

Managers and the Legal Environment Strategies for the 21st Century

Constance E. Bagley



Managers and the Legal Environment



Strategies for the 21st Century

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Dedication

To Pierre and JoAnne

Preface



While no business curriculum would be complete without an overview of the legal environment in which business takes place, the comprehensive legal environment of business text must offer more. To achieve maximum effectiveness, such a text should not only prepare students for their future careers in business, but should also serve as a practical reference which enables managers to spot legal issues before they become legal problems. This objective has been foremost in the mind of the author of *Managers and the Legal Environment: Strategies for the 21st Century*. As its title implies, the text is designed as a “hands-on” and transactional guide for current and future business managers, including entrepreneurs. It provides them with both a broad and a detailed understanding of how law impacts on their daily decisions. No manager operating in the complex and ever-changing global business environment of the 1990s and the 21st century can compete successfully without such knowledge.

The topics covered in *Managers and the Legal Environment: Strategies for the 21st Century* demonstrate its focus on meeting the needs of business managers. The text not only covers the essential legal topics of contracts, torts, antitrust, labor relations, criminal law and the principles of business organization, but also those of vital concern to business managers, such as financing the start-up company, lending transactions, securities offerings, securities fraud and insider trading, as well as international business transactions. The chapter on real property illustrates the overall approach in the text: it includes not only the key legal concepts of property law and land use but also a detailed discussion of the essentials of real estate project financing.

In all instances, the form of presentation is dictated by a desire to convey the dynamic interplay between business decisions and the legal environment. When the most effective method of presenting the material is to demonstrate how actual business conflicts are resolved in the courts, an approach emphasizing judicial cases is used. This approach is employed in a majority of the chapters. When certain material, such as discussions of lending transactions and financing the start-up company, is best conveyed with text, this is the approach taken.

In addition, the legal topics discussed in the main body of the text are on the cutting edge of business regulation. Such topics include the insider trading con-

victions of the 1980s, the look-and-feel debate under copyright law, the fiduciary duties of officers and directors in a corporate takeover, AIDS in the workplace, the pros and cons of venture capital financing for a start-up company, and enterprise share liability for defective products.

Each chapter of *Managers and the Legal Environment: Strategies for the 21st Century* employs a wide array of effective teaching devices which reinforce the goals of the text. These include:

Law in Transition: A Case in Point

Each chapter presents cases, set off from the body of the text, as examples of the law in action. These cases represent crucial court decisions which have shaped important business law concepts, or which present key legal conflicts that managers will address in their careers. Included are many modern cases which represent the most current statement of the law. These cases, such as a 1990 Supreme Court decision that limits who can sue under the antitrust laws, will have direct impact on a manager's decisions. Other traditional cases, like *MacPherson v. Buick Motor Co.*, are used to show early developments in the law which remain applicable today. The selection and approach to cases is guided by the author's above-stated goal of teaching students to identify legal issues before they become legal problems.

The format of the Law in Transition section is designed to convey a detailed understanding of the cases, while simultaneously covering a large range of material. Case citations are followed by a statement of the holding, which reinforces the legal principle being illustrated by the case and provides an easy-to-use review mechanism. Each case discussion then proceeds with a discussion of the facts and the decision. The author believes that students benefit from reading a more rigorous treatment of cases than is provided by the short briefs found in many texts. Thus students are provided with a detailed recitation of the facts, the issues and the court's reasoning, but they are not required to read entire cases or lengthy quotes.

Many of these cases also include a Case Comment. The Case Comments place the case in its proper legal perspective and offer commentary on why the case is important, why the court decided it a certain way, or what are the ramifications of the decisions for business actors. Thus cases are not presented in a vacuum. Instead, students are provided with an explanation of the key significance of the case. This helps students understand how an individual case impacts on the legal en-

vironment as a whole. In addition, the Case Comments encourage students to develop the ability to think critically about court decisions.

Ethical Considerations

This text places great emphasis on ethical concerns, stimulating students to understand how their actions as managers must incorporate considerations of ethics and social responsibility.

Ethical considerations are emphasized in three ways. First, the book begins with a chapter, entitled "Ethics and the Law", which includes topics like Chernobyl, Bhopal, the Tylenol and Perrier recalls and Exxon Valdez. Second, the text includes relevant excerpts from the American Express Company Code of Conduct. Finally ethical considerations are highlighted throughout the text.

These ethical considerations are commentaries on how standards of ethics and social responsibility do (and sometimes do not) inform the process of lawmaking. The text discusses the ethical implications of business decisions made in response to legal rules, as well as the moral boundaries of the legal regime. For example, cases discussing the legal rules regarding the payment of green-mail and hush mail by a target company are followed by a discussion of whether such payments, or antitakeover measures generally, are ethical and socially responsible.

Historical, Political and Economic Perspectives

Each chapter has a separate "boxed" section that puts the law in that chapter into economic, historical or political perspective. For example, the Contracts chapter traces the doctrine of unconscionability from Roman law. The Antitrust chapter describes the economics of the AT&T monopoly and break-up and the Employees chapter describes the presidential veto of the Civil Rights Act of 1990.

