

SEVENTH EDITION

---

# LAW FOR BUSINESS

---

A. JAMES BARNES

TERRY MOREHEAD DWORKIN

ERIC L. RICHARDS

SEVENTH EDITION

# LAW FOR BUSINESS

A. JAMES BARNES, J.D.

TERRY MOREHEAD DWORKIN, J.D.

ERIC L. RICHARDS, J.D.

*All of Indiana University*



Boston Burr Ridge, IL Dubuque, IA Madison, WI New York San Francisco St. Louis  
Bangkok Bogotá Caracas Lisbon London Madrid  
Mexico City Milan New Delhi Seoul Singapore Sydney Taipei Toronto

McGraw-Hill Higher Education  
A Division of **The McGraw-Hill Companies**

LAW FOR BUSINESS

Copyright © 2000, 1997, 1994, 1991, 1987, 1983, 1980 by The McGraw-Hill Companies, Inc.

All rights reserved. Printed in the United States of America. Except as permitted under the United States Copyright Act of 1976, no part of this publication may be reproduced or distributed in any form or by any means, or stored in a database or retrieval system, without the prior written permission of the publisher.

This book is printed on acid-free paper.

4 5 6 7 8 9 0 VNH/VNH 9 0 9 8 7 6 5 4 3 2 1

ISBN 0-07-365917-7

Vice president/Editor-in-chief: *Michael W. Junior*

Publisher: *Craig S. Beytlen*

Sponsoring editor: *Karen M. Mellon*

Marketing manager: *Genyatta Giles Haynes*

Project editor: *Paula M Krauza*

Production supervisor: *Kari Geltemeyer*

Freelance design coordinator: *Mary Christianson*

Freelance designer: *Kristyn A. Kalnes*

Senior supplement coordinator: *Cathy L. Tepper*

Compositor: *GAC/Indianapolis*

Typeface: *10/12 Cheltenham Light*

Printer: *Von Hoffmann Press, Inc.*

**Library of Congress Cataloging-in-Publication Data**

Barnes, A. James.

Law for business / A. James Barnes, Terry Morehead Dworkin, Eric  
L. Richards—7th ed.

p. cm.

Includes indexes.

ISBN 0-07-365917-7

1. Commercial law—United States. 2. Trade regulation—United  
States. 3. Business law—United States. I. Dworkin, Terry Morehead. II. Richards, Eric L. III. Title.  
KF889.B28 2000

346.7307—dc21

99-27985

# LAW FOR BUSINESS

# PREFACE

For 20 years, *Law for Business* has set the standard for an easy-to-read textbook that provides students the tools for understanding the legal environment of business. The text goes well beyond merely identifying the current legal rules and regulations affecting business by offering insights into new developments and trends that will greatly affect the future of business. The result is a comprehensive, yet concise, treatment of the legal issues of fundamental importance to business students and the business profession.

We have been very pleased with the number of institutions—and instructors—representing a wide range of programs in business that continue to adopt *Law for Business*. And, the feedback from faculty and students alike confirms that they particularly like the clear exposition, the careful selection and editing of high-interest cases, and the attractive and readable design.

In preparing the seventh edition of *Law for Business*, we have tried to maintain the strengths of past editions while updating the material and cases, slightly reducing its length, and incorporating several new features that will keep it on the cutting edge of business law/legal environment textbooks. Among these **new features** are:

- A new chapter on Computer Law (Chapter 49) enables students to better understand the current rules governing the Internet and provides insights so they can more accurately identify future regulatory efforts.
- Expansion of the coverage of employment law through use of developments in this area of immense importance to the business community and to those who work in it. These cases are indicated by the employment law icon.
- Links to web sites where students who want to explore topics in more detail can readily do so. These are listed at the end of each chapter in a section called “Interested in Learning More?” International web sites are listed at the end of selected chapters.
- Icons in the margins throughout the text that allow students to quickly identify material that relates to international business, computer law, or employment law.

Other features—maintained from previous editions—include the following:

## ..... PEDAGOGY .....

To assist students in their comprehension and critical analysis of the sometimes complex topics discussed in any business law course, we have employed a number of proven pedagogical devices.

