

O. Lee Reed
Peter J. Shedd
Jere W. Morehead
Robert N. Corley

Legal and Regulatory
Environment of Business

TWELFTH EDITION

THE LEGAL AND REGULATORY ENVIRONMENT OF BUSINESS

O. Lee Reed

Professor of Legal Studies, University of Georgia

Peter J. Shedd

Professor of Legal Studies, University of Georgia

Jere W. Morehead

Professor of Legal Studies, University of Georgia

Robert N. Corley

Distinguished Professor of Legal Studies Emeritus, University of Georgia



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TWELFTH EDITION

THE LEGAL AND REGULATORY ENVIRONMENT OF BUSINESS

ABOUT THE AUTHORS



O. LEE REED holds a J.D. degree from the University of Chicago and a B.A. degree from Birmingham-Southern College. Presently, he is Professor of Legal Studies at the University of Georgia. The author of many scholarly articles, he is former editor-in-chief of the *American Business Law Journal*. He also has served as president of the Academy of Legal Studies in Business and of SEALSB. Professor Reed has received teacher-of-the-year awards from both undergraduate and graduate student organizations. He has been co-author of *The Legal and Regulatory Environment of Business* since 1977.

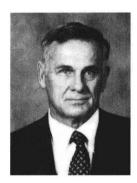


PETER J. SHEDD is a Professor of Legal Studies in the Terry College of Business and Associate Vice President for Instruction at the University of Georgia where he received his B.B.A. and J.D. degrees. Professor Shedd has extensive experience as a teacher, researcher, and author of business-related texts. He is an active member of the Academy of Legal Studies in Business and its Southeastern Regional. Professor Shedd is a past president of the National Academy. In addition to being a member of the State Bar of Georgia, Professor Shedd is a member of the American Arbitration Association. He is an experienced mediator and arbitrator.



JERE W. MOREHEAD is a Professor of Legal Studies at the University of Georgia where he received his J.D. degree. Prior to joining the Georgia faculty, Professor Morehead served as an Assistant United States Attorney in the Department of Justice, where he specialized in the prosecution of white-collar crime. He has served as Editor-in-Chief of the American Business Law Journal and is past president of the International Law Section of the Academy of Legal Studies in Business. Professor Morehead is the recipient of several distinguished teaching awards and has served as a visiting faculty member at the University of Michigan. He has authored many scholarly articles on the subjects of

jury selection, export controls, and peer review. He currently serves as Associate Provost and Director of the Honors Program at the University of Georgia.



ROBERT N. CORLEY is a Distinguished Professor of Legal Studies Emeritus of the University of Georgia. He received his J.D. and B.S. degrees from the University of Illinois, where he taught for eighteen years. He was admitted to the Illinois Bar in 1956. Professor Corley is past president of the American Business Law Association and a past member of the editorial board of the American Business Law Journal. In 1985 he was awarded the Senior Faculty Award of Excellence by the American Business Law Association. Winner of numerous teaching awards at both the undergraduate and graduate levels, he has also taught in several national executive development programs. Since

1964 he has been senior author of *The Legal Environment of Business*. His contributions have shaped the content of the entire legal environment of business field.



PREFACE

Since 1963 this textbook has set the standard for an introduction to the legal and regulatory environment of business. With this twelfth edition it continues and expands that tradition. As always, it focuses on the knowledge of law that business students need to lead informed careers as employees, managers, and entrepreneurs.

From its beginning at the University of Illinois, its authors have emphasized the growing importance of the public regulation of business. It was the first major text to take this approach, and to date it has spawned numerous imitators. However, *The Legal and Regulatory Environment of Business* remains a leader not only in its public law orientation, but also in going beyond a narrow focus on "blackletter" rules to note the many social, political, and economic factors that add vital context to the understanding of law and business. Rules are important, but they make up only the first step in grasping the significance of the legal system.

Now at the University of Georgia, the authors of the twelfth edition proudly introduce in its pages a new theme for teaching the legal and regulatory environment, namely, that law is not a mere perspective on business. In fact, law through its creation of *property* establishes the conditions necessary for the private marketplace, a marketplace that correlates powerfully and positively to the wealth of the modern nation. So that students not merely think of law as a force external to business, the authors encourage faculty teaching from this book to underscore the foundational role of law in the very existence of business. Several of the chapters, including Chapter 1, bring this fact to life.

