

BUSINESS LAW

An Elementary Treatise

BY

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New York

THE MACMILLAN COMPANY

1922

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Set up and electrotyped. Published September, 1919.

Norwood Press
J. S. Cushing Co. — Berwick & Smith Co.
Norwood, Mass., U.S.A.

PREFACE

THESE pages are intended for use by students in schools and for readers in general who desire a brief exposition of the underlying principles of the law governing business transactions. The author has deemed it essential to make the statement as plain as possible and to resist the temptation to elaborate. Physical limitations themselves in a book of this character require brevity. But the chief consideration is that the students for whom this book is intended cannot be expected to derive more than a general, and in some cases, unfortunately, a transient knowledge unless in later life in or out of school they pursue the study further. The author is convinced that many books of this type are spoiled by wrongly directed ambition. What is said here should be of a basic or introductory nature. Accordingly, the first several chapters aim to present a general discussion culminating in a statement of the purpose of the study of "business law." For the same reason more space has been given to the fundamental subject of contracts than to any other.

After much consideration, it has been decided not to include forms. Several reasons have induced to this conclusion. The chief purpose of putting forms in a book of this character is to acquaint the student with their appearance and phraseology. But when it is remembered that the students may purchase from any

stationer blank forms prepared for the needs of the particular jurisdiction, it seems that that fact furnishes the suggestion. It is therefore recommended that the student procure in connection with this book several blank forms for use at the appropriate place. The following are suggested : a bill of sale ; a stock certificate ; a warranty deed ; a lease ; a trust deed or mortgage. Bills of exchange, promissory notes, and checks are illustrated in the text.

Questions and problems follow each chapter, but the teacher will find it profitable to frame many others from the text in addition to those given.

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NORTHWESTERN UNIVERSITY, EVANSTON,
AUGUST, 1919

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BUSINESS LAW

PART I

INTRODUCTORY

CHAPTER I

LAW DEFINED

THE NATURE OF LAW

The units of political power. The people of the world, as we know, have no common government. They are arranged, for governmental purposes, in groups of various sizes and degrees of strength, which, by our hypothesis, have political independence. In the progress of our civilization, some of them may break up into further units, some of them may coalesce and merge, but so long as it is true that there is no common government over all people, organized society necessarily consists in a collection of independent groups.

These units of political power are known as nations, governments, states or sovereignties. The two last words seem technically preferable, for the word nation is frequently used to denote a people of ethnic unity, though perhaps not of political independence as such unity; and the word government may properly be employed to designate the government of a dependency

or subdivision of sovereignty. And yet usage justifies either 'nation' or 'government' as words to describe independent political powers; and no harm is done if we remember that the words may be used in the other sense just described. But by 'state' or 'sovereignty' we always in political science mean a political power without a superior, a body politic owing no allegiance. In this sense, the United States is a state or sovereignty and the so-called 'states' of the union are subsidiary governments which must deal with other sovereignties through the sovereign United States.

Sovereignties or states exist and maintain order by law. It is apparent that a group of people, who desire (or whose leaders desire for them) to form a social organization of stability which can have not only strength to survive against external attack, but also internal peace and order, will find it immediately necessary to establish authority and to issue rules which all within the group must obey, calculated to produce harmony of action, cohesion of members, internal peace and the strength of union. That by which such authority is established and maintained is known as *national law*, or, more usually, *municipal law*. What strictures may be imposed by the people of an independent group upon their representatives or upon the power of the central authority, does not detract from its character as a sovereignty as that term is used to denote international independence. Thus our own federal government cannot enact laws on certain subjects, but that is because the people of the United States have willed it so. The sovereignty of the United States among the nations of the world is not thereby affected. As a political

power it stands upon a strong foundation of popular support, and is enabled to assert its sovereignty against any attack.

It is also apparent that sovereignties in their communications with each other, in their common needs and in their mutual recognition of things right and just, would feel the need of establishing common rules, of making agreements and upholding common customs. Such internationally recognized rules, customs and agreements are known as *international law* or *the law of nations*. Thus, national or municipal law and international law, being commandments emanating from sovereignty, constitute what we know as political law, and are its two great branches.

