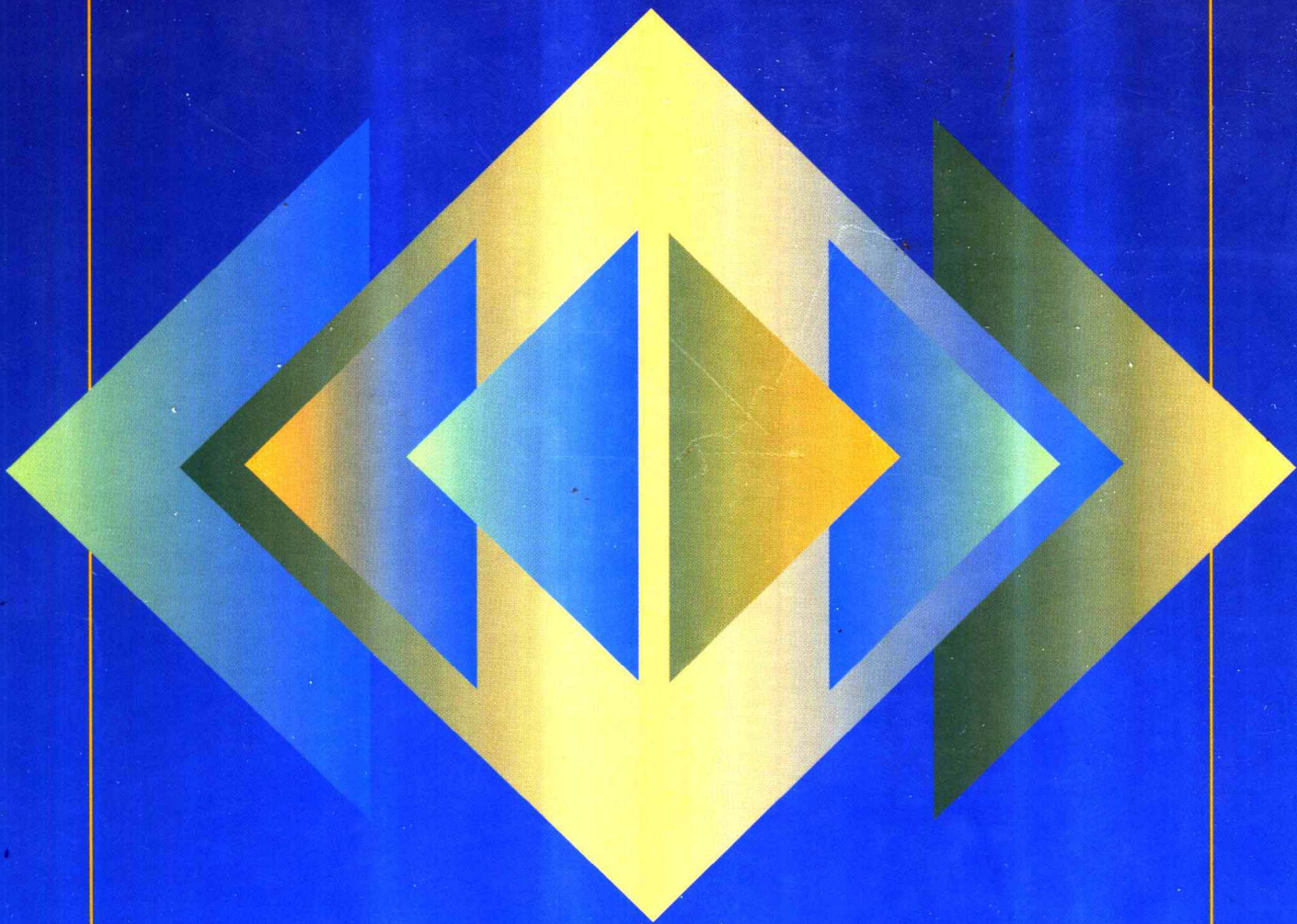


THE LEGAL AND REGULATORY ENVIRONMENT OF BUSINESS

NINTH EDITION



Robert N. Corley / O. Lee Reed / Peter J. Shedd

THE LEGAL AND REGULATORY ENVIRONMENT OF BUSINESS

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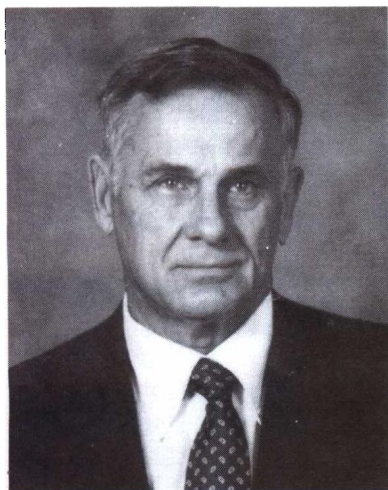
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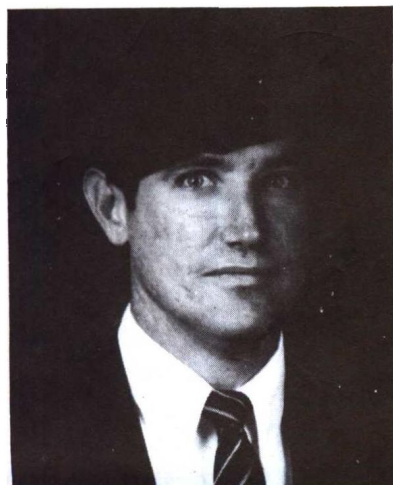
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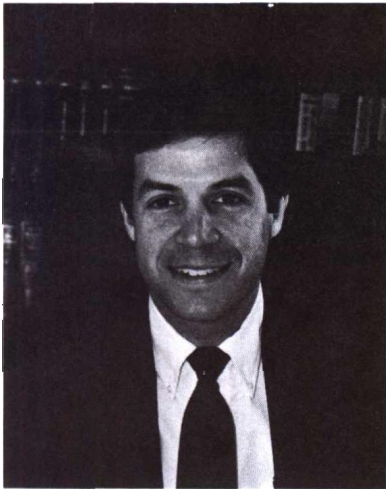
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Peter J. Shedd is a Professor of Legal Studies at the University of Georgia where he received J.D. and B.B.A. degrees. Professor Shedd has extensive experience as a teacher, researcher, and author of business-related texts. He also has been an active member of the Academy of Legal Studies in Business and its Southeastern Regional. Professor Shedd has served as a staff editor of the *American Business Law Journal*. In 1980, he was recognized as the first recipient of the ABLA Faculty Award of Excellence for younger teachers in the business law and legal studies discipline.

PREFACE



Approximately thirty years ago, Professor Robert L. Black, a colleague at the University of Illinois, and I prepared the first edition of *The Legal Environment of Business*. At that time, law courses in business schools covered such topics as contracts, negotiable instruments, and business organizations. The emphasis was on business transactions and the students were taught the “black letter” rules of law that governed them. Such courses usually have been referred to as “traditional” business law.

Our first edition arose out of a belief that the traditional business law course would not adequately educate business students about the law. It seemed to us that issues relating to government regulation of business were more relevant than were many issues of private law, such as the holder-in-due-course concept or the Statute of Frauds, because new legal theories had brought expanded rights to employees, consumers, investors, and others. These new rights imposed corollary duties on business often enforced by government regulatory agencies. Thus, our new approach emphasized public rather than private law and legal relationships rather than business transactions. We called it the “legal environment” approach.

As new editions were prepared, additional subjects were added and much of the original coverage was expanded. Our first attempt at defining the legal environment reflected our belief in the importance of trends in the law and of the importance of ethics to legal studies. The seven subsequent revisions continued this tradition, but each revision also attempted to cover areas of current importance to the legal environment such as product liability, discrimination in employment, and environmental protection. In 1977, we asked Professor O. Lee Reed, a colleague at the University of Georgia, to join the author team to provide expertise in the coverage of these three subjects. In addition, Lee has added his insight into what constitutes the legal environment of business.

