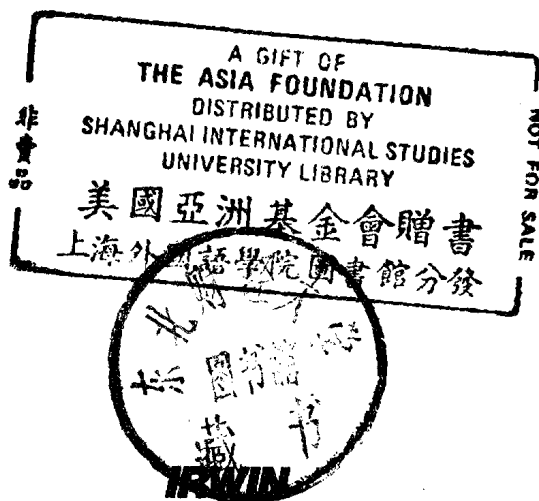

THE LEGAL ENVIRONMENT OF BUSINESS

F. William McCarty
Western Michigan University

John W. Bagby
Pennsylvania State University



Homewood, IL 60430
Boston, MA 02116

*To Laura and Carolyn McCarty, Chris, David, and
Dianne Putti, and Julia Marie Bagby.*

© RICHARD D. IRWIN, INC., 1990

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without the prior written permission of the publisher.

Sponsoring editor: *Frank S. Burrows, Jr.*
Developmental editor: *Joanne White*
Project editor: *Karen J. Murphy*
Production manager: *Irene H. Sotiroff*
Designer: *Diane Beasley Design*
Artist: *Precision Graphics*
Compositor: *Better Graphics, Inc.*
Typeface: *10/12 Berkeley Old Style Medium*
Printer: *R. R. Donnelley & Sons Company*

Library of Congress Cataloging-in-Publication Data

McCarty, F. William. 1941-
The legal environment of business / F. William McCarty, John W.
Bagby.
p. cm.
ISBN 0-256-08482-3
1. Industrial laws and legislation—United States. 2. Commercial
law—United States. 3. Law—United States. I. Bagby, John W.
II. Title.
KF1600.M38 1990
346.73'07—dc20
(347.3067)

89-35296
CIP

Printed in the United States of America

1 2 3 4 5 6 7 8 9 0 DO 7 6 5 4 3 2 1 0

PREFACE



Legal concerns affect every American business, whether a small firm or a multinational enterprise. Today's academic, professional, and general business publications frequently address these concerns with discussions of such issues as insider trading, price fixing, product liability, employment discrimination regulations, alternative dispute resolution methods, and international business ventures.

Clearly, understanding the legal environment in which a business firm operates has become vital for the informed manager and executive who will conduct business in the 1990's and beyond. Citizens and business students need to know the basic legal concepts and the legal processes affecting individual and corporate activities. Accordingly, this text is intended to prepare the student for the business environment with the crucial understanding of legal principles and procedures.

The approach of this text is based on our belief that blending private and public law reflects the legal environment of business better than other approaches. Because the law is not static, students need to understand the dynamic nature of legal concepts. Thus, each chapter of this text features an introductory segment which summarizes past, present, and future developments related to the chapter's legal topic. Further, the integration of case summaries and textual comments effectively presents general concepts and specific applications of legal principles to individual situations.

COVERAGE

We have designed this text to respond to the accreditation standards of the American Assembly of the Collegiate Schools of Business (AACSB). The AACSB standards define the common body of knowledge for business students as including:

... a background of the economic and legal environment as it pertains to profit and/or nonprofit organizations, along with ethical considerations and social and political influences as they affect such organizations.

Thus, this text provides both sufficient historical information for the student to comprehend today's legal environment and also ethical analyses for the student to reflect on ethical problems encountered in the business field.

The coverage of ethics begins in the introductory chapter, which provides an approach to considering ethical dilemmas. The ethics units at the end of each part

offer an opportunity to reflect on ethical problems related to the specific legal topics being reviewed. Finally, the text concludes with an integrative chapter on the social responsibility of business.

