



# THE LEGAL ENVIRONMENT OF BUSINESS

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*Happy is the one who finds wisdom,  
the one who gains understanding;  
For its fruits are better than silver,  
its yield better than fine gold.  
It is more precious than rubies;  
No treasure can match it.*

—PROVERBS 3: 13–15

*This book is dedicated with affection  
to my mother, father, wife, and son.*

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# Preface

The foremost goal of this book is to provide a clear and comprehensive introduction to the nature and functions of our legal system and its importance to manager-citizens. Many years ago, a law-school expert on civil procedure wrote: "In order to achieve its final end, legal education must be not only intellectual but moral and practical as well. It must be intellectual in the sense that it must seek to impart to its students the theoretical bases of the tasks of the lawyer and to develop in them good intellectual habits. It must be moral in the sense that it must try to develop their prudence and their justice. It must be practical in the sense that it must give them practice in the performance of lawyers' arts."<sup>1</sup> Although this book is designed for a first course for managers rather than lawyers, I hold to the belief that it should embody these same intellectual, moral, and practical components.

**Intellectual Base.** I have made a great effort to present legal concepts as clearly as possible. To this end major concepts are supplemented with numerous examples. Each chapter contains at least four major case excerpts which provide an opportunity for students to develop their critical thinking and reasoning skills. Major concepts are placed in their historical and contemporary context, for it is most important that students know more than just what the law is today. Students must be able to think about what the law ought to be, how it might change in the years ahead, and how these changes will affect their lives. Further, they should recognize that as intelligent, informed manager-citizens they can have a voice in molding law and public policy.

**Moral Base.** The American Assembly of Collegiate Schools of Business (AACSB) is the accrediting agency for schools of business and management in the United States. Accreditation standards set by the AACSB "have evolved to meet the contemporary needs for business, professions, government, and graduate and professional schools so that students who study management have the educational background to effectively serve society."

One set of standards addresses the curriculum. For those who teach law courses, a curriculum guideline of particular importance requires that all students have "a background of the economic and legal environment as it pertains to profit and nonprofit organizations along with ethical considerations and social and political influences as they affect such organizations." This book includes ethical and

<sup>1</sup> J. Michael, "The Elements of Legal Controversy: An Introduction to the Study of Adjective Law," quoted in Soia Mentshikoff and Irwin P. Stotzky, *The Theory and Craft of American Law* (Matthew Bender, 1981), p. 263.



social considerations along with legal concepts, not only to meet the AACSB standards but to help promote a better understanding of the importance of ethics and social responsibility in the world in which we live. This book is not just about law; it is also about justice, morality, and individual rights. A separate chapter early in the book introduces social and ethical concepts, which are then integrated throughout the text.

**Practical Base.** One outcome of the legal environment course is to assure that students understand legal issues in a way that will be useful to their lives as managers. An understanding of the legal environment of business is a necessary component of successful management practice.

What legal issues will managers confront in their lifetimes? Financiers need to know about securities law. Accountants will face issues involving contracts. Human resources managers will face issues of labor standards and labor relations. Marketing professionals will face copyrights, product liability, and the like.

As students climb the managerial ranks, each of these subjects will become more important. Indeed, an understanding of how the specific subject areas integrate with one another is essential even at the highest levels of management. The sole proprietor of a manufacturing firm, for example, might need to know what effect changing the business to a partnership or corporation would have on his or her life and on the health of the organization. A grounding in the legal environment of business will help.

## ***STRUCTURE OF THE TEXT***

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This book is written for readers who have had little or no prior exposure to legal studies. That assumption has influenced its organization and content throughout.

### **Part 1: The Nature of Law and the U.S. Legal System**

Chapters 1 and 2 explain the concept of law, its functions and sources, and its relationship to ethics. Chapters 3, 4, 5, and 6 provide the context for the legal issues managers face. They introduce the content of our Constitution and explain how it provides a framework for our government. They look at the structure of the federal and state court systems and examine how disputes are resolved there. They next turn to other systems for dispute resolution, including arbitration and mediation. Finally, they examine the workings of the “fourth branch of government,” our administrative agencies, in some detail.

Part 1 thus provides a systematic overview of the basic parts of the U.S. legal system. A special effort has been made to illustrate these basics with examples drawn from the world of management. With this basic foundation in place, the student is in an excellent position to concentrate on the public and private laws that affect business. These laws are the subject of the balance of the text.

## **Part 2: Organizing to Do Business**

Almost every student will work for an organization, and each organization has a legal and managerial form. Chapter 7 begins with a brief introduction to agency law as it applies to the three basic organizational forms designed to provide a structure for doing business. The sole proprietorship, the partnership, and the corporation are then the subject of the bulk of the chapter. An entire chapter (8) is devoted to securities regulation, a subject of importance not just to future financiers and accountants but to entrepreneurs. A basic explanation of the 1933 and 1934 acts is followed by a discussion of the ramifications of insider trading.

