

Second Edition



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THE STRUCTURE OF THE LEGAL ENVIRONMENT

Law, Ethics, and Business



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.

We give special thanks to Professor Fran Zollers of Syracuse University for her painstaking review of this text and all of the revisions. Her thoroughness is always appreciated and particularly helpful. We would also like to thank the following reviewers for their helpful comments and suggestions:

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↳ p 226-251 only

Brief Contents

ONE *Introduction to the Study of the American Legal Environment 1*

- 1 Introduction to the Study of the Legal Environment of Business 3**
- 2 Foundations of the American Legal System 34**
- 3 Constitutional Law: Basic Concepts 73**
- 4 Constitutional Law: Issues in Business and Society 104**

TWO *Commercial Law: Traditional and Emerging Concepts 141*

- 5 Contract Law 143**
- 6 The Law of Agency, Partnerships and Related Business Associations 180**
- 7 Torts and Liability for Defective Products 223**
- 8 Government Regulation: The Policies and Politics of Consumer Protection 268**

THREE *Legal and Social Control of the Large Business Corporation 317*

- 9 Corporation Law 319**
- 10 Antitrust Law and Policy: Sherman Act Basics 348**
- 11 Antitrust Law and Policy: Mergers and Other Problems for a Competitive Economy 379**
- 12 Federal Securities Regulation: Introduction and Explanation of the Securities Act of 1933 404**
- 13 The Securities Exchange Act of 1934 and the Law of Continuing Corporate Disclosure 426**
- 14 Responsibility of Corporate Management 473**

FOUR *Classic and Emerging Issues in the Legal
Environment of Business* 513

- 15** Employment Law 515
- 16** Labor Law 560
- 17** Environmental Law 595
- 18** International Law and Business Transactions 634

EPILOGUE Economic and Social Power: An Overview of Law
and Its Limits in the American Economy 675

APPENDICES

- I** The Constitution of the United States of America 705
- II** The Sherman Act (Excerpts) 715
- III** The Clayton Act (Excerpts) 716
- IV** The Federal Trade Commission Act (Excerpts) 720
- V** The National Labor Relations Act (Excerpts) 721
- Index of Court Cases 727
- Subject Index 731