This is a comprehensive text. We have sought to provide adequate coverage of the topics which most legal environment of business or business law courses seek to cover. In addition, we have included more topics than many instructors may choose to cover during a typical semester. For example, not every professor will use all the chapters, the end of chapter problems, the case questions, or the ethical analysis units. The individual professor is best able to determine the material which is most important to students at a particular college or university, so we have designed the text to give instructors this flexibility.

TEXT ORGANIZATION

This text is organized in six parts, based on six concepts important to understanding the legal environment of the modern, competitive business firm. Each part concludes with an Ethical Analysis unit and an ethical problem derived from each chapter.

Part 1 presents an overview of the American legal system, focusing on topics such as distinct characteristics of the American legal system, dispute resolution, and constitutional law.

Part 2 focuses on the private law concerns of property, contract, and tort law. Property law is unique in the American legal environment and in countries with a history of economic capitalism and political democracy. The twin foundations of contract and tort law are basic to an understanding of U.S. private law. Both contract and tort law have a profound effect on the obligations and liabilities of American business firms.

Part 3 addresses the legal problems faced by the firm. The United States offers more legal protection for the consumer than any other country in the world. Firms with active plants, offices, and agents in the United States must be aware of special product liability and consumer financing laws. These laws seek to enhance the position of the consumer vis-a-vis the seller of goods or services.

Part 4 discusses laws affecting the organization of business entities. Business firms can use a variety of organizational forms, such as corporations, limited partnerships, partnerships, "S" corporations, and sole proprietorships. Part 4 explores these options as well as the securities regulation laws that affect the firm's method of raising capital.

Part 5 concerns U.S. antitrust laws, which provide a model for many other countries. Although the Reagan years saw fewer antitrust cases in the nation's courts, antitrust laws still occupy a special place in the American legal environment. The severe consequences arising from an unfavorable antitrust case are likely to be an important consideration for the business executive of the 21st century.

Part 6 covers important topics in employee relations. Although union affiliation

has decreased in recent years, management-union practices and agreements often establish the framework for nonunion firms. Whereas some texts combine the topics of employee safety and employment opportunities with other topics, we have given each of these areas special attention as a separate chapter.

Finally, Part 7 focuses on the important topics of environmental law, international business law, and the social responsibility of business. We elected to present these topics at the end of the text because we feel they are integrative with some of the topics considered in earlier chapters. International business, for example, is best reviewed after considering numerous special topics within the domestic environment. Likewise, the social responsibility of business looks beyond the legal concerns of earlier chapters. We believe the introduction of business ethics in the first chapter and the review of its application at the end of each of the six parts of the text, combined with the concluding chapter, provides an excellent integration to this important topic.

CASE FEATURES

This text combines our analysis of important legal principles with extracts from court cases which apply these principles to specific situations. Each chapter includes three to seven cases which begin with a factual summary in the author's language so that the reader can easily understand the problem as viewed by the court. The remainder of each case includes substantial material edited in the language of the court. We have selected a combination of modern and classic cases to portray both a historical context for the development of law and the application of legal concepts to modern problems.

Because the law is subject to individual opinions and different philosophies, some dissenting opinions are given. They present contrasting legal views and offer the reader different approaches to specific problems. The case citations provide the reader with sufficient information for access to the full opinion. Several questions follow each case to ensure that the reader examines important ideas.

CHAPTER PEDAGOGY

As the introductory chapter indicates, we use the SQ3R study method throughout this text. This method emphasizes the survey, questioning, reading, reciting, and review of material.

Each chapter begins with several survey segments. First, the "Key Concepts" section opens each chapter to immediately identify which topics are most important. Second, the "Introduction . . . Past, Present, Future" offers a historical, political, economic, and social perspective. Finally, the "OVERVIEW" provides a prose outline which surveys topics addressed by the text and cases of the chapter.

Several short but pertinent questions address important expressed or implied concerns from each court opinion. Boxed presentations and figures offer relevant information that emerges from the text and case presentations.

Each chapter concludes with a list of key terms and a problem review section which presents a mixture of actual cases, hypothetical problems, and essay questions addressing chapter subjects. This concluding section offers an opportunity to review the terms, text, and case materials.

