

INSTRUCTOR'S MANUAL
TO ACCOMPANY

THE LEGAL AND REGULATORY ENVIRONMENT OF BUSINESS

NINTH EDITION



ROBERT N. CORLEY/O. LEE REED/PETER J. SHEDD

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Part One

INTRODUCTION TO THE LEGAL ENVIRONMENT OF BUSINESS - BUSINESS CONDUCT AND DISPUTE RESOLUTION

Before covering the materials in Chapters 1-4, discuss the importance of law in education for business. Emphasize the following:

1. The concept of private property.
2. The role of the rule of law in society.
3. The relationship between law and economics.
4. The importance of dispute processes resolution.
5. The importance of legal sanctions to business decision makers.
6. The significant costs to business as a result of the legal environment.
 - A. In 1991, the 1000 largest public companies spent \$20 billion on legal fees.
 - B. In 1990, more than 100 million new cases were filed.

To illustrate the importance of the course, discuss the significance to business of recent Supreme Court decisions such as:

1. States may not regulate air fare advertising, **Morales v. Trans World Airlines, Inc.**, 60 USLW 4444 (1992).
2. States may not keep out garbage and hazardous wastes from other states, **Chemical Waste Management v. Hunt**, 60 USLW 4433 (1992).
3. It may be illegal for a manufacturer to refuse to sell replacement parts for its product to independent service companies, **Eastman Kodak Co. v. Image Technical Services, Inc.**, 60 USLW 4465 (1992).
4. States may bar night club nude dancing, **Barnes v. Glen Theatre, Inc.**, 111 S.Ct. 2456 (1991).
5. Tobacco companies may have product liability to cancer victims, **Cipollone v. Liggett Group, Inc.**, 60 USLW 4703 (1992).

Chapter 1

LAW AND BUSINESS

I. LEARNING OBJECTIVES

The purpose of this chapter is to introduce the students to the subject of law and to some classifications of its subject matter. In addition, it is designed to instill in them respect for the role of the "rule of law" in our society and for the fact that the judicial system is the most important stabilizing force in society. It should create an awareness of the vastness and complexity of the subject matter of law. The chapter provides a general introduction to the criminal law, the law of contracts, the law of torts, and the law of property. It also introduces the various sources of law.

A major focus of this chapter is on legal sanctions. The sanctions of the criminal law are contrasted with those of the civil law.

Finally, this chapter introduces the relationship between law and ethics and social responsibility. It illustrates the impact of each on the other.

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III. THE BUSINESS DECISION - PROTECTING THE PIZZAS

A. What risks can be covered?

1. Tort liability
2. Product liability
3. Worker's compensation
4. Property damage by fire, wind, flood, etc.

B. What risks cannot?

1. Breach of contract
2. Criminal conduct
3. Operating losses

C. Who should be covered?

1. The business
2. The partners individually
3. All employees
4. Franchiser if a franchise

D. How much coverage should you buy?

As much as is available including an umbrella policy

IV. TEACHING OUTLINE

LAW AND ITS SOURCES

1. Definitions of LawA. Emphasize:

- (1) The various definitions of law and illustrate each definition with an appropriate example, such as:

Definitions

A command

Principles applied by courts

Scheme of social control

Examples

Taxation and criminal law

Contracts and torts

Abortion decisions and obscenity cases

- (2) That law and justice are not synonymous and the latter is heavily dependent on individual viewpoints and perspectives.

B. Additional Matters for Discussion

- (1) Your students' first experience with the law.
- (2) Taking a recent case in your community, as an example, your students' views on whether justice was done.

2. The Rule of LawA. Emphasize:

- (1) The role of law as a controlling force in society.
- (2) The pros and cons of following rules of law to decide disputes as opposed to allowing the political process to do so.

