UCC
Comprehensive Volume

Business Law

Eleventh Edition

Ronald A. Anderson
Contributing Authors
Ivan Fox · David P. Twomey

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Preface

The twentieth century world continues to change rapidly. New fact situations and shifting values have produced significant changes in business law. These are presented in this Eleventh Edition of BUSINESS LAW in new chapters and in many new and expanded topics within chapters on traditional subjects. These topics include law and law enforcement agencies, social forces, consumer protection, administrative agencies, environmental law, malpractice liability, franchises, securities regulation, computers, and other new topics.

UCC and UCCC

The rapid growth in the number of court decisions under the Uniform Commercial Code since the publication of the Tenth Edition has necessitated an expanded presentation of the law in such areas as sales, commercial paper, and secured transactions. More evident in the opinions too is the influence of the UCC on contracts in general. An appendix includes the complete 1972 Official Text of the Uniform Commercial Code. Where important to the student, differences found in the 1962 Official Text of the Code are stated in the footnotes.

The Uniform Consumer Credit Code has been adopted in several states. Regardless of the number of additional states that adopt the UCCC, this uniform act is having a definite influence on state legislation concerning consumer credit practices. Chapter 14, Legality and Public Policy, and Chapter 8, Consumer Protection, incorporate provisions of the UCCC.

Bankruptcy

Chapter 38 of the Eleventh Edition states the bankruptcy law of today based on the Bankruptcy Reform Act of 1978. This is the law that our students will need for CPA exams and as people working and living in a business world.

Authoritative

The material in this edition has been made up-to-date through an examination of professional publications in the field, new federal legislation, administrative agency regulations, and every reported decision of the federal courts, the state supreme courts, and the intermediate state courts.

Reference is made by the footnotes to uniform statutes, model acts, and restatements of the law as well as to recent cases. In addition to the UCC and UCCC, the uniform statutes and model acts cited pertain to arbitration, anatomical gifts, gifts to minors, aeronautics, fraudulent conveyances, vendor and purchaser risks, disposition of unclaimed property, partnerships, limited partnerships, business corporations, probate, and simultaneous deaths.

Student Supplement

An optional Student Supplement includes for each chapter a review of new legal terms, a study guide consisting of objective questions, and several case

problems for which students are required to state in their own words the principle or rule of law that applies.

Tests and Supplementary Case Problems

For evaluative purposes, printed objective tests have been prepared to accompany this text. The instructor may also wish to use selected supplementary case problems that are available.

Contributing Authors

This edition has been enhanced by the outstanding participation of two Contributing Authors—Professor Ivan Fox of Pace University and Professor David P. Twomey of Boston College. Each brought to the project a unique blend of knowledge and experience that substantially facilitated the development of the publication.

A Special Tribute

This edition is the first in over twenty-five years that does not carry the name of Walter A. Kumpf as coauthor. The thousands of students and instructors who have used the editions on which he labored are the beneficiaries of his many contributions to the teaching of business law. His efforts as coauthor and editor, and his friendship are gratefully acknowledged.

R.A.A.

Contents

Part 1 / Legal Rights and Social Forces

1 LAW AND LAW ENFORCEMENT AGENCIES

Law has developed because people and society have wanted relationships between people, and between people and government, to conform to certain standards. The rules or laws adopted for this purpose have expressed the social, economic, and moral standards and aspirations of society.

A. NATURE OF LEGAL RIGHTS AND THE LAW

Law consists of the entire body of principles that govern conduct and can be enforced in the courts. If there were no society-made law, no doubt many persons would be guided by principles of moral or natural law. Most people would act in accordance with the dictates of conscience, the precepts of right living that are a part of religion, and the ethical concepts that are generally accepted in the community. Those who would choose to act otherwise, however, would constitute a serious problem for society.

§ 1:1. **LEGAL RIGHTS.** What are legal rights? And who has them? In answering these questions, we tend to make the mistake of thinking of the present as being characteristic of what was and what will be. But consider the evolution of the concept of the "rights of the human being" and the right of privacy.

(a) The "Rights of the Human Being" Concept. Our belief in the American way of life and in the concepts on which our society or government is based should not obscure the fact that at one time there was no American way of life. While many religious leaders, philosophers, and poets spoke of the rights and dignity of people, rulers laughed at such pretensions and held people tightly in a society based on status. A noble had the rights of a noble. A warrior had the rights of a warrior. A slave had very few rights at all. In each case, the law saw only status; rights attached not to the human being but to the status.