ADDITIONAL FEATURES

The text includes both a summary and detailed table of contents to enhance the survey features of the text. The glossary, which is more detailed than those found in most legal environment texts, defines each of the bold terms noted in the text so that the reader should need to consult law dictionaries or other sources only rarely. The appendixes present important constitutional and statutory laws which are relevant to the legal environment of business.

SUPPLEMENTS

The *Study Guide for Students* provides a summary of important chapter topics, a brief of cases, and additional objective and essay problems for review. The *Instructor's Manual* contains pertinent information for professors adopting the text. Transparency masters and a computerized test bank are also available to enhance the presentation of material and to aid in preparing quizzes or examinations.

Both the *Study Guide* and the *Instructor's Manual* for the text have been prepared by James Jurinski of the University of Portland. Review problems at the end of each chapter were drafted by Nancy Reeves Mansfield of Georgia State University.

ACKNOWLEDGMENTS

We benefitted from the collegial support received from faculty and administrators of the College of Business Administration at Pennsylvania State University and the Haworth College of Business at Western Michigan University.

In addition, the following reviewers offered valuable suggestions as they reviewed our draft manuscripts for the text:

Sandra Burns, *Arkansas State University*
Larry Clark, *Louisiana State University*
Michael Engber, *Ball State University*

Gamewell Gantt, *Idaho State University*
James Hill, *Central Michigan University*
Susan Jarvis, *Pan American University*
Paul Lansing, *University of Iowa*
Nancy Mansfield, *Georgia State University*
Keith Maxwell, *University of Puget Sound*
John Norwood, *University of Arkansas*
Sheelwant Pawar, *Idaho State University*
Daniel Reynolds, *Middle Tennessee State University*
Burke T. Ward, *Villanova University*
William Wines, *Boise State University*
Larry Zacharias, *University of Massachusetts at Amherst*

Special thanks goes to Keith Nave of BPI, who originally acquired this project and helped in its initial development, and to Frank Burrows, who picked up the project at Richard D. Irwin, Inc., and shepherded it through to completion. We are also indebted to others at Irwin who made numerous worthwhile suggestions to enhance our text:

Joanne White
Gail Korosa
Irene Sotiroff
Karen Murphy
Maureen McCutcheon

We are indebted to the valuable word processing talents of Judy Sartore of Penn State University and Luann Bigelow at Western Michigan University for their assistance in the preparation of the manuscript.

Finally, our appreciation of the support, enthusiasm, and encouragement of two very special people needs acknowledgment: Many thanks to Alma C. McCarty and Robin Sue Bagby.

F. William McCarty
John W. Bagby

BRIEF CONTENTS



List of Cases

Introduction

The Study of Law and the Legal Environment of Business, 1

Part 1

The American Legal System, 11

Chapter 1

Law and the Legal System, 12

Chapter 2

The American Legal System, 36

Chapter 3

Dispute Resolution, 66

Chapter 4

Constitutional Law, 100

Chapter 5

Administrative Law, 138

Ethical Analysis

Ethical Dilemmas in the American Legal System, 169

Part 2

Private Law, 177

Chapter 6

Property, 178

Chapter 7

Contract Law, 212

Chapter 8

Torts, 260

Ethical Analysis

Ethical Dilemmas in Private Law, 295

Part 3

Consumer Law, 301

Chapter 9

Product Liability, 302

Chapter 10

Advertising and Financing Regulation, 346

Ethical Analysis

Ethical Dilemmas in Consumer Protection, 382

Part 4

Business Organizations, 387

Chapter 11

Agency, 388

Chapter 12

Business Organizations, 414

Chapter 13

Securities Regulations, 446

Ethical Analysis

Ethical Dilemmas in Business Organizations, 492

Part 5

Antitrust Law, 497

Chapter 14

Monopolies and Mergers, 498

Chapter 15

Restraints of Trade, Price Discrimination, and Unfair Trade Practices, 536

Ethical Analysis

Ethical Analysis in Antitrust, 577

◆
Part 6
Labor Law, 581

- Chapter 16**
Labor-Management Relations: Regulation of Management, 582
- Chapter 17**
Labor-Management Relations: Regulation of Collective Bargaining and Unions, 612
- Chapter 18**
Employee Standards, Compensation, and Safety, 642
- Chapter 19**
Equal Employment Opportunities, 670
- Ethical Analysis**
Ethical Dilemmas in Employee Relations, 699

