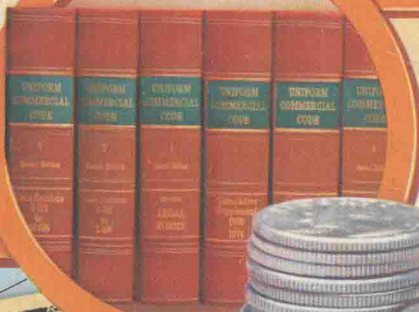
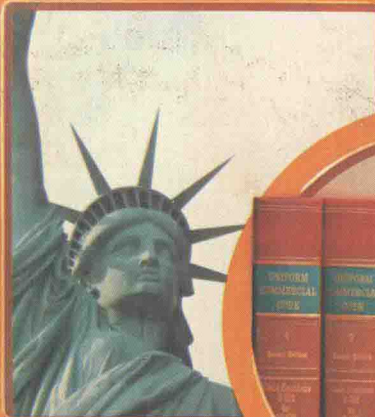


Applied Business Law

12th Edition

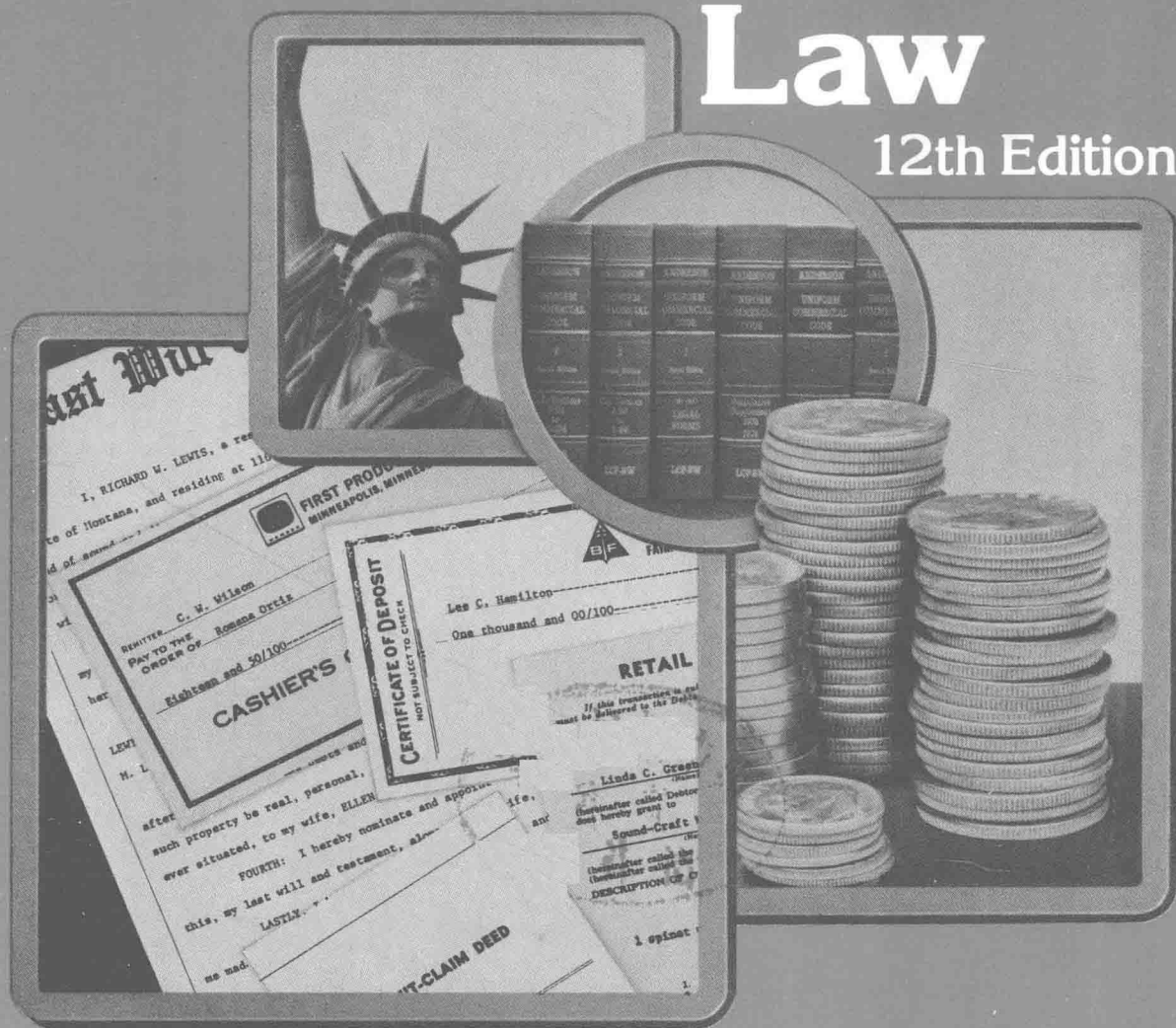


Mietus
Adamson
Fisk

Applied Business Law

Based on the Uniform Commercial Code

12th Edition



Business Law Applied to the
Problems of the Individual as Citizen, Consumer,
and Employee

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Preface

For better or for worse, we have become a law-oriented and litigation-prone society. People are more conscious than ever of their rights. They may grumble about high taxes and big government but are quick to seek new legislation to cure the ailments and correct the maladjustments of modern life. Increasingly, they are quick to sue to secure the redress of wrongs or the protection of rights.

Business, along with other areas, has felt this public pressure. Rapid-fire changes in ideals-values-goals and in customs-products-services have tended to accelerate changes in the law.

Accordingly, this, the Twelfth Edition of APPLIED BUSINESS LAW, has been updated to incorporate significant developments. Every chapter includes new cases and problems to maintain accuracy and to enhance relevance and readability. The text has been scrupulously edited to simplify and further clarify the content. Units and chapters have been rearranged in the interests of clarity and logical development. However, each unit continues to have independent identity and coherence, and so the individual instructor will find that any customized sequence in presentation of units will prove workable.

Some of the units have been renamed to suggest their dynamic character. As before, the study of contracts is given the prominence it deserves as a foundation for all that follows.

The teaching-learning features of the book which have proven to be so successful in the past have been retained and updated:

1. Opening interest-arousing situations—"teasers"—for each chapter.
2. A descriptive leading question as the title for most sections.
3. A challenging real-life problem at the beginning of most sections, with the solution included in the discussion which immediately follows.