In the course of time, serfdom displaced slavery in much of the Western world. Eventually feudalism disappeared and, with the end of the Thirty Years War, the modern nation-state began to emerge. Surely one might say that, in such a "new order," a human being had legal rights. No, not as a human being, but only as a subject did one have legal rights. Even when the English colonists settled in America, they brought with them not the rights of human beings but

the rights of British subjects. Even when the colonies were within one year of war, the Second Continental Congress presented to King George III the Olive Branch Petition which beseeched the king to recognize the colonists' rights as English subjects. For almost a year the destiny of the colonies hung in the balance with the colonists unable to decide between remaining loyal to the Crown, seeking to obtain recognition of their rights as English subjects (a "status" recognition), or doing something else.

Finally, the ill-advised policies of George III and the eloquence of Thomas Paine's Common Sense tipped the scales and the colonies spoke on July 4, 1776, not in terms of the rights of English subjects but in terms of the rights of people existing independently of any government. Had the American Revolution been lost, the Declaration of Independence would have gone rattling down the corridors of time with many other failures. But the American Revolution was won, and the new government that was established was based upon "human beings" as the building blocks rather than upon "subjects." Rights of human beings replaced the concept of rights of subjects. With this transition, the obligations of a monarch to faithful subjects were replaced by the rights of human beings existing without regard to will or authority of any kind. Since then, America has been going through additional stages of determining what is embraced by the concept of "rights of human beings."

(b) The Right of Privacy. Today everyone recognizes that there is a right of privacy. Before 1890, however, this right did not exist in American law. Certainly those who wrote the Declaration of Independence and the Bill of Rights Amendments to the Constitution were conscious of rights. How can we explain that the law did not recognize a right of privacy until a full century later?

The answer is that at a particular time people worry about the problems which face them. Note the extent of the fears and concern of the framers of the Bill of Rights Amendments to the Constitution. The Fourth Amendment states, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized." The people of 1790 were afraid of a recurrence of the days of George III.

The framers of the Fourth Amendment declared what we today would regard as a segment of privacy—protection from police invasion of privacy. The people of 1790 just were not concerned with invasion of privacy by a private person. While a snooping person could be prosecuted to some extent under a Peeping Tom statute, this was a criminal liability. The victim could not sue for damages for the invasion of privacy.

If we are honest with history, all that we can say is that modern people think highly of privacy and want it to be protected. And, knowing that the law is responsive to the wishes of society, we can also say that the right is protected by government. But note that we should go no further than to say that it is a right which society wishes to protect at the present time. If circumstances arise

in our national life of such a nature that the general welfare is opposed to the right of privacy we can expect that the "right" of privacy will be limited or modified. For example, although the right of privacy prevents a bank from giving out information about a customer's bank account, the federal government, acting under a 1969 statute, can require such information to see if income taxes are due or if money has been paid or received in criminal transactions.[1]

§ 1:2. WHAT IS THE LAW? The expression, "a law," is ordinarily used in connection with a statute enacted by a state legislature or the Congress of the United States, such as an act of the federal Congress to provide old-age benefits. However, the statutes enacted by legislative bodies are not the only source of law.

Constitutional law includes the constitutions in force in the particular area or territory. In each state, two constitutions are in force, the state constitution and the national constitution.

Statutory law includes statutes adopted by the lawmakers. Each state has its own legislature and the United States has the Congress, both of which enact laws. In addition, every city, county, or other subdivision has some power to adopt ordinances which, within their sphere of operation, have the same binding effect as legislative acts.

Of great importance are the *administrative regulations*, such as rules of the Securities and Exchange Commission and the National Labor Relations Board. The regulations promulgated by national and state administrative agencies generally have the force of statute and are therefore part of "the law."

Law also includes principles that are expressed for the first time in court decisions. This is *case law*. For example, when a court decides a new question or problem, its decision becomes a *precedent* and stands as the law for that particular problem in the future. This rule that a court decision becomes a precedent to be followed in similar cases is the doctrine of *stare decisis*.

Law also includes treaties made by the United States, and proclamations and orders of the President of the United States or of other public officials.

§ 1:3. UNIFORM STATE LAWS. To secure uniformity as far as possible, the National Conference of Commissioners on Uniform State Laws, composed of representatives from all the states, has drafted statutes on various business subjects for adoption by the states. The best example of such laws is the Uniform Commercial Code (UCC).[2] The Code regulates the fields of sales of goods; commercial paper, such as checks; secured transactions in personal property; and particular aspects of banking, letters of credit, warehouse receipts, bills of lading, and investment securities.