◆
Part 7
Government Regulation and Social Policies, 703

- Chapter 20**
Environmental Law, 704
- Chapter 21**
The Legal Environment for International Business, 728
- Chapter 22**
The Social Responsibility of Business, 762

Appendix A
U.S. Constitution, A-1

Appendix B
Securities Act of 1933, A-12

Appendix C
Securities Exchange Act of 1934, A-14

Appendix D
The Sherman Act, A-16

Appendix E
The Clayton Act, A-17

Appendix F
The FTC Act, A-19

Appendix G
The Robinson-Patman Act, A-20

Appendix H
The National Labor Relations Act, A-22

Appendix I
Title VII of CRA, A-29

Glossary, G-1

Index, I-1

DETAILED CONTENTS



List of Cases, xxv

Introduction

The Study of Law and the Legal Environment of Business, 1

Why Study Law? 2

What Is the Legal Environment of Business?, 2

How Do You Study Law?, 3

Reading the Text Material, 3

Reading the Case Opinions, 4

Reading a Case and Writing a Brief, 4

A Sample Case, 5

Items to Include in a Case Brief, 7

Case Title and Citation, 7

Facts, 7

Issue, 8

Holding, 8

Rationale, 8

Dissent, 8

Comment and Rule of Law, 8

A Sample Brief, 9

Key Terms, 10

Part I

The American Legal System, 11

Chapter 1

Law and the Legal System, 12

Key Concepts, 12

Introduction . . . Past, Present, Future, 13

Overview, 13

What Is Law?, 14

The Nature of Law and Legal Theories, 15

The Natural Law Theory, 15

Legal Positivism Theory, 16

Sociological Theory, 18

Legal Realism Theory, 19

Law and Ethics, 19

What Is Ethics? 20

Ethics and Business Decisions, 21

Business Ethics, 21

The Legal System, 22

Components of a Legal System, 22

Common Law Legal System, 23

Civil Law Legal System, 23

Differences in Civil and Common Law Legal Systems, 24

Legal Reasoning and the Legal System, 24

Other Legal Systems, 25

Tasks of a Legal System, 25

To Maintain Order, 26

To Provide a Forum for the Resolution of Disputes, 26

Other Tasks, 26

Classification of Law, 27

Substantive Law and Procedural Law, 27

Criminal Law and Civil Law, 27

Common Law and Statutory Law, 29

Law and Equity, 30

Public and Private Law, 30

Summary, 32

Key Terms, 33

Chapter Exercises, 33

Chapter 2

The American Legal System, 36

Key Concepts, 36

Introduction . . . Past, Present, Future, 37

Overview, 37

Significant Characteristics, 38

Federalism, 38

Federal Supremacy, 39

Separation of Powers, 42

The Legislative Branch, 47	
Composition of the Federal Legislature, 47	
The Legislative Process, 47	
Relationship between Federal and State Legislation, 48	
The Executive Branch, 48	
Lawmaking by the Executive Branch, 49	
Administrative Agencies and the Executive Branch, 49	
The Judicial Branch, 50	
State Judicial Systems, 50	
Federal Judicial System, 50	
How Courts Make Law, 50	
Summary, 64	
Key Terms, 64	
Chapter Exercises, 65	
Chapter 3	
Dispute Resolution, 66	
Key Concepts, 66	
Introduction . . . Past, Present, Future, 67	
Overview, 67	
Litigation in the American Legal System, 68	
Criminal and Civil Litigation, 68	
The Adversarial Principle, 68	
The Civil Litigation Process, 71	
Prelitigation Concerns, 72	
Pleadings Stage, 72	
Pretrial Activities, 74	
Trial Procedures, 76	
Postjudgment Concerns, 78	
Appellate Process, 78	
Participants in Civil Litigation, 79	
The Trial Judge, 79	
The Jury, 80	
The Attorney, 84	
The Litigating Parties, 89	
Alternative Dispute Resolution Methods, 89	
The Small Claims Court, 90	
Administrative Agencies, 91	
Arbitration, 91	
Mediation, 94	
Other Alternatives, 94	
Summary, 98	
Key Terms, 98	
Chapter Exercises, 99	