Chapter 1

B. Additional Matters for Discussion

- (1) That the facts of any particular case are very important and juries are unpredictable.
- (2) Whether our personal conduct is impacted because the rules of law help make a judge's decision more predictable.
- (3) The reason we need the rule of law in a democratic society is because we do not all agree on what constitutes justice, right or wrong, or countless other things. The rule of law provides procedures by which disagreements on substance can be translated into agreements.

3. General Classifications of Legal Subjects

A. Emphasize:

- (1) The following classifications of law. Have the students give examples of issues that might arise in each area:

Public Law

1. Constitutional Law
2. Administrative Law
3. Criminal Law

Private Law

1. Contracts
2. Torts
3. Property

- (2) That a single fact situation can present legal problems in each of the above major categories of law. For example, a contract between A and B not to deal in the products manufactured by C could be a crime as a contract in restraint of trade under the federal antitrust laws; the F.T.C. might find such an arrangement as an unfair trade practice, thus involving administrative law; the right of the Commission to interfere could be challenged, involving constitutional law; C might be able to demonstrate that either A or B have committed a business tort; and the enforceability of the agreement between A and B might be challenged under principles of contract law. The product covered by the contract is property.
- (3) The distinction between substance and procedure.
- (4) The distinction between civil cases and criminal cases. Note that most of the cases involved in this text are civil cases.

B. Additional Matter for Discussion

Table 1-1.

4. Sources of Law

A. Emphasize:

- (1) The four sources of law. Have the students identify the legislative bodies that govern them.
- (2) The distinction between the federal constitution and those of the states.
- (3) The distinction between a statute, ordinance and codes.

- (4) The distinction between a common law system and a civil law system. Give the advantages and disadvantages of each.
- (5) The general workings of the common law. Note the reasons for following precedent and reasons for change.

B. Additional Matters for Discussion

- (1) The benefits of uniform legislation and especially of the Uniform Commercial Code.
- (2) The importance of the "fourth branch" of government (administrative agencies) to the business community.

LEGAL SANCTIONS

5. For Criminal Conduct

A. Emphasize:

- (1) That the criminal law system fails to provide fast and sure punishment of criminals. Have the students debate whether or not certain actions that are now criminal should be. For example, drug addiction, alcoholism, gambling, and prostitution.
- (2) The growth of "white collar" crime such as income tax evasion, embezzlement, bribery of foreign officials, computer fraud, and price fixing. Have the students discuss appropriate punishment for those convicted.
- (3) The savings and loan scandal and the crimes involved.
- (4) The distinction between felonies and misdemeanors.
- (5) That Chapter 8 will cover the criminal law in detail.

B. Additional Matters for Discussion

- (1) Table 1-2.
- (2) Table 1-3.

6. For Breach of Contract

A. Emphasize:

- (1) That the law of contracts comprises several subparts such as sales, commercial paper, secured transactions, etc.
- (2) The importance of contract law to the business community.

Chapter 1

(3) That significant problems may be involved in interpretation of contracts when the parties use ambiguous language and the fact that one of an attorney's functions is to avoid such problems.

(4) That there is Chapter 5 on contracts.

B. Additional Matters for Discussion

(1) Types of monetary damages, including compensatory, consequential, and liquidated damages.

(2) Other types of nonmonetary relief.

7. For Tortious Conduct

A. Emphasize:

(1) The difference between tort and contract duties. Note that some breaches of contract are also torts.

(2) The theory of damages in tort cases.

(3) That there are three types of torts: intentional, negligence, and strict liability.

(4) That there is Chapter 6 on torts.

B. Additional Matters for Discussion

(1) Table 1-4.

(2) The importance of punitive damages as illustrated by Table 1-5.

(3) The reasons underlying the need for tort law. Ask the students to discuss if these are still sound today. Have them give an example of the various torts.

8. For Violating Statutes and Regulations

A. Emphasize:

(1) That administrative sanctions include all those available in the other areas of the law.

(2) Antitrust sanctions as illustrative of those used in the administrative process.

(3) That Chapters 16 and 17 deal with these antitrust sanctions in detail.