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[1] United States v Bisceglia, 420 US 141. But see § 33:4(a) of this book.

[2] The Code has been adopted in every state except Louisiana. It has also been adopted in the Virgin Islands and for the District of Columbia. Louisiana has adopted Articles 1, 3, 4, and 5 of the Code. In 1972, a group of amendments to the Code was recommended. These have been adopted in Arizona, Arkansas, California, Colorado, Connecticut, Illinois, Iowa, Kansas, Maine, Minnesota, Mississippi, Nebraska, Nevada, New York, North Carolina, North Dakota, Ohio, Oregon, Texas, Utah, Virginia, West Virginia, and Wisconsin. The changes made by the 1972 amendments to the UCC are confined mainly to Article 9 on secured transactions.

National uniformity has also been brought about in some areas of consumer protection by the adoption of the federal Consumer Credit Protection Act (CCPA), Title I of which is popularly known as the Truth in Lending Act.[3] A Uniform Consumer Credit Code (UCCC) has been proposed and is now before the states for possible adoption. To the extent that it is adopted, it will complement the Uniform Commercial Code.[4]

§ 1:4. CLASSIFICATIONS OF LAW. Law is classified in many ways. For example, *substantive law,* which defines the substance of legal rights and liabilities, is contrasted with *procedural law,* which specifies the procedure that must be followed in enforcing those rights and liabilities. The following additional classifications are useful:

(a) Law and Equity. Law is frequently classified as being "law" or "equity." During the early centuries following the Norman Conquest, it was common for subjects of the English Crown to present to the King petitions requesting particular favors or relief that could not be obtained in the ordinary courts of law. The extraordinary or special relief granted by the chancellor, to whom the King referred such matters, was of such a nature as was dictated by principles of justice and equity. This body of principles was called *equity.* While originally applied by separate courts, today the same court usually administers both "law" and "equity."

(b) Classification Based Upon Historical Sources. Law is sometimes classified in terms of its source as the *civil law,* which comes from the Roman civil law, and the *common law,* which is based upon the English common law or the common law that has developed in the United States.

The *law merchant,* which was recognized by early English merchants, has been absorbed to a large extent by the common law. During the centuries that the common law was developing in England, merchants of different nations, trading in all parts of the world, developed their own sets of rules to govern their business transactions. Much of our modern business law relating to commercial paper, insurance, credit transactions, and partnerships originally developed in the law merchant.

B. AGENCIES FOR ENFORCEMENT OF LEGAL RIGHTS

Legal rights are meaningless unless they can be enforced. Government, therefore, provides a system by which the rights of the parties under the law can be determined and enforced. Generally the instrumentality of government by which this is accomplished is a court; the process involved is an action or a lawsuit. Administrative agencies have also been created to enforce law and

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[3] 15 United States Code § 1601 et seq., and 18 USC § 891 et seq.

[4] As of January, 1979, the 1968 version of the Uniform Consumer Credit Code has been adopted in: Colorado, Idaho, Indiana, Oklahoma, South Carolina, Utah, Wisconsin, and Wyoming. This earlier version, however, has been replaced by a 1974 version, which has been adopted in Iowa, Kansas, and Maine.

to determine rights within certain areas. At the same time private agencies have developed as an out of court method of dispute determination.

§ 1:5. COURTS. A *court* is a tribunal established by government to hear and decide matters properly brought before it, to give redress to the injured or enforce punishment against wrongdoers, and to prevent wrongs. A *court of record* is one in which the proceedings are preserved in an official record. In a *court not of record* the proceedings are not officially recorded.

Each court is empowered to decide certain types or classes of cases. This power is called *jurisdiction*. A court may have original or appellate jurisdiction, or both. A court with *original jurisdiction* has the authority to hear a controversy when it is first brought into court. A court having *appellate jurisdiction*, on the other hand, has authority to review the judgment of an inferior court.

The jurisdiction of a court may be general as distinguished from limited or special. A court having *general jurisdiction* has power to hear and decide all controversies involving legal rights and duties. A court of *limited* or *special jurisdiction* has authority to hear and decide only those cases that fall within a particular class, such as cases in which the amounts are below a specified sum.