The character of international law. It has been seen that international law is that law commonly accepted among sovereignties for the regulation of international affairs. It will appear that such law exists merely by common consent among nations and that there is no power superior to them by which it can be prescribed or by which it can be enforced. In this respect it differs basically from the law of a sovereignty. It is for this reason that sovereignties may differ upon questions of international law, and a nation may feel bold to disregard it. Nevertheless, in its main conclusions, it is fairly well established, it progresses with civilization and is generally obeyed. Its infraction leads to protest, demand for indemnity and war.

International law is said to be *express* when it is put in the form of treaties and in the form of agreements and codes adopted in convention. It is said to be *tacit* when agreed upon by common observation of customs.

The character of municipal law. It is municipal law with which the individual is generally concerned, and which we shall consider in this book. Municipal law is the law by which a sovereignty organizes itself, regulates its affairs, establishes harmony of action and maintains peace and good order. There is a power to prescribe it and a power to enforce it. In less civilized states, such power is often arbitrarily expressed and unevenly applied; but with more enlightenment come laws of permanence, uniformity and justice.

THE DEVELOPMENT OF LAW

Law must not be looked upon as a perfect system of rules given to us by a higher power. It is always in development. It deserves respect and demands obedience as the expression of that which is necessary for order and security. In a crude society, the law is crude, often brutal; in a higher order, it expresses the degree of the civilization. It is often a compromise, not only between good and evil, but between opposing views equally sincere. The layman sometimes thinks of the law as merely that which forbids wrongdoing; but a great part of our law is nothing more than rules of action in business life, usually suggested by experience, by which to guide and interpret the manifestations of the business world.

Questions and Problems

(1) Define, as used in international law, the word 'sovereignty.' What is the other word which contains the same idea? Is the State of New York a sovereignty within this definition? Is the Dominion of Canada? Name some sovereignties.

(2) What is international law? How does it develop? How is it enforced? What two kinds of international law? Define each.

(3) What is municipal law? Why is it always in process of development?

CHAPTER II

THE BRANCHES OF MUNICIPAL LAW

LAW CLASSIFIED ACCORDING TO ITS OBJECTS

In general. The object of municipal law is to create a compact state to serve the ends of political power as conceived by the people or their leaders or representatives. Our Declaration of Independence contains a statement of the ends of government according to the ideas of our forefathers. "To secure these rights, governments are created among men deriving their just powers from the consent of the governed." But how shall this be accomplished? It is necessary to establish the form of government, to set forth its powers, to define the rights of individuals as between themselves, and as toward the state. A multitude of laws must be put in force, changed, repealed and added to from time to time as new needs arise. These laws fit into the great structure of law to serve its grand aim. But in themselves they must accomplish more immediate ends. Let us inquire as to those more immediate purposes; in other words, classify law according to its various objects. A classification on this basis is the true classification to denote the character of law.

The classification, as made here, is not a perfect division of law into separate branches; nor can it be.

Particular laws seek various objects; the branches intertwine. Thus the law of Property may involve Constitutional Law, Criminal Law, the Law of Torts, of Contracts and all the other branches.

Constitutional law. This is the law whose object is to establish the government and assert fundamental political rights. In the United States we have a written constitution which is our basic law, and all enactments must be in accord therewith. It is described in the next chapter. But many countries do not have written constitutions.

Administrative law. The law by which the government operates, such as revenue laws, laws establishing courts of justice, laws creating political divisions.

Criminal law. This is the law having for its object the maintenance of the peace and good order of the state; the law by which certain acts or omissions to act are declared to be of such serious damage to the state in its collective capacity that the state will, in its own name, institute legal proceedings and inflict punishment.