**Case Videos**—Adopters of the seventh edition can obtain Irwin’s case videos to supplement classroom instruction. The videos (there are 20 segments in all) portray common business law issues. Portions of the case videos are integrated into the problem cases in many of the chapters.

**Chapter Openers**—Each chapter is introduced by a high-interest case and a series of questions introducing the reader to the issues raised in the chapter.

**Concept Summaries**—These outlines, figures, or drawings are presented throughout each chapter to reinforce important or difficult concepts.

Visual Illustrations—Flowcharts and other visual illustrations have been inserted in each chapter to facilitate student understanding of key topics.

### **CASES**

The textual material is supplemented by current, high-interest cases decided by state and federal courts. The cases have been selected to demonstrate a practical application of the important legal concepts introduced in the chapter. While the cases are brief, they provide enough facts and analysis to clearly illustrate the law in action. To reduce confusion, each case is placed immediately after the textual point it discusses. Multi-issue cases are sometimes presented in several sections to permit the isolation of issues to simplify analysis.

### **FOCUS ON ETHICS**

A separate chapter (Chapter 3) is devoted to the study of business ethics and social responsibility. It provides students with a foundation for understanding the ethical issues confronting business managers. This material is reinforced by the inclusion of brief Ethical Implications reminders throughout the remaining chapters. These comments, questions, and cases permit students to more fully appreciate the complex and pervasive nature of the ethical issues they will encounter in the business world.

### **INTERNATIONAL FOCUS**

The text contains a chapter (Chapter 48) exclusively concerned with the legal issues confronting businesses that venture into the international environment. This global approach is supplemented by separate International Business Perspective features in the other chapters (indicated by the globe icon) that introduce concepts with international implications, and international web sites at the end of selected chapters.

### **SUPPLEMENTS PACKAGE**

**Instructor's Manual.** The authors have prepared an instructor's manual providing insights into the major topics introduced in each chapter. Every case is briefly summarized and accompanied by a "Points for Discussion" section that poses ideas for classroom discussion. This manual also includes the answers to all of the Questions and Problem Cases that appear in text, as well as references to appropriate places within the chapter to discuss particular end-of-chapter cases. The answer key for the student study guide also appears at the end of the Instructor's Manual, as does a set of transparency masters.

**Test Bank.** The Test Bank was prepared with the help of Martin McCrory, our colleague at Indiana University. It contains true–false, multiple choice, and short essay questions with answers and a difficulty rating.

**Computest.** A computerized version of the test bank also is available. It allows you to generate random tests and add your own questions.

**Book Web Site at [www.mhhe.com/barnes](http://www.mhhe.com/barnes).** This site now includes a free Student Study Guide and Workbook. Professor Frona Powell, our colleague at Indiana University, has prepared a Study Guide that gives students additional practice reviewing the major concepts in each chapter and preparing for exams. It includes learning objectives, learning hints, and true–false, multiple choice, and short essay questions.

The web site also includes resources for the instructor and information about updates related to the book's content.

*PowerPoint Electronic Acetates.* More than 200 PowerPoint slides have been created for use in classroom lectures. These slides refer back to figures and concept summaries from the text and provide original material not found anywhere else.

# ACKNOWLEDGMENTS

We wish to thank the many adopters of our prior editions, as we have greatly profited from their suggestions. Of course, we have had to use our judgment in determining which ones to follow. Accordingly, responsibility for any shortcomings in this edition remains ours. We do solicit the comments and criticism of instructors and students who use this edition.

The following reviewers provided ideas and insights for this edition. We appreciate their contributions.

Michael P. Baird, Clayton College and State University

Donald G. Davis, Urbana University

Arthur B. Fulton, Lord Fairfax Community College

Alan R. Gruber, Three Rivers Community-Technical College

Howard Hunnius, John Tyler Community College

Richard Kohn, Southeast Community College

Nick Lemme, Midland Lutheran College

Steven A. Martin, Capital University

David Mitchell, Midland Lutheran College

John Ridge, Northwest College

Thomas I. Rossi, Broome Community College

We also acknowledge the assistance of the following individuals at Indiana University who facilitated the preparation of the manuscript: T. D. Oler and Deloris Schneider.