Courts are frequently classified in terms of the nature of their jurisdiction. A *criminal court* is one that is established for the trial of crimes, which are regarded as offenses against the public. A *civil court*, on the other hand, is authorized to hear and decide issues involving private rights and duties and also noncriminal public matters. In like manner, courts are classified as equity courts, juvenile courts, probate courts, and courts of domestic relations, upon the basis of their limited jurisdiction.

Each court has inherent power to establish rules necessary to preserve order in the court or to transact the business of the court. An infraction of these rules or the disobedience to any other lawful order, as well as a willful act contrary to the dignity of the court or tending to pervert or obstruct justice, may be punished as *contempt of court*.

§ 1:6. ADMINISTRATIVE AGENCIES. The difficulties of courts administering laws regulating business, labor, agriculture, public utilities, and other phases of the economy led Congress and the state legislatures to establish commissions or agencies of experts to make the rules and to pass upon violations of the rules. Thus we find the Interstate Commerce Commission regulating interstate commerce and passing upon whether conduct of a carrier is a violation of its regulations. The Commission is thus a lawmaker, an executive that enforces the law, and a court which interprets and applies the law. This is also true of the Civil Aeronautics Board, the Federal Trade Commission, the Securities and Exchange Commission, the National Labor Relations Board, and many other federal and state administrative agencies.

§ 1:7. PRIVATE AGENCIES. Because of the rising costs, delays, and complexities of litigation, business people often seek to resolve disputes out of court.

(a) Arbitration. By the use of *arbitration* a dispute is brought before one or more arbitrators who make a decision which the parties have agreed to accept as final. This procedure first reached an extensive use in the field of commercial contracts. Parties to a contract which is to be in effect for some time may specify in the contract that any dispute shall be submitted to arbitrators to be selected by the parties. Arbitration today is encouraged as a means of avoiding expensive litigation and easing the workload of courts. Arbitration enables the parties to present the facts before trained experts because the arbitrators are familiar with the practices that form the background of the dispute.

A Uniform Arbitration Act has been adopted in a number of states.[5] Under this Act and similar statutes, the parties to a contract may agree in advance that all disputes arising thereunder will be submitted to arbitration. In some instances the contract will name the arbitrators for the duration of the contract.

The growth of arbitration has been greatly aided by the American Arbitration Association not only in the development of standards, procedures, and forms for arbitration, but also by the creation of panels of qualified arbitrators from which the parties to a contract may select those who will settle their dispute.

(b) Reference to Third Person. An out-of-court determination of disputes under construction contracts is often made under a term of the contract that any dispute shall be referred to the architect in charge of the construction and that the architect's decision shall be final.

Increasingly, other types of transactions provide for a third person or a committee to decide rights of persons. Thus, employees and an employer may have agreed as a term of the employment contract that claims of employees under retirement and pension plans shall be decided by a designated board or committee. The seller and buyer may have selected a third person to determine the price to be paid for goods. Ordinarily the parties agree that the decision of such a third person or board shall be final and that no appeal or review may be had in any court. In most cases, the referral situation involves the determination of a particular fact in contrast to arbitration which seeks to end a dispute.

(c) Association Tribunals. Many disputes never reach the law courts because both parties to the dispute belong to a group or association and the tribunal created by the group or association disposes of the matter. Thus a dispute between members of a labor union, a stockbrokers' exchange, or a church, may be heard by some board or committee within the association or group. Courts will review the action of such tribunals to determine that a fair and proper procedure was followed but generally the courts will not go any further and will not examine the facts of the case to see if the association tribunal reached the same conclusion that the court would have reached.

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[5] The 1955 version of the Uniform Arbitration Act has been adopted in Alaska, Arizona, Arkansas, Colorado, Delaware, Idaho, Illinois, Indiana, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Mexico, North Carolina, South Dakota, Texas, and Wyoming. The earlier 1925 version of the Act is in force in Pennsylvania, Utah, and Wisconsin.

C. COURT ORGANIZATION

Courts in the United States are organized in two distinct systems: the federal courts and the state courts. Although created under separate governments, the methods of operation and organization of these two systems are similar.

§ 1:8. PERSONNEL OF COURTS.

(a) Officers of the Court. The *judge* is the primary officer of the court. A judge is either elected or appointed. *Attorneys* or counselors at law are also officers of the court. They are usually selected by the parties to the controversy—but in some cases by the judge—to present the issue of a case to the court.

The *clerk* of the court is appointed in some of the higher courts but is usually elected to office in the lower courts. The principal duties of the clerks are to enter cases upon the court calendar, to keep an accurate record of the proceedings, to attest the same, and, in some instances, to approve bail bonds and to compute the amount of costs involved.

