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BUSINESS LAW DESKBOOK

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Chapters 1 to 9



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# HIGHLIGHTS

Highlights for the 2026 Edition include:

1. A new chapter on the Minnesota Consumer Fraud Act (new Chapter 35); and
2. A substantially rewritten chapter on federal antitrust law (revised Chapter 22).

In addition, all chapters have been updated and revised as appropriate, including the following:

- Chapter 7. Contracts. Updating 7:46. Statute of frauds; 7:74 (Exculpatory Provisions; Waivers and Releases); 7:154. Third-party beneficiaries.
- Chapter 8. Sales. Updating 8:87 (Gap-filling provisions); 8:102 (Express Warranties); 8:103 (Implied Warranty of Merchantability); 8:172 (Revocation of acceptance).
- Chapter 10. Secured Transactions. Updating 10:178 (Secured party's right to take possession after default; Breach of the peace).
- Chapter 11. Defining the Employment Relationship. Updating 11:11 (Applying tests for employment relationship under the Fair Labor Standards Act).
- Chapter 12. Employment Contracts. 12:9 & 12:10 (Noncompete clauses).
- Chapter 13. Employment Discrimination. Updating 13:4 (Minnesota Human Rights Act); 13:5. (Disparate treatment and disparate impact); 13:10 (Race discrimination); 13:11 (Gender discrimination); 13:19 (Disability discrimination); 13:30 (Religious discrimination).
- Chapter 14. Miscellaneous Employment Law Issues. Updating: 14:5 (Minnesota drug and alcohol testing; Cannabis testing); 14:9 (Medical cannabis program); 14:11 (Cannabis work rules); 14:76 to 14:81 (SOX whistleblower provisions).
- Chapter 15. Copyright. 15:2 (Copyrightable subject matter); 15:7 (Copyrightable subject matter—Audiovisual works); 15:12 (Non-copyrightable subject matter); 15:15 (Joint works); 15:35 (Idea-expression dichotomy); 15:63 (Copyright infringement—Access); 15:75 (Substantial similarity—Computer programs); 15:90 (Fair use); 15:98 (Other defenses to copyright infringement); 15:114 to 15:115 (Remedies); 15:120 to 15:121 (Contributory infringement; Vicarious infringement).
- Chapter 16. Federal Trademarks. Updating 16:10 (Genericness); 16:24 (Trade dress); 16:42 (Abbreviations, mis-

- spellings, and foreign words); 16:70 to 16:73 (Grounds for refusal to register mark); 16:85 (Oppositions).
- Chapter 16B. Internet law. Updating 16B:53 (DMCA—Copyright Management information); 16B:59. (DMCA—Anti-circumvention); 16B:67 to 16B:70 (CDA Immunity); 16B:80 (Online contracts); 16B:83 (Personal jurisdiction); 16B:119 (“Take it Down Act”); 16B:120 (Adult website age verification).
  - Chapter 17. Patents. Updating significant portions of this chapter, including 17:11 (Patentable subject matter); 17:13 (Novelty and § 102); 17:15 (disclosure requirements under § 112); 17:19 (Types of infringement); 17:20 (proving infringement); 17:25 (Doctrine of equivalents); 17:29 (Infringement of means-plus-function claims); 17:30 (Infringement of a design patent); 17:31 (Injunctions); 17:34. (Reasonable royalty); 17:36 (Enhanced damages); 17:37 (Attorney’s fees); 17:39 (Affirmative defenses); 17:41 (PTAB); 17:44 (IPR).
  - Chapter 18. Trade secrets. 18:51 (Examples of misappropriation under the Defend Trade Secrets Act (DTSA)).
  - Chapter 20. False advertising. Updating 20:26 (Commercial speech); 20:40 (Laches).
  - Chapter 21. Franchising and distribution law. Updating 21:50 (Minnesota Franchise Act); 21:52 (Definition of “franchise” – Franchise fee).
  - Chapter 22. Federal antitrust law (newly rewritten chapter).
  - Chapter 26. Federal securities law – Definition of “Security”. Updating 26:6 (Common enterprise element of “investment contracts”); 26:28 (LLC interests as securities—Fourth Circuit); 26:53 (Viatical settlements; Life settlements as securities); 26:55 (Real estate schemes as securities); 26:57 (Cryptocurrencies and digital tokens as securities).
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  - Chapter 27. Securities Exchange Act of 1934. Updating 26D:35 (Item 103); 26D:36 (Item 105); 26D:89 (Disclosure requirements under Regulation S-K—Other Items).
  - Chapter 33. Negligence. Updating 33:11 (Determining whether a duty exists); 33:42 (Examples of misfeasance; Examples of nonfeasance); 33:80 (Duty of reasonable care for operators of motor vehicles); 33:137 (Defenses and Immunities—Common law official immunity—Examples of discretionary functions); 33:138 (Defenses and Immunities—Common law official immunity—Malice); 33:140 (De-

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fenses and Immunities—Statutory immunity—Generally); 33:142 (Statutory immunity—Examples of operational-level decision-making); 33:178 (Comparative fault); 33:201. (Vicarious liability and respondeat superior); 33:207 (Negligent selection of an independent contractor).