In the reference to "property," the authors intend that faculty should explain that all societies face the problem of how to distribute limited resources and that the most prosperous societies have done so through the legal creation of property, a bundle of rights that grant and enforce exclusivity in acquiring, possessing, using, and transferring limited resources. Property is as important in the Cyber Age as it was to the framers of the U.S. Constitution, and to teach students that "property" does not refer legally to things but to a set of rights in things is the beginning for their understanding of how law is a foundation of business.

This book's emphasis on the growing public law regulation of business is entirely appropriate to a teaching theme of law and property as a basis for business. Perhaps the major modification of property during the last century has been a development of government agencies regulating (1) anticompetitive property structure such as monopoly, (2) property-transferring institutions like the securities markets, (3) the property of various

specific industries such as aviation, nuclear power, pharmaceuticals, and agriculture, (4) employment practices affecting the property that employees have in their services, and (5) the way businesses use their resources that adversely impacts the natural environment.

A property system protects private resources not only in allowing considerable freedom in their use but also through establishing limits to their use beyond which it becomes abuse and causes injury to the resources of others. Thus, the regulation of business is part of the property system although the extent of regulation is certainly the subject of much debate.

The other authors take this opportunity to recognize the contributions of Robert N. Corley. For nearly 40 years, Bob was the senior author and driving force behind this book. Now as he assumes a more relaxed role as friend and adviser, we thank him for his positive impact, not only on our careers, but also on the lives of hundreds of thousands of students who have read *The Legal and Regulatory Environment of Business* in 11 previous editions. His influence on the entire teaching of legal studies in business has been profound.

Changes in the Twelfth Edition

The addition of three new chapters highlights revisions of the twelfth edition. "Property in the Cyber Age," Chapter 9, introduces the broad concept of property as a foundation of the private marketplace and explains its relevance to intellectual property and e-commerce as well as to more traditional types of resources. Additionally, as a response to the *Microsoft* case and the increased concern over the laws of competition, we have expanded the antitrust coverage to two chapters (Chapters 13 and 14). Finally, in recognition of how important adequate enforcement forums like courts are to the resolution of the inevitable disputes that arise in business, we have also enlarged the discussion of courts and litigation to two chapters (Chapters 2 and 3).

The twelfth edition features 40 new cases, many of them from the U.S. Supreme Court. To give the option of instruction from case excerpts, we have made selections from the opinions slightly longer than many traditional textbooks do. Adopters should feel free to assign and cover or not to assign and cover these cases in class, although we believe that out-of-class reading of the cases will benefit student comprehension of the material.

In most chapters, we have added "Cyber Law Connections" to note the burgeoning growth of Internet, e-commerce, and computer-related issues. Almost all of these issues also illustrate the centrality of property to the legal and regulatory environment of business.

Pedagogy

Each chapter contains the following pedagogical elements:

Business Decisions—This element, introduced first in the ninth edition, is continued here. At the beginning of each chapter is a statement of facts that highlights one or more of the substantive aspects of the chapter.

Cases—We have included portions of actual court decisions that illustrate the parties' arguments and the court's resolution of the issues raised. From these cases, we have deleted most of the procedural aspects, citations, and footnotes. Although the resulting edited cases are much shorter than in their original form, the heart of the opinions remains.

Preface

Case Questions—Following each case is a series of questions that are designed to help the student understand the key points raised in the case. These questions are a continuation of the eleventh edition.

Concept Summaries—When it is most helpful, a summary of the preceding textual discussion is provided. In this way, complex or lengthy presentations are easily reviewable by the reader.

Cyber Law Connections—As mentioned above, this feature explores the developing legal and regulatory issues linked to the Internet and the continued expansion of computer technology.

Tobacco Industry Insights—We have used the tobacco industry as a model for discussing legal issues. This industry faces every conceivable legal problem, and the causes of these problems are not only understood but are of significant personal importance to students. Not only is tort and product liability of the tobacco industry in the news on a daily basis, so also are attempts by governmental agencies and Congress to regulate that industry. Constitutional issues such as freedom of speech arise, as do antitrust issues such as fixing the price of tobacco leaves. Almost every chapter contains material relating to the tobacco industry.