Over the life of this text, many, if not most, accredited schools of business either required or offered a legal environment law course. During this period, the law has become more and more pervasive in every aspect of business. Decisions of the Supreme Court have become as important to the business community as legislation by the Congress. Appointments to the Supreme Court receive almost as much attention as do presidential candidacies. Thus, the

trend toward more and more legal environment courses in business schools closely paralleled the trend in society to use law and litigation as the primary tools for social engineering.

As we prepared this revision, the American Assembly of Collegiate Schools of Business revised its accreditation standards to include courses that cover the legal *and regulatory* environment of business. This important recognition that courses dealing with government regulation of business are essential in business education signaled the end of a long debate over the content of law courses in business education. It did not, however, signal the end of coverage of much of the traditional business law subjects. While the primary emphasis today is on government regulation of business, private law subjects such as contracts, torts and agency comprise much of the legal environment in which business is conducted. Therefore, they have great significance and are an integral part of this ninth edition.

To illustrate the role of traditional subjects in the legal environment, consider the private law of contracts and agency. One issue of concern to all businesses, for example, is the right of an employer to terminate an employee without liability. The impact of the law of torts and product liability cases on the business community is so significant that a major focus of business lobbying is to change the system and the law in these areas. It is also obvious that the law relating to various forms of business organization must be understood if business is to be conducted successfully. In 1990, Professor Peter J. Shedd, also a colleague at the University of Georgia, joined the author team, bringing to the text his expertise in this area—an area which incidentally has both private law and public law aspects.

GUIDING PRINCIPLES

In preparing this ninth edition, four principles have guided us:

- *The materials should actively prepare students for decision making in business and not just summarize the content of various law school courses.

- *Law is information that serves as a tool for generating policy and for making business decisions.

- *The law is only one influence on business decisions; ethical considerations also play a major role in defining appropriate business conduct.

- *Substantive rules of law are important and should be part of the learning process.

FEATURES OF THE NINTH EDITION

This edition of the book has been thoroughly revised and contains new features in addition to those that have previously been a part of the text. Among the most significant are these:

- *A NEW ORGANIZATION for both parts and chapters, with fewer parts and fewer chapters.

There are now four parts: the first two cover the legal environment of business and the last two the regulatory environment. Part One introduces the student to the role of law in business, the court system, litigation, and other methods of resolving disputes. Part Two covers traditional subjects such as contracts, torts, criminal law, and business organizations. Part Three provides the foundation for understanding the regulatory environment, with special emphasis on self-regulation. Part Four's seven chapters each focus on the regulation of a specific area of business activity, such as employment or marketing.

There are now 20 chapters: The introductory material has been consolidated into

one chapter rather than several. The antitrust materials have been reorganized into two chapters; one covers the law as it relates to competition, and the other focuses on illegal marketing practices such as price-fixing and price discrimination.

Constitutional law has been reduced from two chapters to one, as has labor law. The international law chapter has been rewritten and expanded to keep pace with the increasing importance of international business and the changing international scene.

***NEW CHAPTERS**

There are two brand new chapters: Chapter 8 on the criminal law and business, and Chapter 11 on ethics. The criminal law coverage is directed at business not as a victim of crime, but rather as a perpetrator. The focus is on white-collar crime, with special emphasis on federal crimes and the impact of RICO. The new chapter on ethics is included with the materials on regulation of business conduct because self-regulation probably has as great an impact on business conduct as regulation by government. The authors thank Donald R. Nelson of the University of Denver for his valuable contributions to this chapter. Professor Nelson is one of the founders of the Section on Ethics of the Academy of Legal Studies in Business.

***BUSINESS DECISIONS**

The beginning of each chapter contains a statement of fact that would require a business decision using one or more legal principles discussed in the chapter. These decisions, which are referred to later in the chapter, illustrate the importance of understanding the law in the chapter.