4. Additional explanatory examples.
5. Condensed definitions of legal terms in the margins to assist students in enlarging their legal vocabulary.
6. Valuable practical suggestions on preventing legal difficulties.
7. Vocabulary review in self-test form.

8. Summaries of highlights to be remembered and used for review.
9. Hypothetical cases and actual court cases carefully chosen for student interest and useful for class discussion or outside study.
10. Illustrations to emphasize selected concepts and rules.

Experienced teachers know that because our laws are made by 50 different sovereign states as well as by the federal government, because every law is subject to judicial interpretation which may vary with changing facts, and because human beings engage in an infinite variety of activities under the law, it is impossible to cover every possibility with precision. Exceptions, distinctions, and variations exist in the seemingly most simple rules. Where important differences exist, an attempt has been made to present the generally prevailing or preferred view, including noteworthy exceptions. But a textbook of this nature is intended neither to be definitive nor to take the place of professional legal counsel for the resolution of specific legal problems.

Nevertheless, students who conscientiously read this book and successfully do the assigned work will better understand the world in which they live. They will expand vocabulary and sharpen ability to think analytically and systematically. They will be better equipped than most citizens to recognize legal problems and to utilize professional counsel.

To those many dedicated teachers who have worked with our book in the past and to those teachers and other friends who have been so generous with suggestions for its continued improvement, we express our sincere gratitude.

Finally, we would like to acknowledge the efforts, over the past seven editions and nearly forty years, of the late McKee Fisk. The thousands of students and teachers who have used the editions on which he labored are the beneficiaries of his many contributions to the teaching of business law.