- Chapter 33B. Defamation. Updating 33B:67 (Actual malice); 33B:84 (Absolute privileges); 33:85 (Judicial and quasi-judicial immunity); 33B:89 (High-ranking officials); 33B:100 (Qualified privileges).
- Chapter 33C. Tortious interference. Updating 33C:72 (examples of actionable tortious interference claims); 33C:73 (examples of nonactionable claims).
- Chapter 33D. Infliction of emotional distress. Updating 33D:5 (examples of conduct that fell short of being extreme or outrageous.); 33D:14 (Intentional Infliction of emotional distress—Defenses—Statute of limitations).
- Chapter 33E. Misc. torts. Updating 33E:4 (Invasion of privacy—Publication of private matters).
- Chapter 34. Common law fraud. Updating 34:16 (Past/present fact); 34:97 (Examples of pleading with sufficient particularity).
- Chapter 35. Consumer Fraud Act (new chapter).
- Chapter 38. Collections. Updating all forms.



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**Brent A. Olson** is a leading expert in corporate law and business law. He is the author/coauthor of more than thirty books addressing a multitude of state and federal business law topics.

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Mr. Amantea has written or contributed to several articles in the area of environmental law, including, "New Environmental Due Diligence Standard: EPA's Proposed 'All Appropriate Inquiry' Regulations," *ABA Environmental Transactions and Brownfields Committee Newsletter*, Vol. 7, No.1 (Dec. 2004); "Legislating Risk Assessment," *University of Cincinnati Law Review* (Vol. 63, No. 4, Summer 1995); "The Growth of Environmental Issues in Government Contracting," *American University Law Review* (Vol. 4, 1994); "Protecting America's Wetlands: The President's New Policy Shifts Focus," *National Law Journal*, Vol. 14, No. 23, February 10, 1992; and "EPA Gets Tough on Storm Water Runoff," *National Law Journal*, Vol. 14, No. 15, December 16, 1991. In addition, he has served as an instructor for legal writing and research at Chicago-Kent College of Law (1989) and instructor in the Hazardous Materials Certificate Program at the University of California at Los Angeles' Extension Regulatory Framework for Toxic/Hazardous Substances (1991 to present). Mr. Amantea is a frequent speaker and presenter on environmental issues. Mr. Amantea also was named by Chambers USA 2008 as one of the top environmental lawyers in California.

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Mr. Hauge received his law degree (J.D., *magna cum laude*) in 1995 from Harvard Law School, where he was Articles Editor for the Harvard Environmental Law Review. He also has master's degrees in biology (A.M., Boston University (Marine Program), 1981) and in Technology & Policy (S.M., Massachusetts Institute of Technology, 1983), and earned his bachelor's degree in biology (A.B., *cum laude*) from Princeton University in 1980. He clerked for then-Circuit Judge Samuel A. Alito, Jr. of the United States Court of Appeals for the Third Circuit from 1995 to 1996. In addition to legal publications involving various aspects of federal and New Jersey environmental law, he has authored a number of

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Many thanks to Professor John H. Matheson for his exemplary contributions to the first and second editions of the Deskbook. Professor Matheson's scholarship has been an inspiration to me, and I'm sure to most of the readers.



## Preface

The Business Law Deskbook aims to provide the practitioner with a user-friendly discussion and analysis of roughly three dozen business law topics, which the Author has divided into ten categories: (i) business organizations; (ii) contracts and commercial transactions; (iii) employment law; (iv) intellectual property law; (v) advertising and distribution law; (vi) environmental law; (vii) securities & mergers/acquisitions; (viii) dissolution & bankruptcy; (ix) business litigation; and (x) miscellaneous topics in business law (including “Internet law” and “collection remedies”).

To the extent that business law topics are becoming increasingly interconnected and interdependent, the Author believes that it is helpful, if not essential, to provide the practitioner with a handy resource that discusses these topics in an integrated fashion. For example, an attorney representing a company with an Internet website must confront a myriad of interconnected legal issues, such as copyright law (ch. 15), trademark law (ch. 16), publicity law (ch. 19), distribution law (ch. 21), antitrust law (ch. 22), advertising law (ch. 20), defamation (ch. 33), privacy (ch. 33), fraudulent and negligent misrepresentation (ch. 34); online contracts (chs. 7 & 38), online sales (chs. 8 & 38), taxation (ch. 6), Internet law (ch. 38), business litigation (chs. 33-37), and collection remedies (chs. 10 & 39). Not to mention the need for a start-up Internet company to select an entity (chs. 1-5), hire employees (chs. 11-14), enter into equipment leases (ch. 9), raise capital (chs. 26-27), and consider fundamental structural options, such as mergers (ch. 29), sale of business, or bankruptcy (ch. 32). The Author intends that the Deskbook will become precisely the type of resource that practitioners will expect and demand amid this dynamic legal landscape.