Key Terms—At the conclusion of the text of each chapter is a list of the words or phrases that are introduced in the chapter. The glossary, at the end of the book, contains definitions for these key terms.

Supplements

Instructor's Resource Manual

This manual consists of the teaching outline section, transparency masters, a case brief supplement, and video guide.

The teaching outline section makes up the bulk of this Instructor's Manual, which is organized by text chapter. This section corresponds with the headings in the text, and typically includes suggestions on points of emphasis, answers to the case questions that appear within each chapter of the text, cases for discussion, and additional matters for discussion. Each chapter of this manual also includes a list of references that might be useful secondary sources of information; a suggested answer to the Business Decision that begins each chapter of the text; and suggested answers to all of the end-of-chapter review questions, including the Tobacco Industry Insight questions. The Case Brief section of the manual contains a brief of each edited case found in the text. For ease of use, the briefs are numbered by chapter in the order that they appear in the text, and on the bottom right-hand corner of each page, there is a reference to the page in the text where the edited case appears. The tear-out format of this supplement allows instructors to remove any material and incorporate it into their lecture notes.

Test Bank

Instructors can test students' mastery of concepts as the instructors create exams with the use of this Test Bank. Organized by chapter, the Test Bank contains at least 40 multiple-choice questions, 20 true/false questions, and 10 essay questions per chapter, including 1 or 2 from each Tobacco Industry Insight and Cyber Law Connection scenario. Many of the questions have been modified to correspond with the text's revision. Answers immediately follow each question.

PowerPoint Presentation Slides

A useful supplement to this edition is the PowerPoint Presentation slides. These slides are a replication of those used by Peter Shedd, and contain an outline for classroom lecture.

Computerized Test Bank (Windows Version)

The computerized Test Bank contains all the multiple-choice, true/false, and essay questions included in the above-described print Test Bank. This powerful system allows tests to be prepared quickly and easily. Instructors can view questions as they are selected for a test; scramble questions; add, delete, and edit questions; select questions by type, objective, and difficulty level; and view and save tests. For Mac copies, please contact your McGraw-Hill/Irwin sales representative.

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Finally, but certainly not last, we want to thank all of the professors who have used or are using this text. Your feedback has been and continues to be important. Please feel free to share your thoughts with us. You may contact any of the authors directly at the Terry College of Business, University of Georgia, Athens, Georgia, 30602 or through the McGraw-Hill/Irwin Publishing Company.

O. Lee Reed Peter J. Shedd Jere W. Morehead

TO THE STUDENT

How to Study the Legal and Regulatory Environment of Business

To gain the most from this textbook, you should learn how to study written material effectively. You can achieve effective study through use of the SQ3R method, a method widely taught by study-skills psychologists for learning textual material.

SQ3R stands for **survey**, **question**, **read**, **recite**, and **review**. As a study method, it has dramatically improved the grade-point averages of most students who have practiced it. It is based upon the concept that active study of written material improves memory and comprehension of information far better than passive reading. Unfortunately, many students have not recognized the difference between active study and mere passive reading.

Students often read a textbook chapter exactly as they would read a novel or a magazine article. They begin with the first sentence of the chapter and read straight through the material, pausing only to underline occasionally. This way of reading may be suitable for a novel, but it is quite inappropriate for a textbook. Psychologists insist that an active study method must begin with a **survey** of the material to be read. If you plan to spend two hours studying a 30-page chapter, take three to five minutes in the beginning and survey the chapter. First, read the bold-type section headings (each chapter of this book is divided into numbered sections). Second, read a sentence or two from the text of each section. The purpose of this survey is to familiarize you with the topics covered in the chapter. Fight the tendency to stop your surveying process in order to comprehend all of the concepts you are surveying. Comprehension is not the goal of surveying.

Following the survey of all the sections, go back to the beginning of the chapter: Ask yourself a **question** before reading each section. Ask it aloud, if possible, but silently if circumstances demand. The important thing is actually to "talk to yourself." Normally, each section heading can easily be turned into a question. If the section heading reads **Stare Decisis**, ask yourself the question, "What does stare decisis mean?"

