

The Peter F. Drucker and Masatoshi Ito  
Graduate School of Management



Student Group Specialty Presentations: Readings and Suggested Discussion Questions

Course: **Business Law & Ethics (MGT 309 & 584)**

Spring 2010, Module 1

Instructor: Josephine Sandler Nelson, Esq.

Meeting Times: Tuesdays, 7-10 P.M.

Course Location: Burkle B14

Specialty Presentation Areas:

- White Collar Crime (Corporate Criminal Liability, RICO, and Sarbanes-Oxley);
- White Collar Crime (Bribery, Extortion, and Insider Trading);
- Special Contract Issues for E-Commerce and the Internet;
- Intellectual Property Law (Copyright & Trademarks);
- Intellectual Property Law (Patents);
- Antitrust Statutes & Litigation;
- Labor Law;
- Employment Discrimination and Procedure (Hot topic: Sex);
- Employment Discrimination and Procedure (Hot topic: Race).

## **White Collar Crime (Corporate Criminal Liability, RICO, and Sarbanes-Oxley)**

### **White Collar Crime (Bribery, Extortion, and Insider Trading)**

#### **Basic Background Material:**

1. Kubasek, Brennan, et al. The Legal Environment of Business: A Critical Thinking Approach (5th ed. 2009).  
(Chapter 7: White-Collar Crime and the Business Community)
2. Roger LeRoy Miller & Frank B. Cross, The Legal Environment Today: Business in Its Ethical, Regulatory, E-Commerce, and Global Setting (6th ed. 2010).  
(Chapter 24: Investor Protection and Corporate Governance)
3. Chapter 25 of the Custom Textbook (Cheeseman Ch. 8)  
(Chapter 8: Criminal Law and Cyber Crimes)
4. Ellen S. Podgor & Jerold H. Israel, White Collar Crime in a Nutshell (4th ed. 2009).  
(Chapter One: Scope of White Collar Crime §§ 1.01-1.06)
5. Chapter 29 of the Custom Textbook (Cheeseman Ch. 37)  
(Chapter 37: Corporate Governance and Sarbanes-Oxley Act --- SKIM)

#### **White Collar Crime (Corporate Criminal Liability, RICO, and Sarbanes-Oxley):**

1. Chapter 35 of the Custom Textbook (Cheeseman Ch. 30)  
(Chapter 30: Liabilities of Principals, Agents, and Independent Contractors --- SKIM)
2. Ellen S. Podgor & Jerold H. Israel, White Collar Crime in a Nutshell (4th ed. 2009).  
(Chapter Two: Corporate Criminal Liability §§ 2.01-2.08)  
(Chapter Eight: Racketeer Influenced and Corrupt Organizations (RICO) §§ 8.01-8.08)
3. Chapter 44 of the Custom Textbook (Cheeseman App. 3)  
(Appendix: Sarbanes-Oxley Act of 2002 (Excerpts) --- SKIM)

#### Questions to consider:

- What are the main sources of law for regulating corporate criminal liability?
- What is RICO? How does it work?
- What is Sarbanes-Oxley? What does it do? (IN BRIEF)
- VERY BRIEFLY, when might an executive or employee be personally criminally liable for his or her actions under these statutes? When might the company be liable?
- What most surprised you about what these statutes make criminal and the extent of liability for that criminal activity?

- Do you believe that these legal sanctions are effective and performing the functions that we need them to in society? What would you change about this system?

Accountants' Materials on Sarbanes-Oxley for those who are interested:

- Mark S. Beasley & Randal J. Elder, The Sarbanes-Oxley Act of 2002: Impacting the Accounting Profession (2005).

