between a court opinion and a dissenting opinion?)

American Legal System (Be&K, Chapter 3)

1. What is the attorney-client privilege? When does it apply? Why does the privilege exist? What are the exceptions to the privilege? Under what circumstances is the attorney-client privilege waived?
2. What are some of the differences between civil and criminal litigation?
3. What, in order, are the stages of the civil legal process? What is included in each stage?
4. Why did the court in *Freidig v. Target Corporation* deny Target's motion for summary judgment?
5. What is a class action lawsuit?
6. What did the Supreme Court decide in *AT&T Mobility v. Conception*? What will be the likely result of the Court's decision with regard to class action lawsuits?

Law of Contractual Relations (Be&K, Chapter 5)

1. What is a contract?
2. What are the sources of contract law?
3. What is the objective theory of contracts: What test is used to determine the existence of contractual intent?
4. What are the three basic elements of a contract under the bargain theory of contracts?
5. Contract formation; Offer & Acceptance: How do you make an offer? When can an offer be revoked? When can it not be revoked? What is an acceptance? When does an acceptance become effective, upon dispatch or when it is delivered?
6. Legal consideration for a contract: It isn't what you think it is—what is it?
7. In the *Forbes* case, why did Amanda Forbes not get the free cruise that she won in the raffle at her employer's holiday party?
8. What is the doctrine of promissory estoppel? What are its requirements?
9. What is the doctrine of unconscionability? What does it do to your freedom of contract?
10. What is a covenant not to compete? Where is it usually found? When will it be enforceable? Why was the covenant upheld in *He&R Block v. Morris*? What are some of the economic consequences of covenants not to compete in employment contracts?
11. What is the usual remedy for breach of contract? When will a court order a contract to be specifically performed?

Law of Injuries (Tort Law) (Be&K, Chapter 6)

1. What is a tort?
2. What are the three classifications of torts? How do they differ from each other?
3. What is the doctrine of respondeat superior? When will an employer be liable for the torts of an employee? Can you think of any purpose(s) the doctrine of respondeat serves? Or, what public policies are served by the doctrine of respondeat superior?
4. The second paragraph of the discussion of the tort of false imprisonment reflects which of the two defenses to intentional torts discussed at pp. 129-130? What's the other defense?
5. What four fact patterns do cases of the tort of invasion of privacy fall into? How would you define "privacy" for purposes of the tort of invasion of privacy?
6. What must an employee who has been discharged from a job prove to make out a case of the tort of wrongful discharge? How does *Dukowitz* (p. 127) narrow the application of the tort? What do you think of the employment-at-will doctrine?
7. What is negligence? What are its elements?
8. How does a court determine whether the defendant was under a duty of care?
9. What test is applied to determine whether the defendant breached the duty of care?
10. What is the test for actual cause? What is the test for proximate cause?
11. Why is injury important?
12. What is negligence per se?

13. What is res ipsa loquitur? What is the effect of its application?

14. What defenses are available to a defendant to avoid liability for negligence? What facts are required for each defense?

15. What is strict liability in tort?

16. In what areas or situations is it applied?

17. Is it based on fault?

employment? Would you make any changes in the law?

6. What do you think of Dollar General Corporation's treatment of Linda Atkins's diabetes condition?

Equal Employment Opportunity (Be&K, Chapter 8)

1. What forms of discrimination are forbidden by federal equal employment opportunity laws?

2. Does Title VII's prohibition of employment discrimination on the basis of "sex" include discrimination on the basis of sexual orientation?

3. For each, disparate treatment and disparate impact: What must a plaintiff prove to establish a prima facie case? What must a defendant demonstrate to meet that proof? If the defendant does that, what must the plaintiff prove to still prevail?

4. What is necessary to establish the bona fide occupational qualification exception? For which form of discrimination forbidden by Title VII does the exception not apply?

5. Why do you think the topic of harassment is not included within the chapter subtopic dealing with discrimination on the basis of sex? What two forms does sexual harassment take? *Mandel v. M & Q Packaging* has some strong language and severe facts, but what does the court's discussion of the Supreme Court case law (*Meritor Sav. Bank v. Vinson* and *Harris v. Forklift* at pp. 182-183) teach you about the law regarding sexual harassment in