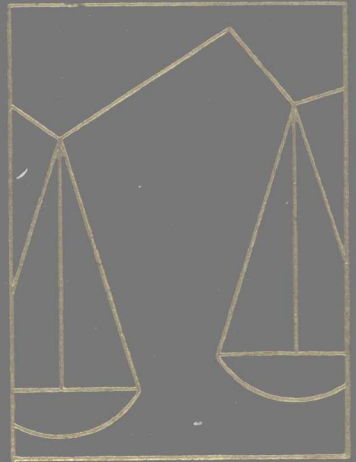


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WEST'S  
BUSINESS LAW  
Text & Cases



Third Edition

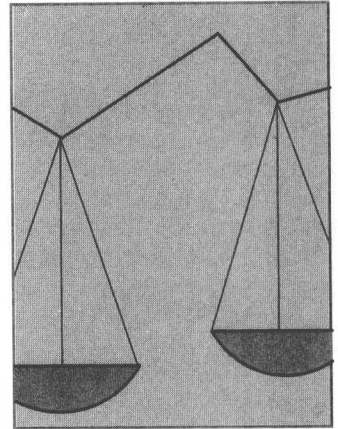
KENNETH W. CLARKSON  
ROGER LeROY MILLER  
GAYLORD A. JENTZ

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# WEST'S BUSINESS LAW

Text & Cases



Third Edition ✓

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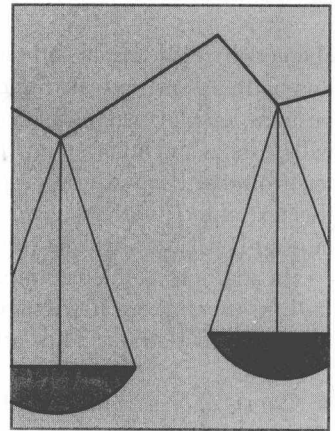
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A study guide has been developed to assist you in mastering the concepts presented in the text. The study guide includes a "Things to Keep in Mind" section, a list of key terms, an outline of each chapter, a set of fill-in questions (a type of programmed learning device), a set of multiple-choice questions, the answers to the fill-in and multiple choice questions, and a new section entitled Uniform CPA Business Law Examination information. This workbook is available from your local bookstore under the title *Study Guide to Accompany West's Business Law: Text and Cases, Third Edition* prepared by Barbara Behr of Bloomsburg University of Pennsylvania.



# PREFACE



The first course in business law is often an exciting adventure for the student preparing for a career in business, accounting, government, law, and most other careers in today's world. Now, more than ever before, a basic knowledge of business law is an important part of a student's general education, for the law touches on just about every individual at one time or another. All you need to do to confirm this statement is glance through some of the case excerpts contained within the following pages. You will see how the litigation represented by these cases involves many different types of individuals and situations and how the law and the legal process affects people from all walks of life. It is no exaggeration to say that the law provides an all-encompassing framework in our society.

It is with this universal applicability of the law in mind that we have fashioned this text. The result is, we believe, a useful "tool for living" and a text which should satisfy the demands of students preparing for future careers.

In this preface we would like to point out not only the changes that have been made in the Third Edition, but also the numerous pedagogical devices that aid the student-reader in systematically learning the law.

## THE THIRD EDITION: THOROUGHLY MODERN

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We believe that business law should be taught in a contemporary setting. Consequently, we have included, wherever possible and appropriate, over one hundred court cases and case problems from the 1980s. Approximately half of the case excerpts included within this text are from the past decade; the remainder include some of the tried and true classics pertaining to business law. The basic criterion for inclusion, however, is always the same: the appropriateness of the case to the legal concept being explained.

Also included are the 1984 Bankruptcy Amendments and Federal Judgeship Act, the recent trend in the passage of "lemon laws," new developments in computer-assisted legal research and crimes, the current status of due-on-sale mortgage clauses, and many more recent changes.

### New Chapters in the Third Edition

The first and second editions of this text included a number of unique chapters that were necessary to keep pace with contemporary legal trends. These

chapters covered special partnerships (including limited partnerships), private franchises, torts related to business, employment and labor relations law, trusts, wills, estates and other topics. These and other chapters from the Second Edition have been retained in this text, appropriately revised or rewritten to reflect current legislation or legal trends.