**A. James Barnes**  
**Terry Morehead Dworkin**  
**Eric L. Richards**



# ABOUT THE AUTHORS

**A. James Barnes, J.D.**, is Dean and Professor at Indiana University in Bloomington's School of Public and Environmental Affairs (SPEA). His teaching interests include environmental law, environmental policy, and ethics and the public official. He has written, testified, and spoken extensively on environmental issues and has considerable international experience dealing with environmental officials in other countries. He currently consults on a variety of environmental matters.

From 1985 to 1988, Dean Barnes served as the deputy administrator of the U.S. Environmental Protection Agency. As the agency's number two official, he has had extensive experience in environmental policy making and administration. Among other things, he played a key role in the development of the radon, solid waste/recycling, and pollution prevention programs. From 1983 to 1985, he was the EPA General Counsel, and in the early 1970s participated in the formation of EPA and served as the chief of staff to its first administrator, William D. Ruckelshaus.

Dean Barnes also served as general counsel of the U.S. Department of Agriculture from 1981 to 1983, where he dealt with a wide variety of public policy issues, including environmental issues involving the Forest Service, Soil and Conservation Service, and federal agriculture programs. For six years, from 1975 to 1981, he had a commercial and environmental law practice with the firm of Beveridge and Diamond in Washington, D.C.

**Terry Morehead Dworkin, J.D.**, is the Jack and Linda Gill Professor and Chair of Business Law, and codirector of the Center for International Business Education and Research (CIBER) at Indiana University in Bloomington. She was the Resident Director for the Program in European Studies at the Center for European Studies, Rijksuniversiteit Limburg in Maastricht, The Netherlands.

Professor Dworkin's primary research interests focus on employment issues, particularly discrimination, whistleblowing, and privacy. She is an author of numerous articles on employment law, corporate compliance, and products liability law, and of two books on business law. Several of her publications have an international focus.

Professor Dworkin has had significant international experience in the last few years including: presenting a harassment workshop at the UN/NGO Forum on Women in Beijing; spending the spring 1996 semester at the Institute for Advanced Legal Studies in London, followed by six weeks in Kiel, Germany; and presenting papers in Austria, the Czech Republic, England, and Germany. During the past year she has given several invited lectures on issues of international ethics and management.

**Eric L. Richards, J. D.**, is an Associate Professor of Business Law at Indiana University. Professor Richards has taught a wide variety of law courses at both the graduate and undergraduate level including personal law, international law, the legal environment of business, and commercial law. His research interests have resulted in scholarly publications exploring antitrust law, the first amendment, international trade law, and environmental issues. For the past 20 years he has been on the faculty of the Kelley School of Business at Indiana University. Prior to that he was an Assistant Professor at Kansas University for two years.

During his academic career Professor Richards has been awarded numerous university and national awards for both his teaching and his research. He also has owned and operated his own business—a martial arts school—for over 20 years.