These Perspectives add a "real world" dimension to the material. Too often law is presented in a vacuum, divorced from the larger political and economic context in which the law is created. The goal of these sections is to heighten students' awareness of these larger forces. In addition, business managers should be made aware of the complicated interplay between economics and the law. That interplay is crucial to the operation of a business, but it is often less than predictable.

The Inside Story

The text contains case summaries which present fascinating and detailed descriptions of real world business conflicts. A strong effort has been made to include many up-to-the-minute, cutting-edge business disputes. The Inside Stories cover conflicts between key-industry players. Examples include the IBM and Fujitsu \$800 million arbitration, the Polaroid and Kodak instant camera patent litigation, the *Pennzoil v. Texaco* case, the RJR Nabisco takeover, as well as class-action litigation, such as the Johns Manville asbestos suit and bankruptcy. These Inside Stories bring the legal conflicts to life and reinforce the students' appreciation for how such conflicts are played out in the real world.

Pennzoil v. Texaco Case Study and Accompanying Video

The *Pennzoil v. Texaco* case study is the Inside Story for the Contracts chapter. It includes excerpts from the court's opinion and the briefs so that students can have the experience of seeing such material first hand. This particular case study can serve as the basis for discussion or for the staging of a mock trial in which students can play the lawyers, executives, investment bankers and jury. An edited videotape of the mock trial conducted by students in the author's class at the Graduate School of Business at Stanford University is also available.

Defined Terms and Glossary

Throughout the text all crucial legal terms are placed in italics and defined immediately. At the end of the text a comprehensive glossary defines each term that has been placed in italics. The definition of terms helps convey the concepts and improves the students' legal and business vocabulary.

The Responsible Manager

Each chapter concludes with a section entitled "The Responsible Manager". This section is an in-depth discussion of the crucial legal considerations that the successful manager must take into account. The Responsible Manager sections serve to summarize each chapter, but they are far more than a mere summary: in a concise yet sophisticated manner, they alert managers to the legal issues they must spot in order to avoid violating the law

or plunging the company into expensive, time-consuming litigation. In addition, the sections highlight the ethical concerns managers need to confront to adequately serve their company and community.

These sections play a vital role in establishing this text as a must-have for practicing business managers. By turning to the Responsible Manager section in a particular area of the law, managers will find a wealth of practical information that will bring them up to speed on the key legal issues in that area. In addition, these sections are not merely check-lists—they contain a depth of analysis that is demanded by the complex, real life nature of the problems at hand.

For example, the Responsible Manager section of the Environmental Law chapter is entitled "Managing Risks of Environmental Liability". The first part alerts managers to the various potential sources of environmental liability. The often dire financial consequences of non-compliance are explained. Tied into this discussion is the observation that non-compliance will also lead to injury to persons and property. The second part outlines, in detail, the importance of conducting due diligence investigations, as well as the manner in which such investigations are carried out. The notions of risk allocation, and liability created inadvertently for lenders, are also discussed. Finally, issues surrounding the potential liability of lessors for environmental damage done by lessees, and those relating to SEC disclosure requirements about potential environmental liability are covered. Thus, the section functions as a guide and reference which will point managers to the crucial legal (and corresponding financial and ethical) concerns in a particular area.

The Responsible Manager section for the Courts, Litigation and Alternative Dispute Resolution chapter provides a step-by-step guide to setting up an effective alternative dispute resolution procedure. The Products Liability chapter section provides a manager's guide to reducing risks of exposure for products liability.

International Considerations

There are two chapters on international aspects of the legal environment. One chapter addresses international trade law, including Europe 1992. The other is a transactional, integrated discussion of international business transactions.

International considerations are also highlighted in many chapters. For example, both the products liability and the insider trading chapters describe the relevant

European Community Directives. Taiwanese environmental law is discussed in the environmental law chapter. The impact of the U.S.-Japan trade imbalance is discussed in the international trade law chapter. Labor unions in Europe and Japan are discussed in the labor relations chapter.

● End of Chapter Questions and Case Problems and Answer Manual

Each chapter is followed by a substantial number of sophisticated and thought-provoking questions which require students to synthesize and review the material. The questions are diverse in nature. Some are imaginative hypotheticals which raise the central legal issues in a creative and humorous fashion. Others are based directly on specific cases, presenting real world legal conflicts as opportunities for students to apply the appropriate law. Often the questions based on actual cases raise issues at the cutting edge of the law. For example, a question in the chapter on Officers, Directors and Controlling Shareholders is based on the Paramount/Time-Warner decision rendered by the Delaware Supreme Court in 1990.

A complete and separate Answer Manual, prepared by the author, which identifies the issues presented in each of the questions and provides thorough, cogent model answers is available.

● Instructor's Manual

The Instructor's Manual with Test Bank was developed by Debbie L. Mescon (Kennesaw State College) and Pamela G. Giltman (Salisbury State College). This manual includes a brief outline, extensive teaching notes, summaries of the cases with discussion questions, true/false test questions, multiple choice test questions, and essay test questions. A set of transparency masters will also be available.

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