***CASES**

Since we believe students should be required to study judicial language and reasoning on substantive issues, we have included those portions of each case that show the arguments of the parties and the court's resolution of the issue raised. We have deleted most procedural issues from the cases, omitted references and footnotes, and shortened long cases without deleting the heart of the opinions.

***ETHICS COVERAGE**

Since ethical questions arise in a number of contexts, in addition to the new chapter on ethics, we have included Focus on Ethics boxes where appropriate in the text. They contain excerpts from the Code of Ethics of the Caterpillar Corporation, which illustrate how ethical principles are applied in real-world circumstances.

***INTERNATIONAL COVERAGE**

International law is the subject of Chapter 10. This topic is of growing importance in the business curriculum. The current efforts and debate over free trade and the development of the European Community make this updated chapter especially significant. We are indebted to Professor Jere Morehead of the University of Georgia for preparing this chapter. He brings to it his combined experiences of teaching and dealing with international issues at the Justice Department.

PEDAGOGICAL DEVICES

***To the Student**

This special section on page xxiii gives step-by-step study instructions as well as a written example of the system for briefing a case.

***CONCEPT SUMMARIES** Major points have been summarized in a new series of boxes throughout the text, so that students can review important material more easily.

***U.S. CONSTITUTION** The Constitution is included as an appendix so that students can refer to the exact language of the Constitution and its amendments.

***GLOSSARY** This edition continues to include a glossary that defines legal terms so that students will not need access to a legal dictionary.

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Finally, we appreciate the active involvement of Frank Burrows and Mary Eshelman as our editors.

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SUPPLEMENTS

For this edition, the following ancillaries are available:

- *A comprehensive Instructor's Manual, prepared by the authors.
- *A Test Bank of multiple choice, true-false, and essay questions, prepared by Wayne R. Wells and Janell M. Kurtz, St. Cloud State University.
- *A Study Guide prepared by O. Lee Reed.

If you would like more information about any of the supplemental materials, please contact your local McGraw-Hill representative.

TO THE STUDENT



HOW TO STUDY *THE LEGAL ENVIRONMENT OF BUSINESS*

To gain the most from this textbook, you should learn how to study written material effectively. You can achieve effective study through use of the SQ3R method, a method widely taught by study-skills psychologists for learning textual material.

SQ3R stands for **survey, question, read, recite, and review**. As a study method, it has dramatically improved the grade-point averages of most students who have practiced it. It is based upon the concept that active study of written material improves memory and comprehension of information far better than passive reading. Unfortunately, many students have not recognized the difference between active study and mere passive reading.

Students often read a textbook chapter exactly as they would read a novel or a magazine article. They begin with the first sentence of the chapter and read straight through the material, pausing only to underline occasionally. This way of reading may be suitable for a novel, but it is quite inappropriate for a textbook. Psychologists insist that an active study method must begin with a **survey** of the material to be read. If you plan to spend two hours studying a thirty-page chapter, take three to five

minutes in the beginning and survey the chapter. First, read the boldtype section headings (each chapter of this book is divided into numbered sections). Second, read a sentence or two from the text of each section. The purpose of this survey is to familiarize you with the topics covered in the chapter. Fight the tendency to stop your surveying process in order to comprehend all of the concepts you are surveying. Comprehension is not the goal of surveying.

Following the survey of all the sections, go back to the beginning of the chapter. Ask yourself a **question** before reading each section. Ask it aloud, if possible, but silently if circumstances demand. The important thing is actually to “talk to yourself.” Normally, each section heading can easily be turned into a question. If the section heading reads **Stare Decisis**, ask yourself the question, “What does stare decisis mean?”

Only after asking a question are you finally ready to **read** a chapter section. In reading keep your question in mind. By so doing you will be reading for a purpose: to discover the answer to your question.