# CONTENTS IN BRIEF

## PART I

---

### *Introduction to the Law 1*

#### CHAPTER 1

Law and Its Sources 2

#### CHAPTER 2

Dispute Settlement 26

#### CHAPTER 3

Business Ethics and Corporate  
Social Responsibility 48

#### CHAPTER 4

Crimes 67

#### CHAPTER 5

Intentional Torts 80

#### CHAPTER 6

Negligence and Strict Liability 94

## PART II

---

### *Contracts 109*

#### CHAPTER 7

The Nature and Origins of Contracts  
110

#### CHAPTER 8

Creating a Contract: Offers 125

#### CHAPTER 9

Creating a Contract: Acceptances  
141

#### CHAPTER 10

Consideration 155

#### CHAPTER 11

Capacity to Contract 171

#### CHAPTER 12

Voluntary Consent 184

#### CHAPTER 13

Illegality 200

#### CHAPTER 14

The Form and Meaning of Contracts  
216

#### CHAPTER 15

Third Parties' Contract Rights 233

#### CHAPTER 16

Performance and Remedies 245

## PART III

---

### *Sales 263*

#### CHAPTER 17

Formation and Terms of Sales  
Contracts 264

#### CHAPTER 18

Warranties and Product Liability  
281

#### CHAPTER 19

Performance of Sales Contracts  
309

#### CHAPTER 20

Remedies for Breach of Sales  
Contracts 325

## PART IV

*Agency and Employment 343*

## CHAPTER 21

The Agency Relationship—Creation,  
Duties, and Termination 344

## CHAPTER 22

Liability of Principals and Agents to  
Third Parties 365

## CHAPTER 23

Employment Laws 388

## PART V

*Business Organizations 411*

## CHAPTER 24

Which Form of Business  
Organization? 412

## CHAPTER 25

Partnerships 434

## CHAPTER 26

Formation and Termination of  
Corporations 460

## CHAPTER 27

Management of the Corporate  
Business 484

## CHAPTER 28

Financing the Corporation and the  
Role of Shareholders 503

## CHAPTER 29

Securities Regulation 527

## CHAPTER 30

Legal Liability of Accountants 548

## PART VI

*Property 565*

## CHAPTER 31

Personal Property 566

## CHAPTER 32

Bailments 582

## CHAPTER 33

Real Property 596

## CHAPTER 34

Landlord and Tenant 627

## CHAPTER 35

Estates and Trusts 645

## CHAPTER 36

Insurance 665

## PART VII

*Commercial Paper 685*

## CHAPTER 37

Negotiable Instruments 686

## CHAPTER 38

Negotiation and Holder in Due  
Course 704

## CHAPTER 39

Liability of Parties 732

## CHAPTER 40

Checks and Electronic Fund  
Transfers 757

PART VIII

Credit Transactions 775

CHAPTER 41	Introduction to Security	776
CHAPTER 42	Secured Transactions	794
CHAPTER 43	Bankruptcy	820

PART IX

Government Regulation 847

CHAPTER 44	Government Regulation of Business	848
CHAPTER 45	The Antitrust Laws	865

CHAPTER 46	Consumer Protection Laws	888
CHAPTER 47	Environmental Regulation	902
CHAPTER 48	International Law	927
CHAPTER 49	Internet Law	954

APPENDIXES

<b>Appendix A</b>	Constitution of the United States of America	977
<b>Appendix B</b>	Uniform Commercial Code	989
<b>Appendix C</b>	Glossary of Legal Terms and Definitions	1129
<b>Appendix D</b>	Spanish-English Equivalents for Important Legal Terms	1151
	Subject Index	1155

# TABLE OF CONTENTS

## PART I

### *Introduction to the Law 1*

#### CHAPTER 1

#### **Law and Its Sources 2**

Introduction	3
<i>Law in Business</i>	3
<i>Chapter Overview</i>	3
The Nature of Law	3
<i>The Legal System</i>	3
<i>Law as Rules</i>	3
<i>Functions of Law</i>	4
Classifications of Law	5
<i>Substantive versus Procedural Law</i>	5
<i>Ethical Implications</i>	6
<i>Criminal versus Civil Law</i>	7
Constitutional Foundations	8
<i>Checks and Balances</i>	9
<i>Constitutional Powers</i>	10
<i>Constitutional Limitations</i>	10
<i>Federalism</i>	11
Sources of Law	11
<i>Constitutions</i>	11
<i>Treaties</i>	12
<i>Statutes</i>	12
<i>Administrative Rules and Decisions</i>	12
<i>Executive Orders</i>	13
<i>Court Decisions</i>	13
<i>Private Law</i>	16
Law and Orderly Change	17
<i>Procedural Safeguards</i>	17
<i>Stare Decisis</i>	17
Jurisprudence	21
<i>Legal Positivism</i>	21
<i>Natural Law</i>	22
<i>Ethical Implications</i>	22
<i>Sociological Jurisprudence</i>	22
<i>Legal Realism</i>	22
Preventive Law	22
<i>Objectives of Preventive Law</i>	22
<i>Roles of Lawyers and Clients</i>	23
Questions and Problem Cases	23