B. Additional Matters for Discussion

(1) Table 1-6.

(2) Concept summary on Legal Sanctions.

PROFIT, ETHICS AND SOCIAL RESPONSIBILITY

9. Economic Incentives

A. Emphasize:

- (1) The impact of the economics on the law and vice-versa.
- (2) That in many situations, economic consequences play a greater role in governing conduct than does the law.
- (3) Other forces that influence business decisions.

B. Additional Matter for Discussion

The reasons behind our competitive economic system.

10. Ethics

A. Emphasize:

- (1) How one's own values as well as the values of others influence behavior. Have the class give examples of peer pressures that influence behavior. Is that always good?
- (2) Improper corporate behavior by having the students give examples of corporate behavior that is unethical and contrary to the best interests of society. Why did such conduct occur? Note that most of the examples were also illegal.
- (3) The differences between laws and ethical standards. Note that the law establishes a minimum standard, while ethics codes are a commitment to a higher standard of acceptable behavior.
- (4) That the more specific a code of ethics becomes, the more difficult it is to get people to agree upon its provisions.
- (5) That there is a Chapter 11 on ethics.

B. Additional Matter for Discussion

Review Caterpillar's Code provisions. Are they realistic? Would your students abide by them if employed by the company? Ask them to give examples when they would not.

V. ANSWERS TO REVIEW QUESTIONS - CHAPTER 1

1. It imposes sanctions for decisions that result in illegal conduct.
2. Justice is the goal of the law.
3. Public vs. Private
Substance vs. Procedure
Civil vs. Criminal
4. **Substantive law** defines the legal relationship of people with other people or between them and the state. **Procedural law** deals with the method and means by which substantive law is made and administered.
5. A - Procedural
B - Substantive
C - Substantive
D - Procedural
6. Constitutions, statutes, case law and administrative rules and regulations.
7. To collect in one body the law that "deals with all the phases which may ordinarily arise in the handling of a commercial transaction from start to finish."
8. The principle that prior decisions provide precedents that should be followed in subsequent cases involving the same question of law. Where a rule of law has been announced and followed by courts so that the rule has become settled by judicial decision, a **precedent** is established for future cases.
9. Death, imprisonment or jail, fine, removal from office and disqualification for office and voting.
10. Compensatory damages.
She must prove that she is entitled to consequential damages which requires proof that the damages were foreseeable.

Chapter 2

COURTS

I. LEARNING OBJECTIVES

The first purpose of this chapter is to acquaint the student with the organization and jurisdiction of the state and federal courts. A second purpose is to distinguish law courts from those in equity. The third purpose of this chapter is to examine the functions of the personnel involved in the judicial process. Special emphasis is placed on the role of jurors and lawyers.

Finally the chapter addresses the judicial process. It acquaints students with the powers and functions of courts and illustrates some of the many factors that affect judicial decisions and make the outcome of any case unpredictable. The chapter introduces the role of the judiciary in adding substance to the bones of legislation through statutory interpretation. It also familiarizes the student with the doctrine of stare decisis and the advantages and disadvantages of a precedent-based judicial system. By examining the concept of stare decisis in depth, the student should become aware of the existence and importance of subtle distinctions between cases as well as acquire a realization that there is built into our system a dynamic capacity for change. The student should be made to feel the eternal conflict in the law between the desire for predictability and certainty on one hand and the demands of society for growth, improvement, and fundamental changes on the other.

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III. THE BUSINESS DECISION - TO SERVE OR NOT TO SERVE?

A. What do you say?

1. Give honest answers when questioned about qualifications, including your job.
2. Do not attempt to seek an excuse; such conduct usually has the effect of preventing excuse.
3. Time off can be made-up.

B. Where does his duty lie?

As a citizen, it lies in his duty to serve in this fundamental government function.

C. If you do not want him to serve, do you have any options?

No.

D. Does he have any options?

Only to give the judge the facts and then to serve if required to do so.