### **White Collar Crime (Bribery, Extortion, and Insider Trading):**

1. Ellen S. Podgor & Jerold H. Israel, White Collar Crime in a Nutshell (4th ed. 2009).  
(Chapter Seven: Bribery and Extortion §§ 7.01-7.11)  
(Chapter Twelve: Currency Reporting Crimes [aka "Money Laundering"] §§ 12.01-12.07)
2. Kubasek, Brennan, et al. The Legal Environment of Business: A Critical Thinking Approach (5th ed. 2009).  
(Chapter 22: Rules Governing the Issuance and Trading of Securities)
3. Ellen S. Podgor & Jerold H. Israel, White Collar Crime in a Nutshell (4th ed. 2009).  
(Chapter Five: Securities Fraud §§ 5.01-5.04 --- SKIM)  
(Chapter Twenty: The Self-Incrimination Privilege: Documents §§ 20.1-20.10 --- SKIM)  
(Chapter Twenty-three: Work Product Protection §§ 23.01-23.05 --- SKIM)
4. Securities Laws from the SEC's website (<http://www.sec.gov/investor/pubs/securitieslaws.htm>)
5. Securities Lawyers Deskbook ([www.law.uc.edu/CCL/](http://www.law.uc.edu/CCL/))

Questions to consider:

- What are the main sources of law for regulating bribery, extortion, and insider trading?
- What other major sources of law are NOT mentioned in these readings, but of which practicing business people should be aware?
- What is the difference between bribery, extortion, and insider trading? (Make sure that you can define each one.) How are each of these three crimes different than embezzlement (and why would embezzlement not be mentioned more in these readings)?
- What is the Hobbs Act? What are the limits of its power? How is it different from RICO?
- What is Rule 10b-5? Whose rule is it? How does it work? (Look it up and be able to present it BRIEFLY in class.)
- Do you believe that these legal sanctions are effective and performing the functions that we need them to in society? What would you change about this system?

## Special Contract Issues for E-Commerce and the Internet

### Basic Background Material:

1. Kubasek, Brennan, et al. The Legal Environment of Business: A Critical Thinking Approach (5th ed. 2009).  
(Chapter 6: Cyberlaw and Business)
  
2. Michael L. Rustad, Internet Law in a Nutshell (2009).  
(Chapter Four: Electronic Commerce §§ 4.1-4.8)
  
3. Selected Chapters from the Custom Textbook (Chs. 16, 8, 15, 4, 3, & 33; Cheeseman Chs. listed below)  
(Chapter 17: Internet Law and E-Commerce)  
(Chapter 9: Nature of Traditional and E-Contracts)  
(Chapter 16: Remedies for Breach of Traditional and E-Contracts)  
(Chapter 4: Constitutional Law for Business and E-Commerce --- SKIM)  
(Chapter 3: Judicial, Alternative, and Online Dispute Resolution --- SKIM)  
  
(Chapter 41: Investor Protection and Online Securities Transactions --- SKIM)

### Questions to consider (IN BRIEF):

- What are the main sources of law for regulating e-commerce and the Internet?
- What other major sources of law are NOT mentioned much in these readings, but of which practicing business people should be aware?
- What are the differences between a web contract, a license, a click-wrap license, and a shrink-wrap license? (Make sure that you can define each one.) What does it mean to “cover” a license?
- What parts of the UCC apply to e-commerce? (Look to the nutshell book for a quick answer.)
- What is the UETA (and what does that acronym stand for)? What are the limits of its power? How is it different from UCITA? How is it different from E-SIGN? What do UCITA and E-SIGN do?
- What most surprises you about the differences between the worlds of traditional and e-commerce? What are the most important things that business people should be aware of when venturing into e-commerce?
- Do you believe that the legal frameworks for regulating e-commerce are effective and performing the functions that we need them to in business and society? What would you change about the systems that we have in place?