#### CHAPTER 2

#### **Dispute Settlement 26**

Means of Dispute Settlement	27
<i>Negotiation</i>	27

<i>Alternative Dispute Resolution</i>	27
<i>The Courts</i>	31
<i>Jurisdiction</i>	31
State Courts	31
<i>Inferior Courts</i>	32
<i>Trial Courts</i>	32
<i>Appeals Courts</i>	33
Federal Courts	33
<i>District Court</i>	34
<i>Special Courts</i>	34
<i>Court of Appeals</i>	34
The Adversary System	36
<i>The Function of the Judge</i>	36
<i>Advantages and Disadvantages</i>	36
Procedure	37
<i>The Functions of Procedure</i>	37
<i>Pleadings</i>	37
<i>Discovery</i>	42
<i>The Trial</i>	43
Appellate Procedure	44
<i>Basis for Appeal</i>	44
<i>The Appeal</i>	45
<i>Results of Appeal</i>	45
Court Problems and Proposed Solutions	46
<i>Some Criticisms</i>	46
<i>Proposals</i>	46
Questions and Problem Cases	47

#### CHAPTER 3

#### **Business Ethics and Corporate Social Responsibility 48**

Introduction	49
The Profit Maximization Criterion	49
<i>Allocational Efficiency</i>	49
<i>Criticisms of the Profit</i>	51
<i>Market Forces and Corporate Responsibility</i>	51
The Law as a Corporate Control Device	53
<i>Corporate Influence on the Content of the Law</i>	53
<i>Conscious Lawbreaking</i>	54
<i>Unknown Harms</i>	54
<i>Irrational Corporate Behavior</i>	55
The Dilemmas of Ethical Corporate Behavior	56
<i>What Is Ethical Corporate Behavior</i>	57
The Corporate Governance Agenda	59
<i>Greater Shareholder Power</i>	59
<i>Changing the Composition of the Board</i>	59
<i>Changes in Management Structure</i>	60
Conclusion	61
Questions and Problem Cases	64

## CHAPTER 4

**Crimes 67**

The Nature of Crimes 68

*The Essentials of Crime* 68*Criminal Procedure* 71*Crime and People in Business* 73

Questions and Problem Cases 78

## CHAPTER 5

**Intentional Torts 80**

Intentional Torts 81

*Interference with Personal Rights* 82*Interference with Property Rights* 89*Interference with Economic Relations* 90

Questions and Problem Cases 92

## CHAPTER 6

**Negligence and Strict Liability 94**

Negligence 95

*Duty* 95*Breach* 97*Causation* 98*Ethical Implications* 98*General Causational Rules* 99*Res Ipsa Loquitur* 100*Negligent Infliction of Mental Distress* 100*Defenses to Negligence* 102*Recklessness* 103

Strict Liability 103

Current Issues 105

Questions and Problem Cases 106

## PART II

**Contracts 109**

## CHAPTER 7

**The Nature and Origins of Contracts 110**

What Is a Contract? 112

Why Have Contracts? 112

How Has Contract Law Developed? 112

The Uniform Commercial Code 114

*Article 2* 114*Creation of Practical Contract Rules* 115*Good Faith and Fair Dealing* 116

Contracts for the International Sale of Goods 117

Types of Contracts 117

*Valid, Unenforceable, Voidable, and Void**Contracts* 118*Unilateral and Bilateral Contracts* 118*Executed and Executory Contracts* 119*Express and Implied Contracts* 119

Quasi Contract 120

Promissory Estoppel 121

Questions and Problem Cases 123

## CHAPTER 8

**Creating a Contract: Offers 125**

Introduction 127

What Is an Offer? 127

*Intent* 127*Definiteness* 128*Communication to the Offeree* 130

Special Problems with Offers 130

*Advertisements* 131*Rewards* 132*Auctions* 132*Bids* 132

What Terms Are Included in Offers? 133

*Ethical Implications* 133

How Long Do Offers Last? 134

*Terms of the Offer* 134*Lapse of Time* 134*Revocation* 135*Firm Offers* 135*Options* 135*Ethical Implications* 135*Estoppel* 135*Revocation of Offers for Unilateral Contracts* 136*The Effectiveness of Revocations* 137*Rejection* 137*Death or Insanity of Either Party* 138*Destruction of Subject Matter* 138*Intervening Illegality* 139