Norbert J. Mietus • John E. Adamson

Introduction

How to Study Business Law

These suggestions are made to help you understand the material in your assignments thoroughly and in the shortest time. They supplement any how-to-study directions which your instructor may provide.

1. The law is about people. People make the laws, use them to get things done in an orderly way, and sometimes break them. In reading the problems and examples, imagine you are one of the parties.
2. Each chapter is introduced with three simple questions that you should be able to answer from what you already know or what you think is fair or reasonable. Answer each of these questions before you read the chapter.
3. After you have answered the three introductory questions, scan the topic headings to see whether your reasoning was sound and to get a general idea of what is included. You can do this by reading the chapter rapidly, checking items that are difficult or puzzling.
4. After you have read the chapter rapidly, read it a second time more slowly and carefully, making notes of the important points in your notebook. Most topic headings are stated in the form of a question; try to answer each question before you study the next topic. Be sure that you understand its meaning before you continue. If in doubt, read the topic again and, if necessary, ask someone to help you with it. If you do not know the meaning of a legal word, look it up by referring to the index or glossary.
5. As you read the paragraphs, try to apply the rules to yourself or to your family and friends. Recall, if you can, situations within your own experience to which the rules apply.
6. Examples of legal problems from real life ("Applying Law to Everyday Life") and actual case problems ("Solving Case Problems") appear at the end of each chapter. All are covered in the text, and you can sharpen your wits by being the judge and solving them. Make a note of the page on which you think the answer to each is found.
7. Before you begin your study of a new chapter, review the sections entitled "Strengthening Your Legal Vocabulary" and "Reviewing Important Points" of the preceding chapter to refresh your memory. Just before you go to class, if you have time, review the similar sections of your new chapter.

How You Can Solve Legal Problems

Following each chapter, you will find a number of real-life problems under the heading "Applying Law to Everyday Life." You will also find actual cases that have been decided by courts, headed "Solving Case Problems," which contain more details and sometimes will be more difficult to understand. The method of solving is essentially the same in both problems and cases.

To answer the question raised in a problem or case, first read it carefully. Be sure you understand the question. Then analyze the situation, determine the rule of law involved, and reach a decision. The basic rule will always be found in the same chapter in which the problem appears. You will find it helpful to answer these five questions:

- 1. What are the facts?**
- 2. What is the disputed point?**
- 3. What rule of law is involved?**
- 4. How does this rule apply to the facts?**
- 5. What is the answer or decision?**

Your instructor may prefer that you use the steps below, in this order:

1. State your answer or decision.
2. Give the rule of law that supports your answer.
3. Explain how the rule of law applies to the facts.

Legal Advice

1. It is wise to have a family lawyer, just as you have a family doctor. If you don't know a lawyer, ask your banker, relatives, friends, or local lawyers' reference service for suggestions.
2. Consult your lawyer if you have any doubts about your rights or duties when your property, life, or liberty is endangered or if significant changes occur in your circumstances.
3. Obtain advice from your lawyer before making a major move, such as buying or selling real property, preparing a will, entering into a business, or making any important agreement. It costs comparatively little and will help you to avoid costly errors.
4. Ignorance of the law is normally no excuse if you have committed a crime or invaded the personal rights of another. Make yourself familiar with local, state, and federal laws to help avoid violations.
5. Remember that a minor is generally liable for crimes and torts and may also be bound by contracts.
6. There is always more than one side to a legal dispute. Try to learn the other person's version of the situation and honestly seek a friendly solution out of court. Remember that in every court action, at least one party loses—and often, both find the costs burdensome.
7. If you think that you have a good cause of action against another person but your attorney disagrees, your attorney is probably right. If not convinced by the explanation given, you can consult

- another attorney, just as you might consult a second doctor about prospective surgery.
8. If someone injures you or your property in a tort, such as an automobile accident, don't rush to sign a statement releasing the person from liability in exchange for some payment of money. The damages may be greater than first determined. On the other hand, don't delay in consulting your attorney and in taking action if appropriate—you may lose your rights if you procrastinate.
 9. Although oral agreements can be legally binding, it is prudent to spell out in writing all contracts which involve relatively much time, money, or detail and to have both parties sign and receive copies.
 10. Keep important papers secure in a safe place, such as a safe-deposit box. Keep a detailed list of the contents at home, for ready reference. Also keep a copy of your will at home because there may be a delay in getting into the safe-deposit box after your death.

