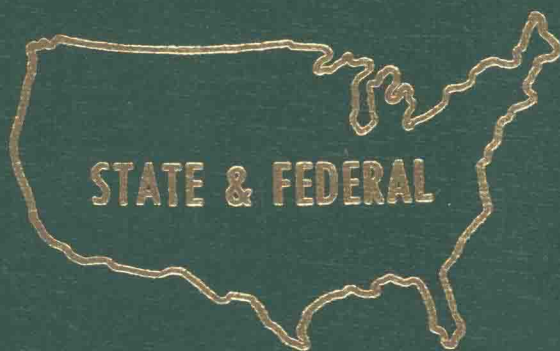


AMERICAN JURISPRUDENCE 2d



PRIVATE FRANCHISE CONTRACTS

PROCESS

AMERICAN JURISPRUDENCE

SECOND EDITION

A MODERN COMPREHENSIVE TEXT STATEMENT
OF AMERICAN LAW

STATE AND FEDERAL

COMPLETELY REVISED AND REWRITTEN
IN THE LIGHT OF MODERN AUTHORITIES AND DEVELOPMENTS
BY THE EDITORIAL STAFF OF THE PUBLISHERS

VOLUME 62B

PRIVATE FRANCHISE CONTRACTS
TO
PROCESS

1990



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FOREWORD

When the article **Private Franchise Contracts** was first written in 1972, both the law of franchising and the industry itself were barely in their infancy. But both have grown with startling speed and today are international in scope. The replacement article appearing in this volume has been expanded correspondingly to reflect the many new developments in the law. After reviewing the definitional requisites of a franchise and the nature of the relationship between franchisor and franchisee, the article considers the factors involved in the decision to franchise, as well as financing problems, and analyzes the all-important franchise agreement and its most common provisions. Detailed coverage is provided with respect to the Federal Trade Commission Rule governing Franchise disclosures; the basic disclosure document is examined, with explanations and examples of each item of information required to be disclosed. In addition, the article examines the issue of applicability of other types of federal regulation, including antitrust and securities laws and RICO. Similar treatment is provided as to state statutes requiring disclosure and/or registration of franchise offerings, and the Uniform Franchise Offering Circular (UFOC). Liability issues are covered with respect to breach of the agreement, fraud, tortious interference with the franchise, and the franchisor's primary and vicarious liability for the acts or defaults of a franchisee. The sensitive area of franchise terminations or nonrenewals, both generally and in particular operations such as automobile dealerships and gasoline service stations, is given in-depth treatment. The article concludes with a general review of the practice and procedure in franchise litigation, including numerous recommendations and practice pointers to guide the practitioner at every stage of the case.

The article **Process** discusses amenability to service, the issuance and form of a summons, service of process generally, methods of service, the territorial reach of process, proof of service by the return, objections to process or service thereof, service of process abroad, service in 28 USCS § 1655 (lien enforcement) proceedings affecting title to property, and appellate review.

Also included in this volume is the article **Procedendo**; the writ is an extraordinary remedy used to compel an inferior court to proceed to judgment.

Each article has been enhanced by the inclusion of *Observations*, *Cautions*, *Practice guides*, *Form drafting guides*, and *Checklists* providing detailed advice and procedures, as well as *Research References* to such practice works as *Am Jur Proof of Facts*, *Am Jur Legal Forms 2d*, *Am Jur Pleading and Practice Forms (Rev)*, and *Am Jur Trials*.

A **Table of Statutes and Rules Cited**, a **Table of Parallel References**, (except for **Private Franchise Contracts**, which has been substantially expanded), and an **Index** covering all of the above topics will be found in this volume.

THE PUBLISHERS

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Also consult the index at the end of the volume for detail and for matters not appearing in the earlier edition.

PRIVATE FRANCHISE CONTRACTS

Explanatory Note: No parallel table has been published because the new article appearing in this volume represents a substantial expansion of the text of the earlier article. Readers are advised to consult the outline at the beginning of the new article or the Index at the back of this volume.

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AMERICAN JURISPRUDENCE

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PRIVATE FRANCHISE CONTRACTS

by

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Scope of topic: This article discusses private franchise contracts both of the business format or chain style and the distribution or dealership type, including the nature and development of the private franchise and the unique features rendering it distinctive from other business relationships; definitions and terminology, and the essential requisites of a franchise; the decision to franchise; financing; federal regulation under the Federal Trade Commission Rule on disclosure and various statutes (see *Federal Aspects*, *infra*); state regulation under franchise investment, business opportunity, deceptive trade practices, securities, or other laws; the franchise agreement, including detailed descriptions of particular provisions; breach of the franchise agreement, and the remedies of the franchisor or franchisee; fraud in connection with the franchise relationship; tortious interference with the franchise; the liability of the franchisor for acts or defaults of the franchisee, whether primary or vicarious; termination or nonrenewal of the franchise, including protection therefrom under the provisions of federal or state Automobile Dealers Franchise Acts, Petroleum Marketing Practices Acts, Farm Implement or Equipment Dealer laws, and Beer, Wine, or Liquor Franchise or Distributor laws; purchase or sale of franchises, including specific performance of the agreement; and litigation matters, including practice and procedure.