Questions and Problem Cases 139

## CHAPTER 9

**Creating a Contract: Acceptances 141**

What Is an Acceptance? 143

*The Battle of the Forms* 144*Accepting an Offer for a Unilateral Contract* 145*Accepting an Offer for a Bilateral Contract* 145*Silence as Acceptance* 146*Ethical Implications* 146*Who Can Accept an Offer?* 146*Acceptance When a Writing Is Anticipated* 147

Communication of Acceptance 148

*Manner of Communication* 148*When Is Acceptance Communicated?* 148*Authorized Means of Communication* 149*Acceptance by Shipment* 150

Questions and Problem Cases 152

## CHAPTER 10

**Consideration 155**

- The Idea of Consideration 157
  - Legal Value* 157
  - Adequacy of Consideration* 158
  - Ethical Implications* 158
  - Bargained for and Given in Exchange* 159
- Solving Consideration Problems 160
  - Facts* 160
- Rules of Consideration 161
  - Preexisting Duties* 161
  - Ethical Implications* 162
  - Promises to Discharge Debts for Part Payment* 164
  - Past Consideration* 165
  - Forbearance to Sue* 166
  - Mutuality of Obligation* 167
- Additional Exceptions to the Requirement of Consideration 167
  - Promissory Estoppel* 167
  - Firm Offer* 168
  - Charitable Subscriptions* 168
  - Debts Barred by Bankruptcy Discharge or the Statute of Limitations* 168
- Questions and Problem Cases 169

## CHAPTER 11

**Capacity to Contract 171**

- Introduction 173
- Minors' Contracts 173
  - The Reason for Minors' Incapacity* 173
  - Ability to Disaffirm* 174
  - Ratification* 174
  - The Consequences of Disaffirming* 175
  - Ethical Implications* 176
  - Barriers to Disaffirmance* 176
  - Misrepresentation of Age by Minors* 177
  - Necessaries* 178
- Contracts of Mentally Impaired and Intoxicated Persons 180
  - Theory of Incapacity* 180
  - The Test of Incapacity* 180
  - The Effect of Incapacity* 180
  - Necessaries* 180
  - The Right to Disaffirm* 180
  - Ratification* 181
- Questions and Problem Cases 182

## CHAPTER 12

**Voluntary Consent 184**

- Introduction 186
  - The Need for Real Consent* 186

*The Parties' Duty of Care* 186

*The Remedy* 186

*Ratification* 186

Misrepresentation 186

*Knowledge of Falsity* 187

*Materiality* 187

*Fact versus Opinion* 187

*Justifiable Reliance* 188

*Detriment* 189

Fraud 189

*What Is a "Knowingly Made" Misstatement?* 189

*Intent to Deceive* 190

*Ethical Implications* 192

*Fraud in the Execution* 192

*The Remedy for Fraud* 192

Duress and Undue Influence 193

*General Nature* 193

*Duress* 193

*Undue Influence* 194

*Ethical Implications* 195

Mistake 195

*The Nature of Mistake* 195

*Mutual Mistake* 196

*Unilateral Mistake* 197

Questions and Problem Cases 198

## CHAPTER 13

**Illegality 200**

- Introduction 202
  - Illegality* 202
  - Types of Illegality* 202
  - The Presumption of Legality* 202
- The Effect of Illegality 202
  - General Rule* 202
  - Ignorance of Fact or Special Regulation* 203
  - Rights of Protected Parties* 203
  - Rescission before Performance of Illegal Act* 204
  - Illegality and Divisible Contracts* 204
- Contracts to Commit Illegal Acts 204
  - Agreements to Commit Crimes* 204
  - Agreements to Commit Torts* 204
- Contracts Made Illegal by Statute 204
  - Watering Statutes* 204
  - Statutes Declaring Bargains Void or Voidable* 205
  - Regulatory Statutes* 205
- Contracts Contrary to Public Policy 207
  - The Idea of Public Policy* 207
  - Contracts Injurious to Public Service* 208
  - Contracts to Influence Fiduciaries* 208
  - Exculpatory Clauses* 208
  - Contracts in Restraint of Trade* 209
  - Unequal Bargains* 211
  - Ethical Implications* 211