Chapter 4	
Constitutional Law, 100	
Key Concepts, 100	
Introduction . . . Past, Present, Future, 101	
Overview, 101	
The Basis for Constitutional Powers, 102	
The Historical Perspective, 102	
The Powers of Government, 104	
Judicial Review, 107	
Specific Powers of Government, 109	
Commerce Clause, 109	
Contract Clause, 115	
Full Faith and Credit Clause, 118	
Privileges and Immunities Clause, 119	
Constitutional Rights of Business and Individuals, 119	
The First Amendment, 120	
The 5th and 14th Amendments, 126	
The Fourth Amendment, 132	
Summary, 134	
Key Terms, 135	
Chapter Exercises, 135	
Chapter 5	
Administrative Law, 138	
Key Concepts, 138	
Introduction . . . Past, Present, Future, 139	
Overview, 139	
Administrative Agencies: General Concerns, 140	
Creation of Administrative Agencies, 140	
Role of Administrative Agencies, 141	
Delegation of Authority to Administrative Agencies, 142	
Controls over Administrative Agencies, 143	
Functions of Administrative Agencies, 147	
Administrative Rulemaking, 148	
Rulemaking Power, 148	
Imposing Procedural Requirements, 148	
Administrative Adjudication, 151	
Informal Administrative Activities, 154	
General Activities, 154	
Information-Gathering Activities, 154	
Inspections, 154	

Judicial Review of Administrative Activities, 156
 Determining Whether a Court Should Review an Agency Decision, 157
 Scope of Review, 158
 Review of Agency Adjudicatory Activities, 161
 Business Interaction with an Administrative Agency, 164
 Information and Influence, 164
 Compliance Considerations, 165
 Structural Concerns, 166
 Commentary, 166
 Summary, 166
 Key Terms, 167
 Chapter Exercises, 167