In addition, at the recommendation of our many faithful users, three new chapters have been added to the Third Edition. They are:

- Constitutional Authority to Regulate Business (Chapter 2)
- The Liability of Accountants (Chapter 56)
- The Effect of International Law in a Global Economy (Chapter 57)

A number of chapters have also been rearranged in the organization of the Third Edition. For example, the chapters on personal property (Chapter 51) and bailments (Chapter 52) are now more logically placed at the beginning of Unit VIII, entitled "The Protection of Property and Other Interests."

In addition, a number of chapters have been substantially rewritten in response to reviewers' suggestions and comments. These chapters include Chapter 14 (Third Party Contract Rights), Chapter 29 (Secured Transactions), and Chapters 32 and 33 (Principal and Agency).

## NEW EXHIBITS

A number of new exhibits have been added to the Third Edition to enhance the student's understanding of the text and the forms used in the business world. Included as new exhibits are copies of a purchase order, security agreement, negotiable bill of lading, and nonnegotiable warehouse receipt.

## CONCEPT SUMMARIES ADDED

Students often need an explicit review of key concepts. In the Third Edition we have provided what we believe to be an extremely useful pedagogical device in the form of Concept Summaries. These summaries are provided in 21 separate instances. Examples are:

- Valid Business Contracts under the Statute of Frauds (Chapter 13)
- Types and Basic Rules of Contract Discharge (Chapter 15)
- Rules on Passage of Title and Risk of Loss (Chapter 18)
- Termination of Agency by Acts of the Parties and by Operation of Law (Chapter 33)
- Rights and Duties of a Bailee (Chapter 52)

## FOCUS ON ETHICS

The teaching of ethics as an integral part of introductory courses in business law is becoming common practice throughout the United States. Additionally, accreditation committees now usually require the inclusion of a minimum of ethical considerations in an introductory business law course. To satisfy this requirement and the increased interest in ethical questions, we have greatly expanded these sections and updated them to include current ethical problems and controversies. These specially prepared sections are found at the end of each of the eight units in the text, and each Focus on Ethics considers ethical problems relating to topics covered in the preceding unit. These sections are not intended as a course in ethics, but are designed to elicit comments and discussion from the student-readers. For this reason, each Focus ends with a set of sample discussion questions.

## APPENDICES

Since most students keep their business law text as a future reference source, we have included a full set of appendices. They are as follows:

- A How to Brief a Case
- B The United States Constitution
- C The Uniform Commercial Code, fully updated
- D The Uniform Partnership Act
- E The Uniform Limited Partnership Act
- F The Revised Uniform Limited Partnership Act
- G The Model Business Corporation Act
- H Selections from the Revised Model Business Corporation Act

Appendix H is new to this edition. Where appropriate, references to these various appendices, including the new one, are given throughout the text.

## OTHER SPECIAL FEATURES OF THIS TEXT

In addition to being comprehensive and accurate, our text provides some unique features for the students and the instructor.

1. *Cases fully integrated:* Cases immediately follow the legal point being discussed that they either substantiate or illustrate, rather than appearing at the back of each chapter.
2. *Cases have a unique format:* The case cite is fully presented in the margin. *Background and Facts* are first given and then the actual case excerpts are presented in different type size to differentiate them. Following the excerpts is a *Decision and Remedy* section. Finally, in some cases, a *Comments* section follows.
3. *Vocabulary stressed:* Each time a new important term is introduced, it is presented in boldface. A further explanation of boldfaced terms is given in the glossary at the end of the text. The glossary has been expanded in the Third Edition.
4. *Easy to read and learn from:* The text is written in an easy-to-read manner and is separated into sections by four different levels of subheadings. This greatly eases the learning process and allows for easier outlining by the student-reader.
5. *Case questions and problems:* At the end of each chapter, there are approximately eight to ten questions and case problems. The first four to five questions are usually hypothetical in nature, centering explicitly on specific areas of law treated in the chapter. The remainder of the questions are actual case problems taken from important cases, for which full citations are given. In most chapters one or more new case problems, based on court cases from the 1980s, have been included in the Third Edition. Complete answers to these end-of-chapter hypothetical problems and case questions are presented in a separately bound booklet. The answers to these end-of-chapter problems and questions constitute a complete review of the law.