## **Intellectual Property Law (Copyright & Trademarks)**

### **Intellectual Property Law (Patents)**

#### **Basic Background Material:**

1. Chapters 24-25 of the Custom Textbook (Cheeseman Chs. 7-8)  
(Chapter 7: Intellectual Property and Cyber Piracy)  
(Chapter 8: Criminal Law and Cyber Crimes)
2. Roger LeRoy Miller & Frank B. Cross, The Legal Environment Today: Business in Its Ethical, Regulatory, E-Commerce, and Global Setting (6th ed. 2010).  
(Chapter 8: Intellectual Property and Internet Law)

### **Intellectual Property Law (Copyright & Trademarks)**

#### **Copyright (focus more here – more complex than trademark)**

1. Arthur R. Miller & Michael H. Davis, Intellectual Property: Patents, Trademarks, and Copyright in a Nutshell (4th ed. 2007).  
(Chapter 19: Foundations of Copyright Protection §§ 19.1-19.4)  
(Chapter 20: The Subject Matter of Copyright §§ 20.1-20.8)  
(Chapter 21: Exclusive Rights §§ 21.1-21.8)  
(Chapter 22: Infringement §§ 22.1-22.4)  
(Chapter 23: Fair Use §§ 23.1-23.10)  
(Chapter 24: Ownership §§ 24.1-24.7)  
(Chapter 25: Formal Requirements §§ 25.1-25.2)  
(Chapter 26: Remedies §§ 26.1-26.6)  
(Chapter 27: Copyright Laws and the Intersection of State and Federal Regulation §§ 27.1-27.4)
2. <http://topics.law.cornell.edu/wex/copyright> (The Legal Information Institute's website on copyright law; overview not that good, but the link to resources is stronger)

#### Questions to consider:

- Where does the legal source of copyright originate?
- Why do we have copyright? What function does it perform? What protection does it offer?
- How long does copyright last?
- What types of creations are copyrightable and what types are not?
- VERY BRIEFLY, how do you acquire a copyright?
- How do you defend a copyright?
- Do you believe that copyrights are effective and performing the functions that we need them to in society? What would you change about the copyright system?

#### **Trademark (focus less here – less complex than copyright & useful primarily in comparison)**

3. <http://topics.law.cornell.edu/wex/trademark> (The Legal Information Institute's website overview of trademark law; see also link to the resources page)
4. Graeme B. Dinwoodie, *The Story of Kellogg Co. v. National Biscuit Co.: Breakfast with Brandeis*, in Intellectual Property Stories 220, 220-257 (Jane C. Ginsburg & Rochelle Cooper Dreyfuss eds.,

2006).

5. Arthur R. Miller & Michael H. Davis, Intellectual Property: Patents, Trademarks, and Copyright in a Nutshell (4th ed. 2007).  
(Chapter 11: Foundations of Trademark Protection §§ 11.1-11.3 --- SKIM)  
(Chapter 12: Distinctiveness §§ 12.1-12.6 --- SKIM)  
(Chapter 13: Dilution and the Expansion of Trademark Doctrine §§ 13.1-13.6)  
(Chapter 14: Loss of Trademark Protection and Partial Protection §§ 14.1-14.6)  
(Chapter 15: Trademark Practice §§ 15.1-15.3 --- SKIM)  
(Chapter 16: Subject Matter §§ 16.1-16.8 --- IMPORTANT)  
(Chapter 17: Infringement §§ 17.1-17.8 --- SKIM)  
(Chapter 18: Remedies §§ 18.1-18.5)

Questions to consider (BRIEFLY! --- mainly to distinguish trademarks from copyrights):

- Where does the legal source of trademark protection originate?
- Why do we have trademark protection? What function does it perform? What protection does it offer?
- How is trademark different than copyright? When would you copyright a creation, and when would you trademark it?
- How long does trademark last?
- What types of creations are trademarkable and what types are not?
- VERY BRIEFLY, how do you acquire a trademark?
- How do you defend a trademark?