Ethical Analysis

Ethical Dilemmas in the American Legal System, 169

The Ethical Context of Business Decisions, 169

Ethical Theories, 169

Law and Justice as Basic Ethical Standards, 170

Business Ethics, 170

Ethical Dilemmas in Business, 171

Ethical Dilemmas in the American Legal System, 171

Ethical Questions, 173

Part 2

Private Law, 177

Chapter 6

Property, 178

Key Concepts, 178

Introduction . . . Past, Present, Future, 179

Overview, 180

Classification of Property, 180

Real Property, 181

Personal Property, 182

Intellectual Property, 184

Ownership and Transfer of Personal Property, 194

Bailments, 194

Transfer of Title, 194

Ownership of Real Property, 195

Possessory Interests, 195

Nonpossessory Interests, 198

Undivided Interests, 199

Sale or Transfer of Real Property, 200

The Sales Agreement, 200

The Legal Documents, 200

Legal Control of Real Property, 203

Nuisance Laws, 204

Zoning and Development Restrictions, 207

Enforcement of Private Restrictions, 207

The Power of Eminent Domain, 209

Summary, 210

Key Terms, 211

Chapter Exercises, 211

Chapter 7

Contract Law, 212

Key Concepts, 212

Introduction . . . Past, Present, Future, 213

Sources of Modern Contract Law, 213

Trends in Contract Law, 213

Overview, 214

Importance of Contract Law, 214

Classification of Contracts, 215

Mutual Assent: The Agreement, 216

Offer, 217

Acceptance, 218

Termination of Offers, 219

Auctions, 225

The Parties' Communications, 225

Consideration, 226

Tests for the Presence of Consideration, 226

Mutuality of Obligation, 227

Unenforceable Promises: Consideration Is Lacking, 229

Promises Enforceable without Consideration, 230

Capacity, 232

Voidability of an Incompetent's Contracts, 232

Necessaries, 233

Reality of Consent and the Defenses to Formation, 233

Misrepresentation and Fraud, 234

Mistake, 234

Duress, 236

Illegality, 239
 Types of Illegality, 239
 Written Contracts, 243
 Sales of Land, 244
 Guarantee Contracts, 244
 Contracts Incapable of Performance within One Year, 244
 Sales of Goods, 245
 Interpretation of Contracts, 245
 Parol Evidence Rule, 246
 Title and Risk of Loss, 248
 Third-Party Rights, 249
 Third-Party Beneficiaries, 249
 Incidental Beneficiaries, 250
 Assignment and Delegation, 250
 Contract Performance and Remedies for Breach, 254
 Discharge by Performance, 254
 Impossibility of Performance, 254
 Force Majeure Clauses, 255
 Damages, 255
 Specific Performance, 256
 UCC Remedies, 256
 Summary, 256
 Key Terms, 257
 Chapter Exercises, 258

Chapter 8
Torts, 260
 Key Concepts, 260
 Introduction . . . Past, Present, Future, 261
 Overview, 261
 Business and Vicarious Liability, 262
 Vicarious Liability: The Agent and the Independent Contractor, 262
 Vicarious Liability and Individual Direct Liability, 262
 Classification of Torts and Business Activities, 263
 Tort Law and Criminal Law, 263
 Tort Law and Contract Law, 264
 Types of Torts, 265
 Intentional Torts, 266
 General Requirements, 266

Intentional Torts that Interfere with Personal Rights, 267
 Intentional Torts that Interfere with Property Rights, 272
 Intentional Torts that Interfere with Economic Relations, 273
 Negligent Torts, 276
 General Requirements, 277
 Defenses to Negligent Torts, 284
 Strict Liability Torts, 288
 Requirements, 288
 Defenses, 288
 Policies, 289
 Tort Law Reform, 289
 The Future of Tort Law, 289
 Joint and Several Liability, 290
 Damage Caps, 290
 Other Tort Reforms, 291
 Summary, 292
 Key Terms, 292
 Chapter Exercises, 293

Ethical Analysis
Ethical Dilemmas in Private Law, 295
 Ethical Analysis of Property Rights, 295
 Trade Secrets and Industrial Espionage, 296
 Entertainment and Computer Software, 296
 Ethical Analysis of Contract Rights, 297
 Ethical Analysis of Torts, 298
 Ethical Questions, 298

◆

Part 3

Consumer Law, 301

Chapter 9
Product Liability, 302
 Key Concepts, 302
 Introduction . . . Past, Present, Future, 303
 Limitations of Product Liability Suits, 305
 Overview, 307
 The Product Liability Theories, 307
 Warranty Liability, 307

- Negligence*, 317
- Strict Liability*, 318
- Misrepresentation*, 319
- Criminal Product Liability*, 321
- The Product Liability Action**, 321
 - Parties*, 321
 - Defectiveness*, 325
 - Defenses to Product Liability Claims*, 333
- Administrative Product Safety**, 336
 - Food Safety and Purity*, 336
 - Drug Safety*, 336
 - Consumer Product Safety*, 337
 - Motor Vehicle Safety*, 337
 - Other Safety Regulations*, 338
 - The Administrative Remedies*, 338
 - Interactions between Administrative Product Safety and Product Liability*, 340
- The Product Liability Crisis: Legislative Trends**, 341
 - Product Liability Insurance Crisis*, 341
 - Recovery Limits*, 341
 - Expansion of Affirmative Defenses*, 342
- Summary**, 342
- Key Terms**, 343
- Chapter Exercises**, 344