## SUPPLEMENTAL MATERIALS

We realize that most business law teachers face a difficult task in finding the time to teach all of the materials they are required to teach during each term. Therefore, we have developed, with several colleagues, supplementary materials which will ease both the students' and instructors' jobs.

### Study Guide to Accompany WEST's BUSINESS LAW, Third Edition

Professor Barbara E. Behr of Bloomsburg University of Pennsylvania has put together what we believe to be the most comprehensive, informative and helpful Study Guide for business law students that exists. It is directly aimed at allowing the student to comprehend not only "black letter" law, but also some of the subtleties behind the legal process. Basically, though, it is designed to allow the student to comprehend each chapter in such a way that exam time will not be a moment of panic. The Study Guide contains:

1. A "things to keep in mind" section.
2. A list of key terms.
3. An outline of the chapter.
4. A set of fill-in questions (a type of programmed learning device).
5. A set of multiple choice questions.
6. The answers to the fill-in and multiple choice questions.
7. A section entitled Uniform CPA Business Law Examination Information.

### Instructor's Manual and Test Bank

In this edition, there is a fully revised Instructor's Manual prepared by Professor Frank S. Forbes of the University of Nebraska, Omaha, and Lorne H. Seidman of the University of Nevada, Las Vegas. The Instructor's Manual contains the following materials:

1. Chapter outlines.
2. Major chapter concepts with notes for classroom lectures.
3. Practical teaching suggestions.

4. Questions for the student that are designed to stimulate classroom discussion.
5. Full notes on all cases excerpted within each chapter, including potential classroom discussion questions.
6. A full set of test questions, including approximately 1,000 multiple choice questions with answers and approximately the same number of true/false questions with answers.
7. Additional information to help students who are taking the course in preparation for the CPA examination.

### Transparencies

A full set of acetate transparencies are available to qualified adopters.

### Legal Business Forms

A separate booklet of approximately forty often-used sample forms is also available.

## ACKNOWLEDGMENTS FOR THE FIRST EDITION

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Barbara E. Behr, Bloomsburg University of Pennsylvania; Robert Staaf, Daniel E. Murray, Richard A. Hausler, Irwin Stotzky, Patrick O. Gudridge, all of the University of Miami School of Law; William Auslen, San Francisco City College; Donald Cantwell, University of Texas at Arlington; Frank S. Forbes, University of Nebraska; Bob Garrett, American River College-California; Thomas Gossman, Western Michigan University; Charles Hartman, Wright State University-Ohio; Telford Hollman, University of Northern Iowa; Robert Jespersion, University of Houston; Susan Liebeler, Loyola University; Robert D. McNutt, California State University-Northridge; Roger E. Meiners, Texas A&M University; Gerald S. Meisel, Bergen Community College-New Jersey; James E. Moon, Meyer, Johnson & Moon-Minneapolis; Bob Morgan, Eastern Michigan University; Arthur Southwick, University of Michigan; Raymond Mason Taylor, North Carolina State; Edwin Tucker, University of Connecticut; Gary Victor, Eastern Michigan University; Gary Watson, California State University, Los Angeles.

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Instructor's Manual previously authored by Frank S. Forbes of the University of Nebraska, Omaha. A special thanks goes to Professor Seidman for his comments and criticisms throughout the entire process of the third edition. Also a very special thank-you to Lavina Leed Miller for her detailed editing and other manuscript assistance.

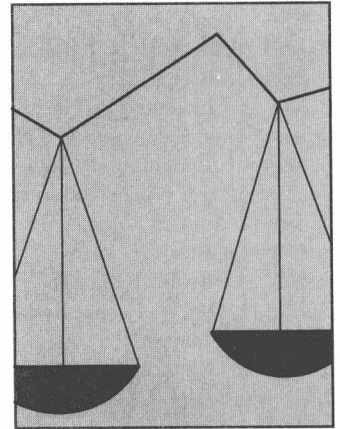
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As always, any remaining errors in the text are solely our responsibility. We welcome comments from all users of this text, for it is by incorporating such comments that we can make this text an even better one in future editions.



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