Contents

ONE *Introduction to the Study of the American Legal Environment* 1

I *Introduction to the Study of the Legal Environment of Business* 3

Introduction 3

The Nature of Legal Rules: The Appellate Case as Text 4

Regina v. Dudley and Stephens 5

Schools of Thought About Rules and the Scope of Law 9

The Naturalist School 9

The Legal Positivists or the Positive School 10

Legal Realism School 10

Historical School 11

Marxist Views 11

Critical Legal Studies 12

Nonstate Legal Systems 12

Schools of Thought: Conclusion 13

The Moral Point of View and Moral Reasoning 13

The Process of Moral Reasoning 15

An Example of Moral Reasoning: The Dilemma of Jean McGuire 16

Ethical Theories 18

Utilitarianism: A Consequentialist Theory 18

Deontological or Duty-Based Theories 20

Criticism of Major Ethical Theories 20

Ethical Theories and Justice 21

What Is Justice? 22

The Nature of Our Business Environment 23

McCoy: THE PARABLE OF THE SADHU 24

The Duty to Rescue 27

Conclusion 28

Endnotes 29

Review Questions and Problems 29

APPENDIX. JOHN RAWLS: A THEORY OF JUSTICE 31

2 *Foundations of the American Legal System* 34

Introduction 34

The Civil Law System 34

The Common Law System 35

BERMAN/GREINER: THE COMMON LAW SYSTEM — HISTORICAL
DEVELOPMENT OF THE DOCTRINE OF PRECEDENT 36

Rule Creation in the Legal Environment of Business 38

Legislative Rule Creation — Federal 38

Legislative Rule Creation — State 40

Judicial Rule Creation 40

Types of Rules 40

Criminal and Civil Rules Distinguished 41

A Note on the Substance of Criminal and Civil Rules 42

The American Judicial System 43

The Federal Court System 44

The State Court System 44

The Overlap Between the Two Court Systems 44

Images of Law and Legal Systems 45

KAFKA: BEFORE THE LAW 46

Lawyers and the Legal System 47

Judges and the Process of Judging 49

FRANK: THE JUDGING PROCESS AND THE JUDGE'S PERSONALITY 49

The Jury 52

Social Systems as Value Systems 53

TRAVEN: ASSEMBLY LINE 54

Conclusion 59

Endnotes 60

Review Questions and Problems 60

APPENDIX 1. An Explanation of the Civil Trial Process 61

APPENDIX 2. JOHN R. ALLISON: AN OVERVIEW OF ALTERNATIVE DISPUTE
RESOLUTION METHODS 67

3 ***Constitutional Law: Basic Concepts*** 73

- ④ Introduction 73
- The Declaration of Independence 74
- The Articles of Confederation 75
- The Constitution of the United States 76
 - Articles of the Constitution 77
 - The Bill of Rights 78
- Separation of Powers 79
 - Judicial Review of Legislative Acts 80
 - Marbury v. Madison* 81
 - Executive Powers and the Judiciary 82
 - Youngstown Sheet and Tube Co. v. Sawyer* 84
- Limitation of Federal and State Action by the Bill of Rights 85
 - The Tenth Amendment: Police Power Reserved to the States 86
 - An Overview: Fourteenth Amendment Limitations on the Police Power of States 86
 - An Overview: Fifth Amendment Limitations on the Power of the Federal Government 87
- ✓ Due Process of Law 87
 - Procedural Due Process 87
 - Goldberg v. Kelly* 88
 - Substantive Due Process 90
 - Lochner v. New York* 92
 - Duke Power Co. v. Carolina Environmental Study Group* 93
- Equal Protection of the Law 95
 - Minnesota v. Clover Leaf Creamery Company* 97
- Equal Protection and Racial Discrimination 98
 - Brown v. Board of Education* 99
- Strict Equal Protection: Fundamental Rights and Suspect Criteria 100
- Conclusion 101
- Endnotes 101
- Review Questions and Problems 103

4 ***Constitutional Law: Issues in Business and Society*** 104

- Introduction 104
- ✓ The Commerce Power 105
 - McCulloch v. Maryland* 105
 - Gibbons v. Ogden* 106
 - Heart of Atlanta Motel, Inc. v. United States* 107

The Balancing Act: Commerce Clause Problems When Congress
Has Not Acted 109

Southern Pacific Railroad v. Arizona 109

Huron Portland Cement Co. v. Detroit 110

American Can Company v. Oregon Liquor Control Commission 111

Taxing and Spending Powers 115

Federal Taxation 115

State Taxation 115

Commonwealth Edison Company v. Montana 116

The First Amendment 117

Freedom of Religion 118

Thornton v. Caldor 120

Freedom of Speech, Press, and Association 121

Corporate Speech and the First Amendment 122

*First National Bank of Boston v. Bellotti, Attorney General
of Massachusetts* 123

Consolidated Edison Company v. Public Service Commission of New York 125

Commercial Speech 126

*Central Hudson Gas & Electric Corporation v. Public
Service Commission of New York* 127

Limitations on Federal and State Government 129

Due Process 129

The Fourth Amendment and Administrative Searches 130

Marshall v. Barlow's Inc. 131

Corporate Criminal Prosecutions and the Fifth Amendment's Privilege
Against Self-Incrimination 133

Zoning and Eminent Domain 134

Penn Central Transportation Co. v. New York 135

Conclusion 137

Endnotes 137

Review Questions and Problems 139

**Commercial Law: Traditional
and Emerging Concepts 141**

5 Contract Law 143

8 Introduction 143

The Common Law of Contracts and the Uniform Commercial Code 144

The Concept of a Code 146

The Philosophical Perspective of the UCC 146

Introduction to Article 2 147

Common Law Offer and Acceptance: The Classical Approach 148

Introductory Note on the Common Law of Contracts 148

The "Objective Theory of Contracts" 148

How Long Are Offers Open? 149

Common Law Acceptances 149

Consideration 150

Article 2 of the UCC 152

A General Pattern of Commercial Conduct in the 1990s 152

Contract Formation Under Article 2 153

Article 2: Offers and Acceptances 154

KESSLER: CONTRACTS OF ADHESION — SOME THOUGHTS
ABOUT FREEDOM OF CONTRACT 155

The Battle of the Forms and Section 2-207 157

CBS, Inc. v. Auburn Plastics, Inc. 159

Promissory Estoppel 160

Hoffman v. Red Owl Stores, Inc. 160

The Statute of Frauds 163

The Unconscionable Contract or Clause 166

Concluding Remarks About Contract Law and Remedies for Breach 167

Expectation Interest 167

Reliance Interest 168

Restitution Interest 168

Texaco, Inc. v. Pennzoil Co. 169

Conclusion 171

Endnotes 171

Review Questions and Problems 172

APPENDIX 1. Some Reflections on the Nature of Social Science
and the Classical View of Contracts 173