## **Part 3: Regulating Private Business Conduct and Crime**

Contracts and torts share the bond of being largely private law and being rooted in the common law tradition. Product liability has its origins in contract and tort law. Separate chapters on these three related subjects begin Part 3, and define the businessperson's private relations with other members of the legal environment. Chapter 12, on business crime, defines the responsibilities of the individual to society as a whole. Unfortunately, criminal law is an ever increasing part of the world of management. The chapter attempts to develop a realistic picture of the world of criminal law and in particular the world of corporate crime.

## **Part 4: Employment and the Law**

Many students are interested in a career in human resources management. Three chapters cover critical areas of the employment relationship. First, we look at the union movement in the United States as an introduction to a discussion of the legal framework for collective bargaining. A labor relations executive cannot practice his or her craft without understanding this material. The next chapter deals with the ever growing number of laws regulating labor standards. Workers' compensation, minimum wage laws, and the problems of occupational disease are among the subjects treated. A separate chapter on equal employment opportunity and affirmative action completes this part.

## **Part 5: The Legal Environment of the Marketplace**

Antitrust has been an area of most rapid change in the late 1970's and 1980's. The very goals of antitrust legislation are being questioned, and enforcement reflects changing values, attitudes, and beliefs. Chapters 16 through 18 present the student with both the historical and current picture of antitrust legislation.

Antitrust enforcement involves the Federal Trade Commission, which is also charged with regulating trade practices. Chapter 18 deals with this aspect of the work of the FTC. Some monopolies are deliberately granted by the government in the form of patents, copyrights, and trademarks. The regulation of this intellectual property is the subject of the final part of Chapter 18.

The work of the FTC in debtor-creditor relations provides a bridge into the world of credit management, credit abuse, and bankruptcy. Chapter 19 discusses both personal and business bankruptcy.

Environmental protection issues are everyone's concern. Business leaders and civic leaders alike struggle to find ways to help our economy grow without sacrificing our treasured natural resources. Chapter 20 describes the current state of legislation. However, we first build a careful base of understanding through an overview of basic property law, which students need in order to understand the issues of environmental protection.

The book concludes with a look at international business law. Students can no longer assume that a knowledge of U.S. business law and management practice is sufficient. They will be part of a world of multinational exchange. Chapter 21 looks at how other countries' businesses become involved in our market and how differences in law are resolved. Specifically covered are the Foreign Corrupt Practices Act, the act of state doctrine, licensing, and joint venturing.

## ***SPECIAL FEATURES***

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***Order of the Chapters.*** I have attempted to group the chapters in a way that coincides with certain logical pedagogical concerns. However, each instructor may wish to regroup them to fit the particular needs of his or her own educational philosophy. Certain chapters obviously need to be handled together; but to the extent possible the chapters have been written to be independent of each other. Numerous cross references facilitate the use of chapters in differing orders, and an extensive glossary assures that any unfamiliar terms encountered in a chapter read out of its original sequence will be easily accessible to students.

***Cases.*** One hundred cases have been carefully selected for their pertinence to a major point in a chapter, for their intrinsic interest, and for their usefulness in exemplifying the process of legal reasoning. With that in mind, I have let the cases speak for themselves, eschewing headnotes or summaries. The resulting cases are somewhat longer than those sometimes found in legal environment texts, but no harder. In keeping with my goal of showing the background of current law I have included some classic cases among the hundred, but most of the cases excerpted are recent.

***Chapter Summaries.*** Each chapter has a carefully written summary that reviews the most important ideas and concepts contained in the chapter.

***Glossary.*** Each new term is highlighted and clearly defined in the text as it appears. Since many basic terms are important in chapters other than those in which they first appear, all such terms are glossed at the end of the book.



**Bibliography.** The sources on which I drew in the writing of this book are listed by chapter at the end of the book. Students may find this list useful in the preparation of research papers or as a guide to further information.

**Case Problems.** At the end of each chapter 10 case problems give students an opportunity to apply the information contained within the chapter. Many of these cases are hypothetical; most of the actual cases have been disguised. Citations for the actual cases are given at the end of each problem, however.

**Supplements.** An excellent instructor's manual has been prepared under the general direction of Professor Linda K. Enghagen of the University of Massachusetts at Amherst. It contains teaching suggestions and lecture outlines prepared by Professor Enghagen, case briefs prepared by Kenneth Rutman, and solutions to the case problems, additional problems, and additional material on ethics prepared by Professor Dawn D. Bennett-Alexander of the University of Georgia.

A test item file available in both book and diskette form contains true-false, matching, multiple choice, and short essay questions. It was prepared by Professor Enghagen.

A study guide and workbook is also available.

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GEORGE W. SPIRO, J.D.  
Professor of Law and Management

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