The *sheriff* is the chief executive of a county. In addition to the duty of maintaining peace and order within the territorial limits of a county, the sheriff has many other duties in connection with the administration of justice in county courts of record: summoning witnesses, taking charge of the jury, preserving order in court, serving writs, carrying out judicial sales, and executing judgments. The *marshals* of the United States perform these duties in the federal courts. In county courts not of record, such as the courts of justices of the peace, these duties, when appropriate, are performed by a *constable*. Some of the duties of the sheriff are now performed by persons known as *court criers;* or by deputy sheriffs, known as *bailiffs*.

(b) The Jury. The *jury* is a body of citizens sworn by a court to try to determine by verdict the issues of fact submitted to them. A trial jury consists of not more than twelve persons. The first step in forming a jury is to make a *jury list*. This step consists of the preparation by the proper officers or board of a list of qualified persons from which a jury may be drawn.

A certain number of persons drawn from the jury list constitute the *jury panel*. A trial jury is selected from members of the panel.

§ 1:9. FEDERAL COURTS.

The federal courts include the following:

(a) Supreme Court of the United States. The Supreme Court is the only federal court expressly established by the Constitution. Congress is authorized by the Constitution to create other federal courts.

The Supreme Court has original jurisdiction in all cases affecting ambassadors, other public ministers, and consuls, and in those cases in which a state is a party. Except as regulated by Congress, it has appellate jurisdiction in all cases that may be brought into the federal courts in accordance with the terms of the Constitution. The Supreme Court also has appellate jurisdiction of certain cases that have been decided by the supreme courts of the states. Thousands of cases are filed with this court in a year.

(b) Courts of Appeals. The United States, including the District of Columbia, is divided into 11 judicial circuits. Each of the circuits has a court of appeals. These courts are courts of record.

A court of appeals has appellate jurisdiction only and is empowered to review the final decisions of the district courts, except in cases that may be taken directly to the Supreme Court. The decisions of the courts of appeals are final in most cases. An appeal may be taken on certain constitutional questions. Otherwise, review depends on the discretion of the Supreme Court and, in some cases, of the court of appeals.

(c) District Courts. The United States, including the District of Columbia, is divided into a number of judicial districts. Some states form a single district, whereas others are divided into two or more districts. District courts are also located in the territories.

The district courts have original jurisdiction in practically all cases that may be maintained in the federal courts. They are the trial courts for civil and criminal cases.

Civil cases that may be brought in these district courts are (a) civil suits brought by the United States; (b) actions brought by citizens of different states claiming land under grants by different states; (c) proceedings under the bankruptcy, internal revenue, postal, copyright, and patent laws; (d) civil cases of admiralty and maritime jurisdiction; (e) actions against national banking associations; and (f) cases between citizens of different states or between citizens of one state and of a foreign state involving $10,000 or more that arise under the federal Constitution, or laws and treaties made thereunder.

(d) Other Federal Courts. In addition to the Supreme Court, the court of appeals, and the district courts, the following tribunals have been created by Congress to determine other matters as indicated by their titles: Customs Court, Court of Customs and Patent Appeals, Court of Claims, Tax Court,[6] Court of Military Appeals, and the territorial courts.

§ 1:10. STATE COURTS. The system of courts in the various states is organized along lines similar to the federal court system, although differing in details, such as the number of courts, their names, and jurisdiction.

(a) State Supreme Court. The highest court in most states is known as the Supreme Court. In a few states it may have a different name, such as "Court of Appeals" in New York. The jurisdiction of a supreme court is ordinarily appellate, although in a few instances it is original. In some states the supreme court is required to render an opinion on certain questions that may be referred to it by the legislature or by the chief executive of the state. The decision of the state supreme court is final in all cases not involving the federal Constitution, laws, and treaties.

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[6] This court was created originally as a Board of Tax Appeals with the status of an independent agency in the executive branch of the federal government. The Tax Reform Act of 1969 established the official name as United States Tax Court with the status of a court of record under Article I of the Constitution of the United States.

(b) Intermediate Courts. In some states intermediate courts have original jurisdiction in a few cases but, in the main, they have appellate jurisdiction of cases removed for review from the county or district courts. They are known as superior, circuit, or district appellate courts. As a general rule, their decisions may be reviewed by the highest state court.

