
LAW AND BUSINESS

**The Regulatory
Environment**

THIRD EDITION

**Lawrence S. Clark
Peter D. Kinder**

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The Regulatory Environment

Third Edition

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LAW AND BUSINESS
The Regulatory Environment

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To Our Wives

Georgia A. Clark
and
Amy D. Kinder

Preface

It is one of life's ironies that authors only get a chance to improve their work if they convince publisher and public of their book's merit. The authors of this book found themselves in the humbling and happy circumstance of being asked to prepare a third edition. After mulling the comments of students and professors and reviewing the changes in our thinking, we took the opportunity to revise and add to the text.

WHAT'S NEW IN THIS EDITION

Our revisions fall into three categories. First, we have added coverage where events and trends in the law dictated. The simultaneous collapse of the Eastern bloc and the unification of Western Europe have redefined the world as we've known it since 1945. Our international coverage reflects this revolution. An almost equally dramatic change has occurred in world-wide perceptions of the critical condition of our environment. We have expanded our treatment of environmental issues.

Less cosmic changes required new material on drug testing, the Federal Reserve Board's treatment of ATM transactions and check clearing, and the fall of the financial wizards of the 1980s and the changes in securities regulation they caused.

We have also made extensive revisions to our treatment of ethics and dispute resolution, agency authority, the business judgment rule, sales contract formation, Article 9 perfection, and sexual harassment.

The second area of change appears in our end of chapter and end of part materials. Here, we have added 54 case problems and revised 40 others and replaced twelve of the end of unit problems. These problems offer students and

teachers alike extraordinary tools for discussion and review.

The third area of change affects our table of contents. We have moved our discussion of Constitutional law and the regulation of business into Part I. We have also created a new chapter on limited partnerships and restructured our treatment of choosing a form of business organization.

We have made many other changes ranging from adding 23 cases and updating analysis, to correcting errors pointed out by vigilant readers. Our goal, as in earlier editions is to clarify and to explain. We welcome your reactions.

THE BOOK'S PHILOSOPHY

One thing remains unchanged from the first edition: the book's philosophy. We want students to come away from *Law and Business* with, first, knowledge of how things work and, second, an understanding of how to make things work. In describing his difficulties in researching how life was lived in the Renaissance, Fernand Braudel, the great French scholar, summed up what we have tried to avoid:

*The drawback of archives is that they do tend to collect for the historian's attention the bankruptcies, lawsuits and disasters, rather than the regular flow of business. Happiness, whether in business or private life, leaves little trace in history.**

Like economic historians, teachers of law gravitate naturally to bankruptcies, lawsuits, and disasters. After all, their training centered on case reports. And they take it as a given that the miles of numbered tan volumes in law libraries are compilations of cautionary tales.

Law students—particularly undergraduate law students—do not have this understanding. The emphasis on liability obscures the unstated goal of the parties' mutual happiness. This book does not wholly avoid the trap of focusing on liability. But we have attempted to shift from that traditional focus to one which emphasizes

*F. Braudel, "The Wheels of Commerce," vol. 2 in *Civilization and Capitalism, 15th-18th Centuries* (New York: Harper & Row, 1982), p. 75.

the fulfillment of the parties' mutual expectations.

Students take business law courses not only for vocational reasons but also simply to learn the role of law in everyday life. Whatever their reasons for taking an undergraduate business law course, these students share two needs. First, in order to be comprehensible, the law must be placed in social, economic, and business contexts they can understand. Second, because most undergraduates take only one or two courses in law, they need clear, concise explanations of legal structures. Unlike law school students, undergraduates cannot be expected to immerse themselves in law until they discern the underlying coherences.

THE STRUCTURE OF THIS BOOK

We have written and structured *Law and Business* with these two needs in mind. Each part begins with an introduction which places its chapters in context. The book itself begins with an extensive introduction to law's place in society. And many chapters—including those on administrative, environmental, and antitrust law—place their subjects in historical and social contexts.

The same impetus impelled a close attention to definitions and to the origins of words. Words which baffled generations of law students—like “liquidated”—are explained in legal and etymological terms to help students understand their current use.

Of course, merely placing a concept in context benefits the student little if the concept itself is not clearly explained. In this regard, verbal description alone sometimes is not adequate, and a picture may be worth far more than a thousand words. Sample pleadings, financing statements, wills, deeds, and the like, can save hours of classroom time. So, too, can diagrams and flowcharts. Where we have felt that such devices would illuminate concepts for the student and save teaching hours, we have used them.