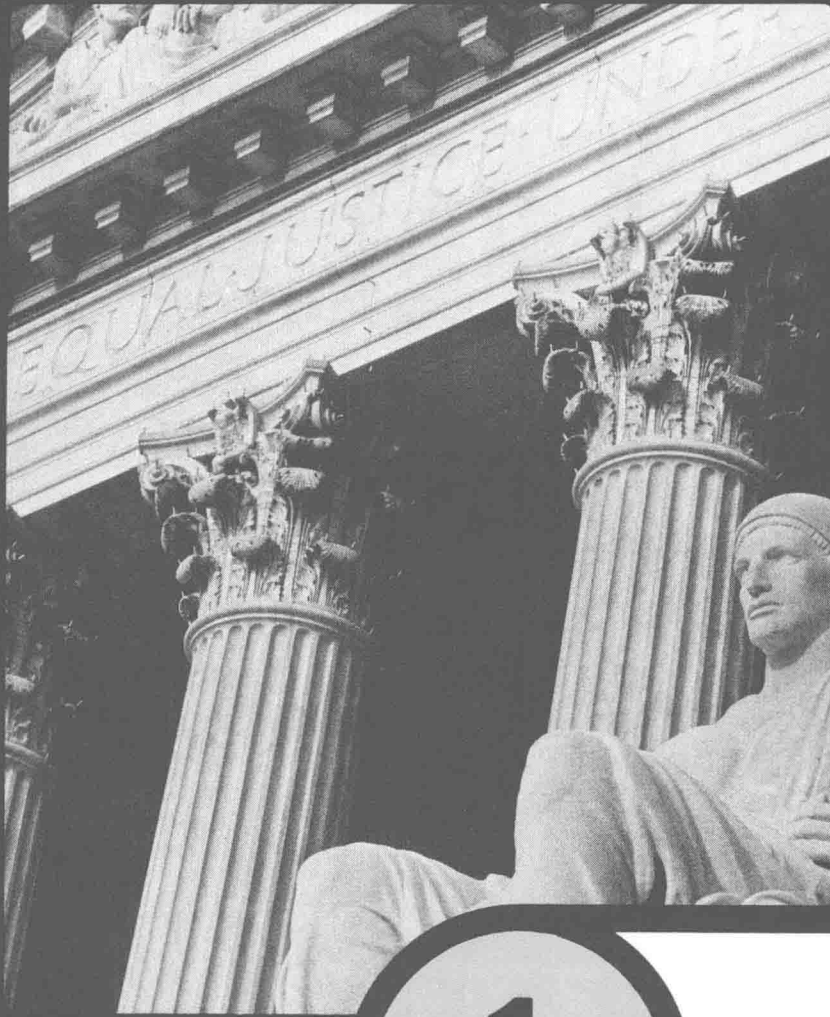
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1

Understanding the “Why” and “What” of Law

1. Nature and Kinds of Law
2. Law and the Individual
3. Law Enforcement and the Courts
4. Crimes
5. Torts

For people to live together in peace and harmony, rules of conduct must be made and enforced. We are influenced in our behavior by family, church, friends, employers. We are also guided by our own conscience, or sense of what is right and wrong.

But the principal agency that affects our conduct in our relations with others is the law. Through law, the people in a democracy decide what each person may and may not do. These rules protect every individual's right to the safety and security of person and property.

Rules of law are unique in that they alone can be enforced in courts. Such rules are generally obeyed because they make life more pleasant and liveable. They are also usually obeyed because violations can lead to court-imposed sanctions including payment of damages, fines, imprisonment, and even death.