Federal aspects: This article provides detailed coverage of the Federal Trade Commission Rule requiring franchisors and franchise brokers to furnish information to prospective franchisees for the purposes of enabling the latter to make informed decisions about entering into the franchise relationship. Federal antitrust laws as specifically applied to franchises, such as those prohibiting certain tying arrangements, are also considered here. In addition, the article covers the Racketeer Influence and Corrupt Organizations Act of 1970 (more popularly known as RICO), the federal securities aspects of franchises and franchise agreements, and federal tax and bankruptcy laws which affect franchise operations. The discussion of termination or nonrenewal of franchise agreements includes detailed coverage of the Automobile Dealers Day in Court Act and the Petroleum Marketing Practices Act. See "Federal Legislation," *infra*, for USCS citations. As to federal taxation relating to the topic, see "Tax References," *infra*.

Treated elsewhere:

Corporate franchises or charters to organize and operate as a corporation (see 18 Am Jur 2d, CORPORATIONS §§ 70-72)

Franchises in the nature of special privileges granted by the government, or subordinate agencies thereof, to private persons or organizations (see 36 Am Jur 2d, FRANCHISES)

Tort liability of an oil company supplying service or filling stations (see 38 Am Jur 2d, GARAGES, AND FILLING AND PARKING STATIONS § 137)

Antitrust aspects of exclusive dealing contracts in general, such as output or requirements contracts, and the like (see 54 Am Jur 2d, MONOPOLIES, RESTRAINTS OF TRADE, AND UNFAIR TRADE PRACTICES §§ 85 et seq., 111 et seq., 593 et seq.)

Tying arrangements in general (see 54 Am Jur 2d, MONOPOLIES, RESTRAINTS OF TRADE, AND UNFAIR TRADE PRACTICES §§ 59-72)

Unfair dealer arrangements in general (see 55 Am Jur 2d, MONOPOLIES, RESTRAINTS OF TRADE, AND UNFAIR TRADE PRACTICES §§ 783-789)

Trademark law in general (see 74 Am Jur 2d, TRADEMARKS AND TRADENAMES)

Research References**Text References:**

Franchise Law Journal (quarterly journal of the Forum Committee on Franchising)

Franchising in the Economy (Education Foundation of International Franchise Association)

Annotation References:

ALR Digest to 3d, 4th, and Federal: Franchises §§ 8-16

Index to Annotations: Franchises

Practice References:

20 Am Jur Pl & Pr Forms (Rev), Private Franchise Contracts

4 Am Jur Legal Forms 2d, Business Franchises §§ 50:1 et seq.; 11 Am Jur Legal Forms 2d, Laundries, Dyers, and Drycleaners §§ 160:11 et seq.

20 Am Jur POF2d 197, Imposition by Franchisor of Tying Arrangement on Franchisee; 21 Am Jur POF2d 353, Franchise Tying—Imposition of Tying Arrangement by Contract or Coercion; 22 Am Jur POF2d 267, Franchise Tying—Market Power; 39 Am Jur POF2d 699, Franchisor's Liability for Acts of Franchisee; 43 Am Jur POF2d 577, Wrongful Termination of Dealership

21 Am Jur Trials 453, Private Franchise Litigation

Tax References:

34 Am Jur 2d, Federal Taxation ¶¶ 4621 et seq., 4727, 5565, 6200

Am Jur Legal Forms 2d Federal Tax Guide ¶¶ 177-B et seq.

Federal Legislation:

15 USCS §§ 1, 2 (Sherman Act)

15 USCS § 14 (Clayton Act)

15 USCS §§ 1221-1225 (Automobile Dealers Day in Court Act)

15 USCS §§ 2801-2806 (Petroleum Marketing Practices Act)

18 USCS §§ 1961 et seq. (RICO)

Administrative Rules and Regulations:

16 CFR § 14.17

16 CFR §§ 436.1-436.3

Auto-Cite®: Cases and annotations referred to herein can be further researched through the Auto-Cite® computer-assisted research service. Use Auto-Cite to check citations for form, parallel references, prior and later history, and annotation references.

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