<i>The Code and Unconscionable Contracts</i>	212
Questions and Problem Cases	214

## CHAPTER 14

### ***The Form and Meaning of Contracts*** 216

The Statute of Frauds	218
<i>The Effect of Failure to Comply</i>	219
<i>Ethical Implications</i>	219
Contracts Covered by the Statute of Frauds	220
<i>Executors' Agreements to Personally Pay Their</i>	
<i>Decedents' Debts</i>	220
<i>Contracts to Answer for the Debt of Another</i>	220
<i>Contracts Transferring an Interest in Land</i>	221
<i>Bilateral Contracts Not Capable of Being Performed</i>	
<i>within One Year</i>	222
<i>What Kind of Writing Is Required?</i>	223
<i>The Code's Statute of Frauds</i>	224
Interpreting Contracts	226
<i>The Necessity of Interpretation</i>	226
<i>Rules of Construction</i>	226
The Parol Evidence Rule	227
<i>The Purpose of the Rule</i>	227
<i>Exceptions to the Parol Evidence Rule</i>	228
Questions and Problem Cases	230

## CHAPTER 15

### ***Third Parties' Contract Rights*** 233

Assignment of Contracts	235
<i>Definition</i>	235
<i>What Contracts Are Assignable?</i>	235
The Consequences of Assignment	237
<i>The Rights and Duties of Assignees</i>	237
<i>Delegation of Duties</i>	237
Third-Party Beneficiary Contracts	239
<i>Donee Beneficiaries</i>	240
<i>Creditor Beneficiaries</i>	241
<i>Incidental Beneficiaries</i>	241
Questions and Problem Cases	243

## CHAPTER 16

### ***Performance and Remedies*** 245

Conditions	247
<i>Definition</i>	247
<i>Types of Conditions</i>	247
<i>The Creation of Conditions</i>	248
Standards of Performance	249
<i>Complete or Satisfactory Performance</i>	249
<i>Substantial Performance</i>	250
<i>Material Breach</i>	251

<i>Anticipatory Breach</i>	251
<i>Special Performance Problems</i>	252
<i>The Time for Performance</i>	252
Excuses for Nonperformance	253
<i>Prevention</i>	253
<i>Impossibility</i>	253
Discharge	255
<i>The Nature of Discharge</i>	255
<i>Discharge by Agreement</i>	255
<i>Discharge by Waiver</i>	255
<i>Discharge by Alteration</i>	255
<i>Discharge by Statute of Limitations</i>	255
Remedies	256
<i>The Theory of Remedies</i>	256
<i>Damages in Contracts Cases</i>	256
<i>The Duty to Mitigate Damages</i>	258
<i>Equitable Remedies</i>	259
Questions and Problem Cases	261

## PART III

### *Sales* 263

## CHAPTER 17

### ***Formation and Terms of Sales Contracts*** 264

Introduction	265
<i>Sale of Goods</i>	265
<i>Leases</i>	265
<i>Higher Standards for Merchants</i>	266
<i>Code Requirements</i>	267
Terms of Sales Contracts	267
<i>Gap Fillers</i>	267
<i>Price Terms</i>	267
<i>Quantity Terms</i>	268
<i>Delivery Terms</i>	268
<i>Time Terms</i>	268
Title and the Code	268
<i>Code Changes</i>	268
<i>General Title Rules</i>	269
<i>Buyer's Rejection</i>	270
Title and Third Parties	270
<i>Transfers of Voidable Title</i>	271
<i>Buyers in the Ordinary Course of Business</i>	272
<i>Entrusting Goods</i>	272
<i>Ethical Implications</i>	273
Risk of Loss	273
<i>Overview</i>	273
<i>The Terms of the Agreement</i>	273
<i>Shipment Contracts</i>	273