Only after asking a question are you finally ready to **read** a chapter section. In reading keep your question in mind. By so doing you will be reading for a purpose: To discover the answer to your question.

Upon finishing each section, stop and **recite** the answer to your question. As an example, at the end of the section on stare decisis say to yourself, "Stare decisis refers to

the legal tradition that a judge in a given case will follow the precedent established in similar cases decided by courts in the jurisdiction." According to psychologists, to recite this way greatly aids memory. Recitation also lets you know whether or not you have understood the material just read.

The last step of the SQ3R method is **review.** When devoting two hours to the study of a chapter, take the final 15 minutes of the time to review the material. Review the questions taken from the headings of each chapter section and recite the answers to them, rereading material if necessary to answer accurately.

While the SQ3R method may be used effectively to study any subject, the **case briefing system** is uniquely designed to aid in the study of court decisions. In studying law, students frequently write up case briefs of each decision they read. Whether you are required to write up every decision is up to your individual instructor. However, the case briefing system provides an excellent framework for comprehending complicated judicial reasoning processes, and you should brief cases whether required to do so or not.

To avoid getting lost in a maze of judicial terminology, you should ask yourself a standard set of questions about each case decision and read to discover the answers to these questions. These standard questions lie at the heart of the case briefing system. They are:

- 1. Who is the plaintiff and who is the defendant?
- 2. What are the facts of the case? (Who did what to whom? What is the behavior complained of?)
- 3. Did the plaintiff or the defendant win in the lower court(s), and which party is appealing? (All decisions in this textbook come from appellate courts.)
- 4. What was the legal issue or issues appealed?
- 5. Does the plaintiff or the defendant win on the appeal?
- 6. What rules of law and reasoning does the appellate court use in deciding the issue?

Here is an illustration of a written case brief. It is a brief of the third case in the book, which is found on page 56. Before looking at the brief you should now read that case. To understand the case you need to know that a "summary judgment" occurs when a court determines that no genuine factual dispute exists and that either the plaintiff or the defendant is entitled to judgment as a matter of law. No evidence is presented before a jury. The court (judge) rules in favor of the plaintiff or the defendant on the basis of what the law is rather than on what facts (who did what to whom, etc.) are believed.

Case Brief

WORLD-WIDE VOLKSWAGEN CORP. v. WOODSON, 100 S. Ct. 559 (1980) [The notation following the name of the case indicates that the case may be found in volume 100 of the *Supreme Court Reporter*; starting on page 559. The Supreme Court decided the case in 1980.]

Plaintiff and Defendant

The plaintiff (who brings the lawsuit against the defendant by filing a complaint) is Woodson. The defendants are the German manufacturer of the Audi automobile, Volkswagen of America (the importer), World-Wide Volkswagen (the wholesale distributor), and Seaway (the retail dealership).

To the Student xiii

Facts

The plaintiff Woodson, a resident of New York, purchased an Audi from a retail dealer-ship in New York. Woodson drove the car to Oklahoma. While in Oklahoma, Woodson was injured in an accident caused by a defect in the car. He sued the dealership and the other defendants in an Oklahoma state court. The dealership and the importer objected to the Oklahoma court's personal jurisdiction (legal power to decide the case concerning the plaintiff and defendants).

Lower Courts

The Oklahoma trial court and appellate courts rejected the arguments that they lacked the jurisdiction to decide the case. The U.S. Supreme Court agreed to hear an appeal on the basis of constitutional due process.

Issue Appealed

Do the courts of Oklahoma have jurisdiction over a nonresident automobile dealer and its wholesale distributor in a products liability case, when the defendants' only connection with Oklahoma is the fact that an automobile sold in New York to a New York resident became involved in an accident in Oklahoma?

Who Wins

The dealer and the wholesale distributor win.

Reasoning

- A state court may assert personal jurisdiction over a nonresident defendant only as long as there are "minimum contacts" between the defendant and that state. The due process clause requires this standard.
- This standard protects the defendant from having to defend himself in a distant or inconvenient place. It also ensures that states will not reach out beyond their boundaries and disturb the balance imposed by the federal system of our government.
- 3. The dealer and wholesaler carried on no activity whatsoever in Oklahoma; thus they may not be sued in that state.

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