In this unit we learn how our system of law developed and how it operates today. We discuss the rights and responsibilities of citizenship. We know that some persons defy the law and hurt others in ways that society condemns as criminal conduct. Therefore a full chapter is devoted to crimes. We know, too, that many persons hurt others in ways that are not criminal, and yet violate legally recognized rights. Such acts are called torts, which are also discussed in this unit.

1. You are an expert swimmer, sunning yourself at a crowded beach. Suddenly, you alone see a small child swept up by a wave and about to drown. Are you under any legal duty to rescue the child?
2. Some customs, like driving on the right side of the road, have been enacted into law. Others, like using knives, forks, and spoons for dining, have not. How do you account for the difference?
3. A teenage motorist, driving toward an intersection, sees the traffic light change from green to yellow. Attempting to "beat the signal," the driver suddenly accelerates. The car roars ahead, racing well above the posted speed limit. However, the light turns red seconds before the car reaches the corner. Brakes screech, and a deafening crash follows as the car smashes into the side of a sedan which is moving across the intersection. The teenage driver is knocked unconscious and partially paralyzed. The other driver is killed, and two passengers are seriously injured. What kinds of law have been violated?

chapter

1

Nature and Kinds of Law



WHY DO WE HAVE LAW?

Problem: Three high school students were on a backpacking trip in the wilderness country of the Olympic National Park in Washington. A heavy storm suddenly struck, and the students lost their way while taking a shortcut to a shelter. A rescue party was organized. Several qualified mountaineers refused to join in the search. Did the mountaineers violate any law?

America is known as the land of the free and the home of the brave. So why can't we do anything we please? Perhaps we could if each of us lived alone on an isolated island. Possibly we could if everyone observed the golden rule: Do unto others as you would have them do unto you. Not everyone does. Human beings, by their very nature, live in groups: families, tribes, cities, nations. There is much specialization in work and in play according to abilities and interests. As a result, human beings depend on each other to get things done cooperatively. Sometimes, however, people behave unreasonably, selfishly, and even criminally. Therefore, to protect everyone, a civilized society establishes rules which govern human relations. When the government makes the rules, they are known as laws. They help assure peace and order. Their ultimate goal is justice, whereby every person receives what is fairly due.

We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness.

—*The Declaration of Independence*

Freedom and rights, however, are coupled with limits and duties. A famous judge once said, "Your right to swing your fist ends at the point where the other person's nose begins." If others are to respect your rights, you must also respect theirs. Thus, your right to drive a car is limited by a duty to abide by the rules of the road. At an intersection, your duty to stop protects another's right to go. If you buy a hamburger, you are obligated to pay for it. If you borrow a suitcase from a friend, you have a duty to return it in the same condition as when you borrowed it, less ordinary wear. As you see, most legal duties arise from the rights of other persons. Laws reflect duties and provide guidelines for conduct. Laws help to protect every person's freedom within reasonable limits.

No one is perfect: Everyone misbehaves sometimes. Usually, nobody is hurt as a result; Generally, no law is violated. But in every society, some persons defy the law and misbehave seriously. A thief may support an addiction to drugs, first by stealing hubcaps, then by stealing entire cars. Other violators are less blameworthy. Some youths playing ball in the street get careless and break a window. A motorist rushing to work turns off a major highway onto a city street without slowing down in a 30 MPH zone. It is inexcusable that the driver didn't see the posted limit. The driver should

have looked for it or known of the lower limits on such streets.

Often, honest and well-intentioned persons become involved in disputes they cannot settle personally. Whatever the cause of conflict, law may be invoked to deal with it—to protect the innocent, to discipline the wrongdoer, to compensate the injured.

The purposes of law are:

1. To establish and enforce standards of conduct, including rules for business transactions.
2. To recognize and protect individual rights and to define and enforce related duties.
3. To provide ways of avoiding and, if necessary, of settling disputes without violence.
4. To promote justice with order and thus to provide for the general welfare.