The key to achieving a comprehensive yet compact business law resource requires that the Author eschews “highly specialized” materials and “highly specialized” fields of law. More specifically, the definition of “highly specialized” that best embodies the Author’s purposes may be the following: generally, a field of law is “highly specialized” when one or more of the following criteria are met: (i) the area of practice is so self-contained that it has its own set of codes, rules, and procedures; (ii) the area of practice is uniformly regarded as a “specialty” among practitioners; (iii) practitioners within that specialty are presumed to already pos-

sess numerous resources for that specialized field; and (iv) attorneys have no expectation that a publication addressing “business law” would include these “highly specialized” materials. Accordingly, the following areas of law are omitted (even though they otherwise fit within the rubric of “business law”): tax law (although chapter 6 provides a primer on federal taxation as relates to “choice of entity”), insurance law, Business Law Deskbook banking law, the law of investment companies, and other industry-specific areas of law.

Although the Second Edition of the Deskbook retains the core format, style, and approach of the First Edition, it offers many additional features that the Author believes will enhance its usefulness to the reader. Specifically:

1. The Deskbook eschews reliance on pocket parts in favor of an annual, softbound publication. This allows the Author to revise the Deskbook annually. An annual publication affords the reader with the most timely material available.
2. The Deskbook has added two completely new chapters: (i) Internet Law; and (ii) Collection Remedies.
3. Each chapter of the Deskbook has been completely revised and updated; some of the chapters have been rewritten entirely.
4. As appropriate, each chapter incorporates additional “practice pointers.”
5. The Deskbook aims to become a unified, integrated work, rather than an amalgamation of disparate chapters.

Although the Deskbook focuses on substantive (and not procedural) law, it addresses both transactional and litigation-oriented issues in equal measure. For example, the employment law and business torts sections are primarily litigation oriented, while the business entities chapters tend to focus on transactional aspects. With that said, most of the chapters aim to represent a balanced blend of transactional and litigation issues so as to maximize the usefulness to the reader. In addition, many of the chapters feature sample forms to facilitate the reader’s drafting of transactional business agreements and other documents.

The Author acknowledges the significant and substantial contribution of fellow West authors, including John H. Matheson and Philip S. Garon (corporate law); Stephen F. Befort (employment law); Steven J. Kirsch (collection remedies); and the law firm of Kinney & Lange, P.A. (intellectual property law). The Deskbook could not have been written without—and to a great extent whatever analytical sophistication resulted is—the product of their enormous contributions. In adapting their publica-

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tions to the Deskbook, it was necessary to condense, edit, and sometimes eliminate material (and any errors or omissions that remain are ours).

Finally, the Author stresses that he intends that the Deskbook become a useful resource for any attorney requiring guidance on important issues pertaining to business, commerce, employment, intellectual property, or related fields. Viewed most expansively, this publication aims to be readily accessible to any attorney or business person seeking general or specific information about business or commercial law. Accordingly, the Author intends that the following practitioners and scholars will value the Deskbook:

1. attorneys who regularly practice in business law;
2. non-business law practitioners who nevertheless occasionally confront business law issues (and most attorneys will at some point);
3. attorneys representing corporations or other business entities;
4. attorneys confronting intellectual property issues;
5. attorneys confronting employment law issues;
6. attorneys confronting issues relating to trade and/or commerce;
7. attorneys whose clients seek to raise funds;
8. attorneys confronting environmental law issues;
9. attorneys confronting antitrust issues;
10. attorneys whose clients are part of any distribution system;
11. attorneys confronting advertising law issues;
12. attorneys whose clients use the Internet;
13. attorneys whose clients have an Internet website;
14. attorneys who enter into contracts or whose clients enter into contracts;
15. attorneys whose clients sell or lease goods or services;
16. attorneys whose clients may be a party to a law suit involving business torts.

Two final points are in order. First, like all general legal resources, the Deskbook is not designed to be relied upon as a substitute for specific legal advice or research. It is a general guide and the Author does not purport to be providing legal advice. Second, like all tools, the Deskbook can be improved and undoubtedly there are items that could be clarified or may even be erroneous. We ask our readers to let us know if they have suggested improvements or corrections.





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