### **Intellectual Property Law (Patents)**

1. <http://topics.law.cornell.edu/wex/patent> (The Legal Information Institute's website on patent law; contains a quick and accurate overview of the subject)
2. Arthur R. Miller & Michael H. Davis, Intellectual Property: Patents, Trademarks, and Copyright in a Nutshell (4th ed. 2007).  
(Chapter 1: The Foundations of Patent Protection §§ 1.1-1.3)  
(Chapter 2: The Subject Matter of Patents §§ 2.1-2.10)  
(Chapter 3: Patentability --- Novelty and Statutory Bar §§ 3.1-3.9)  
(Chapter 4: Patentability --- Utility §§ 4.1-4.2)  
(Chapter 5: Patentability --- Nonobviousness §§ 5.1-5.7)  
(Chapter 6: Double-Patenting §§ 6.1-6.2)  
(Chapter 7: The Patenting Process §§ 7.1-7.10)  
(Chapter 8: Infringement §§ 8.1-8.9)  
(Chapter 9: Remedies §§ 9.1-9.5)  
(Chapter 10: Patent Law and the Intersection of State and Federal Regulation §§ 10.1)

Questions to consider:

- Where does the legal source of patent power originate?
- Why do we have patents? What function do they perform? What protections do they offer?
- How long do patents last?

- What types of inventions are patentable and what types are not?
- VERY BRIEFLY, how would you patent an invention?
- How do you defend a patent?
- Do you believe that patents are effective and performing the functions that we need them to in business and society? What would you change about the patenting system?

## Antitrust Statutes & Litigation

### Basic Background Material:

1. Kubasek, Brennan, et al. The Legal Environment of Business: A Critical Thinking Approach (5th ed. 2009).  
(Chapter 23: Antitrust Laws)
2. A. Douglas Melamed & Daniel L. Rubinfeld, U.S. v. Microsoft: *Lessons Learned and Issues Raised*, in Antitrust Stories 287, 287-310 (Eleanor M. Fox & Daniel A. Crane eds., 2007).
3. Roger LeRoy Miller & Frank B. Cross, The Legal Environment Today: Business in Its Ethical, Regulatory, E-Commerce, and Global Setting (6th ed. 2010).  
(Chapter 23: Antitrust Law and Promoting Competition)
4. Chapter 36 of the Custom Textbook (Cheeseman Ch. 46)  
(Chapter 46: Antitrust Law and Unfair Trade Practices)
5. Gellhorn, Kovacic, et al., Antitrust Law and Economics in a Nutshell (5th ed. 2004).  
(Chapter 1: Restraints of Trade at Common Law pp. 5-16)  
(Chapter 2: The Antitrust Statutes pp. 17-56)  
(Chapter 3: Antitrust Economics (in a nutshell) pp. 57-108)
6. <http://topics.law.cornell.edu/wex/antitrust> (The Legal Information Institute)
7. [www.usdoj.gov/atr](http://www.usdoj.gov/atr) (Department of Justice Antitrust Division)

### Questions to consider (IN BRIEF):

- What is the rationale behind antitrust regulation? Why do we have it? Whom does it protect?
- What are the bases of law for antitrust litigation? Who enforces antitrust statutes? What sources of law are NOT mentioned much in the readings and of which business people should be aware?
- What is the Sherman Act of 1890? What does it require? Who can enforce it? Why should we care about a law that old?
- What is the Clayton Act of 1914? What does it require? Who can enforce it? Why might a private party have particular incentive to sue under the Clayton Act?
- What is the FTC and what does it do? What powers does it have under the FTCA?
- What is price discrimination? What are tying arrangements and exclusive-dealing contracts? Why might these private forms of contract become problems for consumers?
- How might US antitrust laws have international effects? How might other countries' antitrust enforcement measures affect companies in this country?
- Do you believe that antitrust regulation is effective and performing the function that we may need it to in society? What might you change about our antitrust regulatory system?