One of the most challenging problems in writing a business law text is determining where to cover material which relates to two subject areas which may not be covered in the same course. For example, to what extent should basic contract law be repeated in sales? To what extent should sales concepts, like firm offers and merchant confirmations, be treated in contracts? There is no wholly satisfactory solution to the repetition problem.

The approach we took in *Law and Business* was to limit repetition by adopting a cross-accessing system. It features:

- Part openers which relate the part's subject matter to other areas of law
- Introductory chapter outlines
- Cross-references within chapters
- A glossary with references to chapters in which each term is discussed
- An expanded index

These tools lead readers quickly and surely to amplified coverage.

END-OF-CHAPTER MATERIALS

Each chapter ends with the same sequence of materials:

- A conclusion
- A list of key words
- Discussion questions
- Case problems

The conclusion, in most cases, refocuses the student's perspective from the detail of legal tenets to the larger issues posed by the chapter. It is, therefore, not a summary but a synthesis.

We have found that students who prepare their own summaries are considerably better off for the exercise. The list of key words and the discussion questions are consciously designed to facilitate that task. The key words highlight the most important terms introduced or used in the chapter. The discussion questions, usually numbering ten, follow the sequence of the chapter and ask the student to define concepts. In some instances, the discussion questions ask for analysis of issues presented in the case briefs.

The ten or so case problems with which each chapter concludes demand an analysis of common situations and the application of legal principles discussed in the chapter. They are framed like short essay questions. No other business law text contains as many case problems per chapter.

We believe the case problems are uniquely useful for three reasons. First, instructors can readily use their fact patterns to focus class discussion. Virtually all the cases are open to Socratic modification. Second, students who wish to test their ability to analyze and answer short essay questions will find them quite helpful.

Third, and finally, accounting students will find the case problems particularly useful, since their presentation of facts closely resembles that used on the CPA examination. In fact, 175 of the approximately 450 case problems in this book are adapted from CPA examination questions. These are identified in the Instructor's Manual that accompanies the text.

END-OF-PART PROBLEMS

The end-of-part problems are unique to *Law and Business*. Each set is made up of four questions, which together require students to apply, review, integrate, and appraise what they have learned.

The problems appear under three headings:

- Practical problems
- Summative problems
- Ethical problems

Practical problems require that the students draft a legal document of some sort—a contract, a will, a financing statement, and others. These problems are designed to reveal the analysis behind a document's contents. Summative problems bring together in one hypothetical fact pattern many disparate strands from the immediately preceding chapters. Each set of end-of-part problems contains two summative problems.

The end-of-part problems always conclude with a problem of ethics. We have purposely

constructed these problems so that their answers are not obvious—if, in fact, answers exist. Many ethical problems are not clear-cut, and students need to appreciate the kinds of dilemmas the real world can force upon them.

The ethical problems in these parts of the book are far from being the only material in it which raises moral questions. Such questions are implicit throughout the book, and the instructor's manual notes many of these.

COURSE FORMAT OPTIONS

Any informal survey of business law instructors quickly reveals the vast differences in course design among instructors and institutions. We have accommodated the more standard approaches to one- and two-semester business law courses. We have also provided material for a course in business regulation or the legal environment of business.

As indicated earlier, we have made extensive use of questions derived from the CPA examination. Not only is the CPA examination the only standard examination in the field, but many business law students will ultimately take it. Many schools offer special business law courses for CPA candidates. To accommodate them, Chapter 24 focuses on the legal liabilities of accountants. Even where such courses are not offered, this chapter can be of interest to non-accounting majors who may have considerable contact with the profession.

SUPPLEMENTARY MATERIALS

This text is accompanied by the full range of teaching aids which teachers of business law have come to expect. These include:

- An Instructor's Manual prepared by the authors
- A Study Guide prepared by Thomas McCoy and Jean Volk (Middlesex County College)
- A Test Bank prepared by Joe J. Goodro (Metropolitan Technical College)
- A set of two-color overhead transparencies featuring all the charts and illustrations in the text

- A Full Case Supplement for selected cases from the text prepared by Rowena Comegys Denhollem

Each of these aids is fully integrated, chapter by chapter, with the text.

The Instructor's Manual contains—for each chapter of *Law and Business*—extensive teaching notes, suggested solutions to the questions and problems in the text and the manual, and transparency masters.

The Study Guide contains an essay on studying business law. It also provides an introduction to each part and chapter and self-test study questions of the types normally used in undergraduate business law courses: multiple choice, true or false, and short essay. The answers to these questions appear in the guide.

The Test Bank holds approximately 2000 test items. It is also available from the publisher in RHTest format for use with IBM microcomputers with 3.5 and 5.25 disk configurations.

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Lawrence S. Clark
 Peter D. Kinder

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