The breach of the criminal law is called a crime. A crime may be defined as an act, or an omission to act, of such serious tendencies to the damage of the state in its collective capacity that the state will, in its own name, and for its own sake, take notice of the event and punish the actor for the purpose of warning him and others against like conduct in the future. It is the injury *to the state* which makes the conduct a crime. If an individual is also injured he may have redress for his injuries under the law of *torts*; but it is the injury to the state, the *public wrong*, which makes the act a crime. Many injuries which are hurtful to individuals

and which therefore constitute grounds for suits for damages are not criminal in character, because the injury is not of such a nature that it tends directly and materially to disturb the peace and good order of society and may therefore be safely left for correction to the suit of the individual for his damages. Such, for instance, is injury by mere negligence, as where I lend my book to a friend and he carelessly loses it. Here there is no crime; but if he steals my book, a crime is committed; the state may punish and I may have my suit for damages. In this case he commits a *crime*, or wrong to the state, tending to disrupt its peace and the public security; and he also commits a *tort*, or private wrong to an individual. Many crimes arise out of acts which are not wrongs to any particular individuals, as in cases of exceeding speed limits upon highways, having counterfeit models in one's possession, and the like; but usually a crime does involve also a wrong to an individual.

Examples of crimes are: murder, arson, burglary, robbery, larceny, assault and battery, getting money under false pretenses and disturbing the peace.

The law of torts. The law imposes upon each individual duties toward other individuals as individuals. Membership in society brings curtailment of natural liberty. If one person infringes upon the rights of another as defined by the general law, the injury is called a *tort*. The act may, as we have seen, be also a crime; and it may not be. Whether it is or not is immaterial in the definition of the tort. A tort may be defined as a wrong committed by one individual toward another, consisting in the violation of the general law

by which the rights of individuals *as such* are established. In a tort we must have injury to an individual. No matter, for instance, how careless a person is, if no one is injured by that carelessness, no tort has been committed, for no one has any right to complain that he is damaged.

Various torts are: negligence, slander and libel, trespass to property, assault and battery, improper acts of dominion over another's goods (conversion), fraud and conspiracy.

The law of contracts. This is the law under which obligations may be assumed by agreement. It is considered fully hereafter.

The law of property. This is that branch of the law which regulates the ownership of private property. It determines the theory of ownership, covers one's duties respecting the use of his property, defines the manner of sale or gift, establishes the rules of descent upon the death of the owner.

The law of persons concerns the status of persons of exceptional classes, as those under age and insane persons.

The law of delegation and representation. This is the law under which one (called a principal or master) may delegate to another (called an agent or servant) the power to act in his name and for him. It constitutes one of our subjects of extended discussion hereafter.

The law of business associations. Corporations and partnerships are the most important headings here. These are considered fully in later chapters.

The law of pleading and procedure. This is the law by which a right arising under some other heading of

~~Law~~ is enforced in and carried through the courts. It is sometimes called *adjective* law; and the law for whose enforcement it is provided is called *substantive* law.

Other headings might be mentioned, but the most important general branches are above enumerated.

LAW CLASSIFIED ACCORDING TO SUBJECT MATTER INVOLVED

The law is often treated in textbooks and digests under headings of a narrower and more specific nature than those we have considered, as, the law of negotiable paper, the law of carriers, the law of bankruptcy, etc. These are either further subdivisions of the subjects above enumerated or subjects upon which to attain its more general ends the law operates. In our discussion at length hereafter we shall have occasion to consider some of these specific subjects.

Questions and Problems

- (4) What is the most satisfactory classification of law? Why?
- (5) What is constitutional law?
- (6) What is the object of administrative law?
- (7) What is the object of the criminal law?
- (8) Define a crime.
- (9) Is a crime necessarily injurious to an individual?
- (10) What is an act called which results in injury to an individual when considered from that individual's standpoint? Is such act also a crime?
- (11) Name some crimes.
- (12) Name some torts.
- (13) What is comprehended in: the law of persons, the law of delegation and representation, the law of business associations?
- (14) What is adjective law? Its object?
- (15) In what other way is the law often divided?