## Labor Law

### Basic Background Material:

1. Chapter 38 of the Custom Textbook (Cheeseman Ch. 32)  
(Chapter 32: Labor Law and Collective Bargaining)
2. Dawn D. Bennett-Alexander & Laura Hartman, Employment Law for Business (4th ed. 2004).  
(Chapter 17: Labor Law)
3. Chapter 37 of the Custom Textbook (Cheeseman Ch. 31)  
(Chapter 31: Employment, Worker Protection, and Immigration Laws)
4. Roger LeRoy Miller & Frank B. Cross, The Legal Environment Today: Business in Its Ethical, Regulatory, E-Commerce, and Global Setting (6th ed. 2010).  
(Chapter 17: Employment, Immigration, and Labor Law --- esp. Labor Unions, p. 593 et seq. -- SKIM)
5. [www.aflcio.org](http://www.aflcio.org) (American Federal of Labor-Congress of Industrial Organizations (AFL-CIO) website)
6. [www.bls.gov](http://www.bls.gov) (Bureau of Labor Statistics website for a variety of data on employment conditions and trends)
7. <http://topics.law.cornell.edu/wex/Labor> (The Legal Information Institute's website; especially the resources page)

### Questions to consider (IN BRIEF):

- What were the major grievances that unions were organized to address? What was the historical background for the formation of unions? (Look esp. to the Bennett-Alexander & Hartman chapter for a brief review of how courts viewed attempts at collective bargaining before passage of the major labor laws.) What place do unions have in the modern workplace?
- What are the bases of law for federal regulation of management and unions? Who enforces federal labor laws? What sources of law are NOT mentioned much in the readings and of which business people should be aware?
- What is the NLRA (also called the Wagner Act of 1935)? VERY BRIEFLY, what does it require? What institution did it create?
- What is the NLRB? What does it do?
- What is the Taft-Harley Act of 1947? What does it protect?
- What are some of the special freedom of speech issues involved on both the management and union sides of labor law?
- Do you believe that we have struck the right balance in regulation of management and unions in the workplace? What would you change about federal regulation of collective bargaining?

## **Employment Discrimination and Procedure (Hot topic: Sex)**

## **Employment Discrimination and Procedure (Hot topic: Race)**

### **Basic Background Material:**

1. Roger LeRoy Miller & Frank B. Cross, The Legal Environment Today: Business in Its Ethical, Regulatory, E-Commerce, and Global Setting (6th ed. 2010).  
(Chapter 18: Employment Discrimination)
2. Chapter 39 of the Custom Textbook (Cheeseman Ch. 33)  
(Chapter 33: Equal Opportunity in Employment)
3. Dawn D. Bennett-Alexander & Laura P. Hartman, Employment Law for Business (4th ed. 2004).  
(Chapter 3: Title VII of the Civil Rights Act of 1964)  
(Chapter 4: Title VII: The Beginning of the Employment Relationship)
4. Robert N. Covington & Kurt H. Decker, Employment Law in a Nutshell (2d ed. 2002).  
(Chapter 1: The Developing Law of Employment pp. 1-34)  
(Chapter 4: Discrimination pp. 200-259)  
(Chapter 10: Employment Law Remedies pp. 508-529)
5. Chapter 37 of the Custom Textbook (Cheeseman Ch. 31)  
(Chapter 31: Employment, Worker Protection, and Immigration Laws)
6. [http://topics.law.cornell.edu/wex/employment\\_discrimination](http://topics.law.cornell.edu/wex/employment_discrimination) (The Legal Information Institute's website on employment discrimination; see also the resources page with selected California links)

## **Employment Discrimination and Procedure (Hot topic: Sex)**

1. Dawn D. Bennett-Alexander & Laura P. Hartman, Employment Law for Business (4th ed. 2004).  
(Chapter 7: Gender Discrimination)  
(Chapter 8: Sexual Harassment)  
(Chapter 9: Affinity Orientation Discrimination)

By the way, I really like the introductory lead-ins to Chapter 7 (pp. 221-223, et seq.) and Chapter 8 (pp. 269-70, et seq.) of this book. I think that they may grab your classmates' attention too, and they may help focus your classmates on how common employment discrimination claims are and on the financial penalties of ignoring such claims. Consider quoting some of those statistics and judgment numbers when introducing this subject to the class, and telling classmates something about the cases in which those damages were awarded.