IV. TEACHING OUTLINE

ORGANIZATION

1. Jurisdiction

A. Emphasize:

- (1) The dual nature of the court system and the three levels of courts.
- (2) That jurisdiction means "power" to hear a case.
- (3) The difference between general and limited jurisdiction.

B. Additional Matters for Discussion

- (1) The reasons for creating courts with specialized subject matter jurisdiction.
- (2) Why are some disputes not justiciable? Have your students give examples of such disputes.

2. State Courts

A. Emphasize:

- (1) The distinction between substance and procedure.
- (2) The sources of procedure.
- (3) That generally there is a right to only one appeal.
- (4) The importance and role of petitions for leave to appeal and petitions for writ of certiorari. Note the small percentage of the petitions that are granted.
- (5) The dollar limitation on the small-claims courts in your state. Suggest to the students that they attend such a court if possible. If the students watch the People's Court on television, point out its great oversimplification of the system. Emphasize that attorneys are usually not required. Have the students list the typical types of cases and disputes that end up in such courts.
- (6) The advantages and disadvantages of proceeding in small-claims court. Emphasize that winning is not equal to collecting for many plaintiffs.
- (7) The fact that many small-claims court decisions are actually compromises worked out by the judge.

B. Additional Matters for Discussion

- (1) Figure 2-1.
- (2) The distinction between trial courts and appellate courts.
- (3) The chart of the court system of your state and the reasons that each court was created.

3. Federal Courts

A. Emphasize:

- (1) That original jurisdiction is granted to the U.S. Supreme Court in Article III, Section 2. Note that although the court may have jurisdiction, it may in its discretion refuse to exercise it. See **Ohio v. Wyandotte Chemicals Corp.**, 91 S.Ct. 1005 (1971).
- (2) That the federal court system is one of limited jurisdiction. Give examples of federal question cases.
- (3) The reasons for jurisdiction based on diversity of citizenship.
- (4) The special importance of the federal courts located in Washington, D.C.
- (5) That a corporation is a citizen of two states for diversity purposes. Note the tests for determining the principal place of business of a corporation.
- (6) That there are proposals to eliminate diversity jurisdiction entirely or to *greatly limit it*.

Chapter 2

- (7) That if there are multiple plaintiffs, each must sue for the jurisdictional amount.
- (8) The function of the Supreme Court in ruling upon petitions for a writ of certiorari and the fact that only a small percentage of the petitions for certiorari are granted.
- (9) The limited review of the final decisions of state courts. A state has the right to be "wrong" in its own laws.
- (10) The circumstances under which a case may be transferred from the state court system to the federal court system and vice versa.
- (11) The difference between removal at the trial level and certiorari at the reviewing court level.
- (12) That the precedent established in one state is not actually binding in another but may be followed by the second. Note that the federal and each state court system uses its own rules of procedure.
- (13) That it is only in diversity of citizenship cases that a state's substantive laws, including state common law decisions, are binding on the federal courts. Also point out how and when federal court decisions are binding on the state courts.

B. Additional Matters for Discussion

- (1) Figure 2-2.
- (2) The doctrine of Erie RR v. Tompkins.
- (3) The citizenship of all partners in a limited partnership must be taken into account when deciding whether diversity jurisdiction exists.
- (4) The law of the transferor forum applies when a diversity suit is transferred under 28 USC 1404(a), regardless of who initiates the transfer.
- (5) Rehnquist's proposal to raise the jurisdictional amount to \$75,000.
- (6) Approximately 1/4 million civil cases are filed in the federal courts each year. In 1990 10.4% of all cases on file were more than 3 years old.
- (7) Business litigation is often delayed by courts overcrowded with drug related and other criminal cases.
- (8) Approximately 95% of all private civil cases filed in federal courts never reach trial.