APPENDIX 2. MACAULEY: NON-CONTRACTUAL RELATIONS IN BUSINESS:
A PRELIMINARY STUDY 177

chag 6

217 ~ 260

6 ***The Law of Agency, Partnerships and Related Business Associations*** 180

9

Introduction 180

Agency Law 181

Definition and Creation of an Agency Relationship 182

Creation of Agency by Contract 182

Creation of Agency by Ratification 183

Creation of Agency by Estoppel 183

Creation of Agency by Operation of Law 183

Liability of a Principal to a Third Party Because
of an Agent's Contracts 184

Actual Authority — Express or Implied 184

Circumstantial or Apparent Authority 185

Contract Liability of the Agent 186

Tort Liability of a Principal and Agent to Third Parties 187

Vicarious Liability of Principals 187

Massey v. Tube Art Display, Inc. 189

Summary of the Vicarious Liability of Principals 191

Agency Termination 192

Agency Coupled with an Interest 193

Termination by Consent 193

Termination of Events 193

Termination of the Agent's Authority As Perceived by Third Parties 194

Summary of Agency Law 194

Proprietorships 195

Partnerships 195

Characteristics of Partnerships 196

Partnerships Created by the Partners' Manifested Intent 197

Additional Features of a Partnership 198

Dissolution of the Partnership 200

Joint Ventures 200

Limited Partnerships 201

Limited Partnerships with Corporate General Partners 201

Cooperatives 203

Franchises 204

Employer-Employee Relationships and the Duties of Loyalty,
Due Care, and Good Faith 204

The Challenge to the Employment-at-Will Doctrine 207

Pugh v. See's Candies, Inc. 208

Whistleblowing 211

BOC: WHISTLEBLOWING AND PROFESSIONAL RESPONSIBILITY 212

Conclusion 218

Endnotes 219

Review Questions and Problems 219

7 ***Torts and Liability for Defective Products*** 223

Introduction 223

The Characteristics of the Common Law of Torts 224

Tort Law Is Judge-Made Law 224

A Focus on Injury	224
Tort Law Makes Public Policy	225
Factors Affecting Liability	225
Overview of Common Torts	226
Intentional Torts	226
Negligence	226
Absolute or Strict Liability	227
Damages	227
<i>Sterling v. Velsicol Chemical Corp.</i>	228
A Note on Malpractice	232
Liability for Defective Products	233
Consumer Law Defined	234
History of Products Liability Law	234
An Overview of Consumer Remedies	235
The Warranties of Article 2 of the UCC	235
Express Warranties	236
<i>Cipollone v. Liggett Group, Inc.</i>	237
Implied Warranties	238
Exclusion or Modification of Warranties and Limitation of Damages for Breach of Warranty	239
The Unconscionable Contract or Clause	240
<i>Henningsen v. Bloomfield Motors, Inc.</i>	241
Tort Theories of Products Liability	246
Advantages and Disadvantages of Tort Theories	246
Negligence	246
<i>Escola v. Coca-Cola Bottling Co. of Fresno</i>	247
Strict Liability	249
<i>Escola v. Coca-Cola Bottling Co. of Fresno</i>	250
Defective and Unreasonably Dangerous Products	251
An Examination of Two Dangerous Products: Cigarettes and Handguns	253
<i>Kelley v. R. G. Industries, Inc.</i>	254
Fundamental Assumptions in the Law of Products Liability	257
Defenses to Products Liability Claims	258
Plaintiff's Misuse of the Product	258
The "State of the Art" Defense	259
Special Problems in Products Liability Law	259
Mass Tort Litigation	259
<i>Sindell v. Abbott Laboratories</i>	260
Alternatives to Court Trials	262
Proposed Federal Legislation to Govern Products Liability Cases	263

Conclusion 265

Endnotes 266

Review Questions and Problems 266

8

***Government Regulation: The Policies and Politics of Consumer Protection* 268**

Introduction 268

The Origins of the Adversarial Relationship: Business vs. Government 268

Reasons for Government Regulation in the American Economy 270

Cost-Benefit Analysis in Government Regulation 274

Is Regulation Always Inefficient? 275

The Administrative Process of Government Regulation 276

BISNOW: CONGRESS: AN INSIDER'S LOOK AT THE MESS
ON CAPITOL HILL 277

Administrative Law 279

Legislative Rule Making by Regulatory Agencies 279

Adjudicatory Policy Making and the Right to Be Heard 281

Informal Administrative Activity and the Exercise of Discretion 282

The Work of Four Administrative Agencies 285

Consumer Product Safety Legislation 285

The Consumer Product Safety Act of 1972 287

Southland Mower Company v. Consumer Product Safety Commission 288

Motor Vehicle Safety Legislation 290

Motor Vehicle Manufacturers Association v. State Farm Mutual 292

Food and Drug Regulation 295

McDaniel v. McNeil Laboratories 296

The Federal Trade Commission 298

Unfair and Deceptive Trade Practices 299

Warner-Lambert Co. v. FTC 300

The Magnuson-Moss Warranty-Federal Trade Commission
Improvement Act 303

State Legislation on Unfair and Deceptive Trade Practices 304

Recent Federal and State Consumer Protection Legislation — Credit 305

The Consumer Credit Protection Act 305

The Fair Credit Reporting Act 306

The Equal Credit Opportunity Act 306

Consumer Protection Against Credit Abuses at the State Level 307

Conclusion 307

Endnotes 308

Review Questions and Problems 309

APPENDIX. REICH: TOWARD A NEW CONSUMER PROTECTION 311