Questions to consider:

- What are the sources of the federal government's ability to regulate sex discrimination in the workplace? (Look to the Legal Information Institute's website for an easy answer to this question.) What other major sources of law against employment discrimination are NOT mentioned much in your readings, but of which business people should be aware?<sup>1</sup>

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<sup>1</sup> Think about not only State civil harassment laws, but also about State criminal statutes here. What application in the workplace might there be for a criminal case of, for example, assault, battery, the intentional infliction of emotional distress, false imprisonment, or the intentional interference with contractual relations? (See p. 319 of the Employment Law book for brief definitions.)

- What is Title VII of the Civil Rights Act of 1964? What does it protect? What does it NOT protect? BRIEFLY explain the process by which it works (filing claims with the EEOC, etc.).
- What is the EEOC, and what does it do in alleged cases of gender discrimination?
- What is the Equal Pay Act, see 29 U.S.C. §206(d)? What does it protect? What does it NOT protect?
- What is the Pregnancy Discrimination Act, see 42 U.S.C. §2000e? What does it protect? What does it NOT protect?
- IN BRIEF, what is a “bona fide occupational qualification” (a BFOQ) vs. a gender stereotype? How should BFOQs guide the interviewing and hiring process? (See, e.g., pp. 228-29 in the Employment Law book for a brief rundown on this topic.)
- What is “quid pro quo” discrimination? What is “hostile environment” sexual harassment? How would you prove them? What are the differences between them?
- What is “retaliatory discrimination” and how is it proven?
- Please outline (BRIEFLY) the tests for company-wide liability (or “vicarious liability”) for sexual harassment claims? How are these claims different from other types of sexual harassment allegations? What type of “reasonable measures” are expected of companies to prevent the occurrence of sexual harassment in their workplaces? (See also p. 316 in the Employment Law book on investigating allegations of discrimination in the workplace.)
- What remedies are available for proven violations of gender anti-discrimination laws?
- Do you believe that our system of federal gender anti-discrimination laws is effective and performing the function that we need it to in society? What would you change about the way that we have constructed this legal system?

### **Employment Discrimination and Procedure (Hot topic: Race).**

1. Dawn D. Bennett-Alexander & Laura P. Hartman, Employment Law for Business (4th ed. 2004).  
 (Chapter 6: Race Discrimination)  
 (Chapter 5: Affirmative Action --- read after the chapter on Race Discrimination)  
 (Chapter 11: National Origin Discrimination)

Questions to consider:

- What are the sources of the federal government’s ability to regulate racial discrimination? (Look to the Legal Information Institute’s website for an easy answer to this question.) What other major sources of law against employment discrimination on the basis of race are NOT mentioned much in your readings, but of which business people should be aware?
- What is Title VII of the Civil Rights Act of 1964? What does it protect? What does it NOT protect in terms of racial discrimination? BRIEFLY explain the process by which it works (filing claims with the EEOC, etc.)
- What is the EEOC, and what does it do in alleged cases of racial discrimination?
- What is 42 U.S.C. § 1981? VERY BRIEFLY, what is its history? What does it protect? What does it NOT protect? What is the Civil Rights Act of 1991? What affect did it have on our understanding of 42 U.S.C. § 1981?
- What is 42 U.S.C. § 1983? VERY BRIEFLY, what is its history? What does it protect (BRIEFLY define “under color of state law”)? What does it NOT protect?

- What is 42 U.S.C. § 1985? VERY BRIEFLY, what is its history? What does it protect? What does it NOT protect?
- IN BRIEF, what are the theories of “disparate treatment” vs. “disparate impact” discrimination? (Please define each term, how each type of claim is proven, and be able to differentiate the two theories.)
- What is “retaliatory discrimination” and how is it proven?
- Can race EVER be a “bona fide occupational qualification” (a BFOQ)?
- What remedies are available for proven violations of racial anti-discrimination laws?
- Please describe (IN BRIEF) what federal affirmative action is vs. how it has been commonly misunderstood.
- Do you believe that our system of federal racial anti-discrimination laws is effective and performing the function that we need it to in society? What would you change about the way that we have constructed this legal system?