<i>Destination Contracts</i>	274
<i>Goods in the Possession of Third Parties</i>	274
<i>Risk Generally</i>	275
<i>Breach of Contract and Risk of Loss</i>	275
<i>Insurable Interest</i>	276
Sales on Trial	277
<i>Sale or Return</i>	277
<i>Sale on Approval</i>	277
<i>Sale on Consignment</i>	277
Questions and Problem Cases	278

## CHAPTER 18

### **Warranties and Product Liability 281**

Introduction: Historical Development of the Law	282
Warranties	282
<i>Express Warranties</i>	282
<i>Ethical Implications</i>	284
<i>Implied Warranties</i>	285
Exclusions and Modifications of Warranties	291
<i>General Rules</i>	291
<i>Limitation of Express Warranties</i>	291
<i>Exclusion of Implied Warranties</i>	292
<i>Unconscionable Disclaimers</i>	293
<i>Limitation of Warranties</i>	293
Who Benefits from a Warranty	293
<i>Purchaser</i>	293
<i>Privity of Contract</i>	294
<i>Nonpurchasers</i>	294
Federal Trade Commission Warranty Rules	296
<i>Magnuson-Moss Warranty Act</i>	296
<i>Purpose of the Act</i>	297
<i>Requirements of the Act</i>	297
<i>Full Warranties</i>	298
<i>Limited Warranties</i>	298
<i>Availability of Warranties</i>	298
<i>Enforcement</i>	298
Negligence	299
<i>Product Liability in General</i>	299
<i>Negligence</i>	299
<i>Duties</i>	300
<i>Privity and Disclaimers Do Not Apply</i>	300
Strict Liability	300
<i>Reasons for Development of Strict Liability</i>	300
<i>Elements of Strict Liability</i>	301
<i>Ethical Implications</i>	302
<i>State of the Art</i>	303
<i>Defenses</i>	303
<i>Industrywide Liability</i>	303
<i>Possible Limitations on Strict Liability</i>	304
<i>Statutes of Repose</i>	304
Questions and Problem Cases	306

## CHAPTER 19

### **Performance of Sales Contracts 309**

Introduction	310
General Rules	310
<i>Good Faith</i>	310
<i>Course of Dealing</i>	310
<i>Usage of Trade</i>	310
<i>Ethical Implications</i>	311
<i>Waiver</i>	311
<i>Assignment</i>	312
Delivery	312
<i>Basic Obligations</i>	312
<i>Place of Delivery</i>	313
<i>Seller's Duty of Delivery</i>	313
Inspection and Payment	313
<i>Buyer's Right of Inspection</i>	313
<i>Payment</i>	314
Acceptance, Revocation, and Rejection	314
<i>Acceptance</i>	314
<i>Effect of Acceptance</i>	315
<i>Revocation of Acceptance</i>	316
<i>Buyer's Rights on Improper Delivery</i>	317
<i>Rejection</i>	318
<i>Right to Cure</i>	318
<i>Wrongful Rejection</i>	318
<i>Buyer's Duties after Rejection</i>	318
Assurance, Repudiation, and Excuse	319
<i>Assurance</i>	319
<i>Anticipatory Repudiation</i>	321
<i>Excuse</i>	321
<i>Commercial Impracticability</i>	321
Questions and Problem Cases	322

## CHAPTER 20

### **Remedies for Breach of Sales Contracts 325**

Introduction	326
<i>Remedies in General</i>	326
<i>Agreements as to Remedies</i>	326
<i>Statute of Limitations</i>	328
Seller's Remedies	329
<i>Remedies Available to an Injured Seller</i>	329
<i>Cancellation and Withholding of Delivery</i>	329
<i>Resale of Goods</i>	330
<i>Recovery of the Purchase Price</i>	330
<i>Damages for Rejection or Repudiation</i>	331
<i>Liquidated Damages</i>	332
<i>Seller's Remedies Where Buyer Is Insolvent</i>	332
Buyer's Remedies	333
<i>Buyer's Remedies in General</i>	333
<i>Buyer's Right to Damages</i>	333
<i>Buyer's Right to Cover</i>	334