Upon finishing each section, stop and **recite** the answer to your question. As an example, at the end of the section on stare decisis say to yourself, “Stare decisis refers to the legal tradition that a judge in a given

case will follow the precedent established in similar cases decided by courts in the jurisdiction.” According to psychologists, to recite this way greatly aids memory. Recitation also lets you know whether or not you have understood the material just read.

The last step of the SQ3R method is **review**. When devoting two hours to the study of a chapter, take the final fifteen minutes of the time to review the material. Review the questions taken from the headings of each chapter section and recite the answers to them, rereading material if necessary to answer accurately.

While the SQ3R method may be used effectively to study any subject, the **case briefing system** is uniquely designed to aid in the study of court decisions. In studying law, students frequently write up case briefs of each decision they read. Whether you are required to write up every decision is up to your individual instructor. However, the case briefing system provides an excellent framework for comprehending complicated judicial reasoning processes, and you should brief cases whether required to do so or not.

To avoid getting lost in a maze of judicial terminology, you should ask yourself a standard set of questions about each case decision and read to discover the answers to these questions. These standard questions lie at the heart of the case briefing system. They are:

- 1 Who is the plaintiff and who is the defendant?
- 2 What are the facts of the case? (Who did what to whom? What is the behavior complained of?)
- 3 Did the plaintiff or the defendant win in the lower court(s), and which party is appealing? (All decisions in this textbook come from appellate courts.)
- 4 What was the legal issue or issues appealed?
- 5 Does the plaintiff or the defendant win on the appeal?
- 6 What rules of law and reasoning does the appellate court use in deciding the issue?

Here in an illustration of a written case brief. It is a brief of the first case in the book, which is found on page 52. Before looking at the brief you should now read that case. To understand the case you need to know that a “summary judgment” occurs when a court determines that no genuine factual dispute exists and that either the plaintiff or the defendant is entitled to judgment as a matter of law. No evidence is presented before a jury. The court (judge) rules in favor of the plaintiff or the defendant on the basis of what the law is rather than on what facts (who did what to whom, etc.) are believed.

Case Brief

HAVENS REALTY CORP. v. COLEMAN, 102 S.Ct. 1114 (1982) [The notation following the name of the case indicates that the case may be found in volume 102 of the *Supreme Court Reporter*, starting at page 1114. The United States Supreme Court decided the case in 1982].

Plaintiff and Defendant

The plaintiffs (who bring the lawsuit against the defendant by filing a complaint) are Coleman and Willis. The defendant is the Havens Realty Corp.

Facts

The Fair Housing Act of 1968 outlaws discrimination in housing and authorizes civil suits to enforce the law. Suit was filed against the defendant operator of two apartment complexes alleging “racial steering” in violation of the law. Plaintiffs were

testers who never intended to rent an apartment. Coleman, who is black, was told that no apartments were available, but Willis, who is white, was told that there were vacancies. In fact, there were apartments available for rent.

Lower Court

The federal district court [a trial court] ruled that the plaintiffs lacked standing to sue and dismissed the lawsuit. [To lack "standing to sue" in this instance means that the plaintiffs did not claim that they were injured in a way that the Fair Housing Act protects against. To dismiss the lawsuit means to throw it out of court].

Issue Appealed

Do either of the plaintiffs have standing to sue under the Fair Housing Act?

Who Wins

Plaintiff Coleman.

Reasoning

1. Despite the fact that the "testers had no intent to rent the apartments," Congress prohibited misrepresentation to "any person" in the Fair Housing Act. Therefore, all persons have a legal right to truthful information.
2. Because Congress, in this Housing Act, intended to give standing to the fullest extent possible, a plaintiff must simply allege that the defendant's actions resulted in a distinct injury.
3. Since Coleman received false information, he can properly allege that the defendants injured him. Since Willis received accurate information, he cannot properly allege a violation of the Fair Housing Act.
4. Thus, the black tester has standing to sue, but since the white tester received no false information, he lacks standing.

O. LEE REED

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