Law consists of the rules of conduct that society enforces through its system of courts and regulatory agencies. Law reflects social and business standards and customs. As those standards and customs change, the law changes. For example, within your parents' lifetimes and even within your own thus far, many laws have been changed in response to our changing values and moral standards. For example:

law:
rules of conduct
enforceable by
government

1. Young persons are considered adults at age 18 instead of 21.
2. Divorce is more easily obtained in many states. It may be called dissolution of marriage, and no fault need be proved.
3. Certain abortions are legal.
4. Equal rights of women and minorities are recognized and enforced.
5. Consumers are shielded from fraud.
6. Persons accused of crimes, as well as those who have been convicted and imprisoned, have new guarantees of fair treatment.
7. Workers may organize into unions, and management must bargain with them collectively.
8. The environment is protected against rampant pollution.
9. Persons are protected by social security programs against the cruelties of poverty, unemployment, and disability.

Not all customs or ethical and social standards have the force of law. Only standards that society recognizes through its laws have legal force. In the problem, the mountaineers who refused to aid in the search for the lost hikers violated no legally recognized duty. Although their refusal may have been a breach of a moral duty, they were subject to no legal penalty.

HOW DID OUR LAW DEVELOP?

Problem: The labor strike was in its fifth bitter week. The atmosphere was tense. The strikers were restless and angry as were those workers who

had remained on the job. For several days, about a thousand pickets and sympathizers had gathered at the main gate, chanting slogans and jeering at “scabs” who entered the plant. Then a company truck was overturned and burned by the disorderly crowd. Top management went to court for protection. What could the court do?

Since the time when people first began living together, rules have been adopted to protect the group and its members and to govern their relationships with each other. In early medieval England, there was no formal body of written law. Each feudal lord or baron administered law personally. Although these baronial courts had similarities, the laws tended to differ by locality or region. Disputes were settled on the basis of local customs and the baron’s judgment. In time, the king was able to establish a system of courts which enforced a common law throughout England. The rules of law, which were stated in these early cases, became *precedents* (examples) for settling future, similar cases. In the beginning, few decisions were recorded, and so the early common law was sometimes known as “unwritten law.” Eventually, the principles and rules announced by the courts were preserved in writing. The particular rules thus became fixed, and people knew what to expect if similar problems arose in the future. This resulted in what has come to be known as the **common law**—judge-made case law which has its origin in the traditions, customs, and trade practices of the people. Common law operates through the **doctrine of stare decisis**—Latin words meaning “to abide by decided cases.” This means that cases in the future which have similar facts will be decided by applying the rule established in the earliest case. By this doctrine (which is also called the *rule of precedent*), court decisions become more consistent and predictable. Persons with similar problems are treated equally. Of course, if conditions change and the rule no longer makes sense, the appropriate supreme court may reject the old precedent and create a new one.

Sometimes in medieval England, there was no remedy available from a common law court to enforce certain rights or make amends and correct certain wrongs. This was because the court could give only monetary damages in civil cases. A person who wanted any other kind of relief would appeal directly to the king. The king would refer the person to his chancellor, who was usually a clergyman of good conscience and equity—fairness. The chancellor would hear the case, without a jury, and would then give appropriate relief. Such hearings developed into what came to be known as a separate system of courts of **equity**.

For example, suppose that Citizen A promises to sell a parcel of land to Citizen B and then refuses to complete the deal. Citizen B could buy a similar, but possibly more expensive, parcel of land and then sue in a common law court for money damages to cover the extra cost. But every piece of land is *unique* (one of a kind) in location. Therefore, if the original parcel is desired, Citizen B could go to the chancellor for equitable relief. The chancellor would order **specific performance**. Thus, the seller would have to deliver the land as promised.

common law:
case law, reflecting
customs of the
people

*doctrine of stare
decisis:*
principle under
which like cases
are decided in like
manner

equity:
form of justice
administered when
there is no suitable
remedy available in
common law
courts

*specific
performance:*
completion of an
agreement as
promised