C. Cases for Discussion

- (1) An Illinois corporation's sole manufacturing activity was in Winona, Miss. Its executive offices were located in Chicago. Its plant is a labor-intensive activity and brings it into contact with the local community as employer and consumer. The corporation's financial and other management decisions were made in Chicago and its corporate records and major bank accounts were in Chicago. Significant management decisions were made in Winona.
Issue: Is the corporation a citizen of Mississippi for diversity of citizenship purposes?
Held: Yes. Winona is not only the locale of the corporation's only substantial activity but also the place in which some significant business decisions are made. *Winona is where the vast majority of the employees are located, where its products are manufactured, where it*

has its most substantial investment, and where, more than any other place, its corporate purpose is fulfilled. Considering the total activity of the corporation, the balance of the relevant factors demonstrates that Winona is the corporation's principal place of business. **J.A. Olson Co. v. Winona**, 818 F.2d 401 (1987).

- (2) An employee sued his former employer, alleging violations of federal and state age discrimination laws, wrongful discharge, breach of contract, and other state law causes of action. The employer removed the case to federal court. The plaintiff then dropped the federal age discrimination claim and sought a remand to state court. **Issue:** Is the federal court allowed to remand? **Held:** Yes. The doctrine of pendent jurisdiction provides authority for a remand. Under that doctrine, a federal court has jurisdiction over purely state law claims that arise from the same operative facts as the federal claims supporting jurisdiction. Since the exercise of jurisdiction over pendent state claims is discretionary, the remand question becomes one of discretion as well. In deciding whether to remand or dismiss such a case, a court should consider whether a remand would promote "the values of economy, convenience, fairness, and comity." **Carnegie-Mellon University v. Cohill**, 108 S.Ct. 614, 1988.
- (3) A product liability suit was filed in a state court based on negligence, breach of warranty and strict liability. Among the allegations was alleged misbranding of a drug in violation of the Federal Food, Drug and Cosmetic Act. **Issue:** Is this case remandable to a federal court? **Held:** No. A violation of a federal statute as an element of a state cause of action, when Congress has determined that there should be no private, federal cause of action for the violation, does not state a claim "arising under the Constitution, laws, or treaties of the United States." **Merrell Dow Pharmaceuticals Inc. v. Thompson**, 106 S.Ct. 3229 (1986).
- (4) A Pennsylvania farmer was injured in Pennsylvania while cleaning a combine in July 1982. In July 1985, he filed a negligence and strict liability action in the Southern District of Mississippi, seeking damages for the injuries suffered in the 1982 accident. The farmer chose Mississippi because the manufacturer was qualified to do business there and because the Mississippi statute of limitations for personal injuries is six years. Thereafter, the farmer moved, to transfer his case to the Western District of Pennsylvania, and the motion was granted. The farmer insists that Pennsylvania is obliged to apply Mississippi's choice-of-law rule and that since Mississippi would in this case apply its own statute of limitations, the Pennsylvania court must do likewise. **Issue:** Is he correct? **Held:** No. Choice-of-law rule of state whose only contact with occurrence giving rise to lawsuit is nominal residence of defendant cannot, consistent with Due Process Clause, be applied in federal diversity action. Mississippi has no interest in the injuries sustained by the farmer or in the transaction by which he acquired the machine that injured him. Because Mississippi could not apply its own law if this suit were pending in Mississippi state court, a federal diversity forum need not do so. **Ferens v. Deere & Co.**, 819 F.2d 423 (1987).
- (5) An Alabama statute requires an appellate court, upon affirming a money judgment without substantial modification, to impose a 10-percent penalty on any appellant who had obtained a stay of that judgment by executing a bond. The statute's purposes are to penalize frivolous appeals and those interposed for delay, and to provide appellees with additional compensation for having to suffer the ordeal of appeal. **Issue:** Is this statute applicable in federal diversity cases? **Held:** No. The rule is procedural and conflicts with Federal Rule 38 which allows damages for frivolous appeals. **Burlington Northern R. Co. v. Woods**, 107 S.Ct. 967 (1987).