

# THE STRUCTURE OF THE LEGAL ENVIRONMENT

Law, Ethics, and Business

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Bill Shaw Art Wolfe

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# The Structure of the Legal Environment

Law, Ethics, and Business

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## Preface

This second edition of *The Structure of the Legal Environment* is a radically transformed version of the first edition. Major changes include the elimination of four chapters, two on antitrust law and two on government regulation, and the creation of three new ones on torts and liability for defective products (Chapter 7), corporate social responsibility (Chapter 14), and economic and social power (Epilogue). Structural changes include a division of the chapters into four new parts, including a collection of six chapters devoted to an examination of the legal and social control of the large business corporation.

Throughout the book we have added more short stories and parables to address the affective and qualitative dimensions of complex issues. We have updated information on major policy changes by including excerpts from thoughtful law review articles, and we have expanded discussions of the moral basis of various rules and the ethical implications of business practices. Of course, all of the substantive changes in the various rules covered in the text have been brought up to date.

The discussion of moral reasoning and ethical theories has been moved from the end of the book to the beginning of Part One. In Chapter 2 we have added material on the functions of lawyers, judges, and juries in our legal system. We have expanded the information on the civil trial process and also included a full discussion of the means of alternative dispute resolution. In Chapters 3 and 4 on constitutional law, we narrowed the focus to business issues, yet retained some of the material on the broader social concerns in the areas of free expression and equal protection.

In Part Two the second half of Chapter 6 on agency law focuses on the morality of challenging an employer or principal by "blowing the whistle" about business practices. We have added a full chapter (Chapter 7) on tort law that focuses on the use of such concepts as toxic torts to regulate the impact of environmental pollutants. We examine the major lawsuits against cigarette and handgun manufacturers to understand the national policy about these products that has evolved through case law. The chapter following the torts chapter, "Government Regulation: Policies and Politics of Consumer Protection," is substantially new and examines the background and various successes and failures of government regulation.

Another major change in this edition is the creation of a collection of six chapters on the law of the large business corporation (Part Three). We have greatly expanded the state-based corporate law material in light of the legislative activity in many states to protect incumbent management from hostile takeovers. The whole process of large corporate mergers is treated in three places in the text — in Chapter 9 on corporation law, in Chapter 13 on federal securities law, and in the Epilogue on power.

The antitrust material in Chapters 10 and 11 is substantially shortened and simplified, and a pronounced emphasis on antitrust policy supplants technical explanations of the rules that have fallen from attention and use. In a lengthy excerpt from a law review article, well-known authors explore all of the arguments for and against lessening antitrust enforcement to promote corporate growth in order to compete more effectively in world markets. There are major new additions of material on RICO, the federal statutory law applied to management when there are allegations of white-collar crime. Chapter 14 on corporate social responsibility is restructured and contains almost all new material.

In Part Four a much expanded chapter on all of the recent developments in employment law focuses particularly on the cases based on intentional discrimination and contrasts these with cases based on apparently neutral standards. Chapter 16 on labor law includes new cases on public-sector bargaining, and the environmental law material in Chapter 17 includes two essays that confront the morality of exploiting natural resources the way we do. The final chapter on international business and law is mostly new and emphasizes international business transactions instead of public international law.

The final chapter, the "Epilogue," examines various forms of power in our economy and speculates about whether our law is structured to guide these aggregations of power, especially those forms that flow from organization, hierarchy, and the group mentality. We have used a variety of materials in this new chapter: the writings of sociologists, economists, psychologists, and organization theorists and short stories.

Like the first edition, the second edition still contains a mixture of the three types of material: The first is our own textual material that explains the law as we see it; the second is excerpts from appellate court decisions in which judges define and apply the rules of our legal system; and the third is a collection of the best writing we can find on law and public policy, including excerpts from law review articles, various opinion pieces from national journals (e.g., the *Harvard Business Review*), a classic parable from Kafka, and essays that address the problems of the structural biases in our legal system.

These sources are arranged to explore the three major themes of this text. The first theme is that the study of law should start with understanding the rules that form the basis of our legal system. Thus, the text is devoted to an explanation of the significant rules that are applied to our legal environment of business.

But the scope of this book goes far beyond a mere memorization of the basic rules. An understanding of the rules is used as a departure point for a discussion of the second major theme: an explicit treatment of the nature of our moral and ethical values and the methods of discourse that underpin and surround the application of these rules. Material on ethics is found in each chapter and in a variety of forms. In the first chapter we discuss many of the key ideas that comprise our set of ethical notions that define our major social and economic system of capitalism. In subsequent chapters we extend and apply these ethical notions or introduce new material on morals and ethics.

Our third theme is a dedication to the realistic presentation of the circumstances of our legal business environment. Rules and ethical ideas are not created and applied in a social vacuum; they are created and applied in response to very real circumstances. Some of these circumstances are identifiable as the underlying structures that shape our business society. The most powerful of these are the large business corporation and the federal government.

In conclusion, the material in this book represents our own view of legal education. We distinguish education from training, which is the process of narrowing your perspective to accomplish a specific task. A key to our view of education is to broaden your view of business life by presenting complex issues and questions for which there are no obvious or easy solutions. To be educated and to be successful in business, you must become comfortable with the ambiguous nature of our legal environment. This requires involvement in a process that relies more on perception, reflection, and disciplined discussion than on memorization. In many areas we explain and then challenge the legal and commercial patterns established by nothing more than the raw use of power or the conditioning of unthinking experience.

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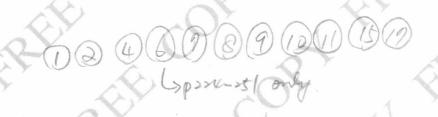
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