(c) County and District Courts. These courts of record have appellate jurisdiction of cases tried in the justice of the peace and police courts, as well as general original jurisdiction of criminal and civil cases. They also have jurisdiction of wills and guardianship matters, except when, as in some states, the jurisdiction of such cases has been given to special orphans', surrogate, or probate courts.

(d) Other State Courts. In addition to the foregoing, the following, which are ordinarily not courts of record, have jurisdiction as indicated by their titles: city or municipal courts, police courts, traffic courts, small claims courts, and justice of the peace courts.

D. COURT PROCEDURE

Detailed laws specify how, when, and where a legal dispute can be brought to court. These rules of procedure are necessary in order to achieve an orderly, fair determination of litigation and in order to obtain, as far as humanly possible, the same decisions on the same facts. It is important to remember, however, that there is no uniform judicial procedure. While there are definite similarities, the law of each state may differ from the others. For the most part the uniform laws that have been adopted do not regulate matters of procedure.

In a lawsuit, the person suing is the *plaintiff,* and the person sued is the *defendant*. There may be more than one plaintiff and more than one defendant. If *A* and *B* jointly own an automobile which is damaged by *C*, both *A* and *B* must join in an action against *C*. It is improper for *A* or *B* to sue alone since it is "their" car and not the car of either one alone.

In some instances, several persons, such as shareholders or taxpayers, may bring a *class action* on behalf of themselves and all other persons having the same or similar interest. In some instances, a defendant has the right to bring another person into an action on the ground that such person also has a claim. For example, an insurance company, by the procedure of *interpleader,* may require a person claiming to be entitled to the proceeds of a policy to come into an action brought by another person as beneficiary of the same policy.

§ 1:11. STEPS IN A LAWSUIT.

(a) Commencement of Action. In the common-law courts an action was commenced by filing an order with the keeper of the court records to issue a writ to the sheriff. This writ of summons ordered the sheriff to inform the defendant to appear before the court on a particular date. This method of commencing an action is still followed in many states.

By way of contrast, an action in a court of equity was begun when the plaintiff filed with the court a *complaint*. No writ was issued, but a copy of the

complaint was served on the defendant. In many states and in the federal courts, the reforms of recent years have extended this equity practice to all legal actions. Such actions are today commenced by the filing of the plaintiff's complaint. Some states still preserve the former distinction between law and equity, while others give the plaintiff the option of commencing the action by either method.

(b) Service of Process. The defendant must be served with *process* (a writ, notice, or summons; or the complaint itself) to give notice that the action is pending and to subject the defendant to the power of the court.

(c) Pleadings. After process has been served on the defendant and the plaintiff has filed a complaint, the defendant must make some reply after receiving the complaint, generally within 15 or 20 days. If the defendant fails to do so, the plaintiff ordinarily wins the case by default.

Before answering the plaintiff's complaint, the defendant may make certain preliminary objections, such as that the action was brought in the wrong court or that service was not properly made. If the objection is sustained, the case may be ended, depending upon the nature of the objection, or the plaintiff may be allowed to correct the mistake if that is possible. The defendant may also raise the objection, sometimes called a *motion to dismiss* or *demurrer,* that even if the plaintiff's complaint is accepted as true, the plaintiff is still not entitled to any relief.

If the defendant makes an objection but the objection is overruled or dismissed, the defendant must file an *answer,* which either admits or denies some or all of the facts averred by the plaintiff. For example, if the plaintiff declared that the defendant made a contract on a certain date, the defendant may either admit making the contract or deny having done so. An admission of having made the contract does not end the case, for the defendant may then be able to plead defenses, for example, that at a later date the plaintiff and defendant had agreed to set the contract aside.

Without regard to whether the defendant pleads such new matter, the defendant may generally assert a *counterclaim* or *cross complaint* against the plaintiff. Thus the defendant may contend the plaintiff owes money or is liable for damages and that this liability should be offset against any claim which the plaintiff may have.

After the defendant files an answer, the plaintiff may generally file preliminary objections to the answer. Just as the defendant could raise objections, the plaintiff may, in certain instances, argue that a counterclaim raised by the defendant could not be asserted in that action, that the answer is fatally defective in form, or that it is not legally sufficient. Again the court must pass upon the preliminary objections. When these are disposed of, the pleading stage is ordinarily over.

Generally, all of the pleadings in an action may raise only a few or perhaps one question of law, or a question of fact, or both. Thus the whole case may depend on whether a letter admittedly written by the defendant amounted to an acceptance of the plaintiff's offer, thereby constituting a contract. If this question of law is answered in favor of the plaintiff, a judgment will be entered for