Chapter 10

Advertising and Financing Regulation, 346

Key Concepts, 346

Introduction . . . Past, Present, Future, 347

Overview, 347

Role and Powers of the Federal Trade

Commission, 348

FTC Investigations, 348

Regulation of Advertising, 349

Consumer Protection Regulations, 356

Consumer Financing, 358

Consumer Credit Protection Act, 358

Fair Credit Billing, 363

Electronic Funds Transfer, 366

Debt Collection, 366

Usury Laws, 368

Secured Financing, 368

Bankruptcy, 369

Straight Bankruptcy, 370

The Bankruptcy Process, 370

Alternatives to Liquidation, 373

Lender Liability, 377

Lender Imposes Managerial Decisions, 377

Good Faith, Fair Dealing, and Fiduciary Duty, 378

The Impact of Lender Liability, 378

Summary, 378

Key Terms, 380

Chapter Exercises, 380

Ethical Analysis

Ethical Dilemmas in Consumer Protection, 382

Warranties and Products Liability, 382

Consumer Confusion about Warranties, 382

Consumer Ethical Responsibilities and Product Safety, 383

Risk-Benefit Analysis, 383

Unconscionability, 383

Overreaching in Advertising, 384

Creditor's Rights, 384

Bankruptcy, 385

Bankruptcy Reorganization by Solvent Corporations, 385

Ethical Questions, 385

Part 4

Business Organizations, 387

Chapter 11

Agency, 388

Key Concepts, 388

Introduction . . . Past, Present, Future, 389

Overview, 389

Creation and Termination of an Agency Relationship, 390

Creation of an Agency Relationship, 390

Termination of an Agency Relationship, 396

Duties Owed by Principal and Agent to Each Other, 397

Duties of the Agent to the Principal, 397

Duties Owed by the Principal to the Agent, 402

Agency Relationships and the Liability of the Principal toward Third Parties, 404

The Employer-Employee Relationship, 404

The Principal-Agent Relationship, 405

The Employer-Independent Contractor Relationship, 408

Summary, 411

Key Terms, 412

Chapter Exercises, 412

Chapter 12

Business Organizations, 414

Key Concepts, 414

Introduction . . . Past, Present, Future, 415

Overview, 416

The Proprietor Form of Business Organization, 416

Characteristics of a Proprietorship, 416

Creation of a Proprietorship, 418

The Partnership Form of Business Organization, 418

Characteristics of a Partnership, 418

Formation of a Partnership, 421

Partnerships Compared to Similar Entities, 421

The Roles of Partnership Participants, 422

Franchises and Business Organizations, 427

Distinctive Characteristics of a Franchise, 427

Franchise Legislation, 428

The Corporation Form of Business Organization, 428

The Role of the Corporation Today, 429

Characteristics of a Corporation, 429

Corporate Formation, 432

Types of Corporations, 432

Public and Private Corporations, 433

Profit and Nonprofit Corporations, 433

Publicly or Closely Held Corporations, 433

Professional and Nonprofessional Corporations, 434

Foreign and Domestic Corporations, 434

The Role of Corporate Participants, 435

Shareholder Rights, 435

Role of the Board of Directors, 437

Role of the Officers, 439

Comparison of Proprietorship, Partnership, and Corporation, 440

Taxation, 440

Liability, 441

Control, 441

Continuity, 442

Summary, 442

Key Terms, 443

Chapter Exercises, 443

Chapter 13

Securities Regulations, 446

Key Concepts, 446

Introduction . . . Past, Present, Future, 447

Overview, 447

The Primary Federal Securities Statutes, 448

Securities Act of 1933, 448

Securities Exchange Act of 1934, 448

Registration of Securities, 448

Registration Statement and Prospectus, 450

The Registration Process, 452

Shelf Registration, 453

What Is a "Security"? 453

Exemptions from 1933 Act Registration, 456

Resale Restrictions, 458

Securities Act Liabilities, 459

Insider Trading, 464

The Controversy over Insider Trading, 464

Short Swing Profits: Section 16(b), 464

Insider Trading under the Common Law and Rule 10b-5, 466

Insider Trading Sanctions Act of 1984, 473

Insider Trading and Securities Fraud Enforcement Act of 1988, 474

Proxy Solicitations and Tender Offers, 474

Proxy Solicitations, 474

Liability for Proxy Violations, 479

Tender Offers, 481

What Is a "Tender Offer"? 483

Mechanics of the Tender Offer, 483

Miscellaneous Securities Laws, 487

Racketeer Influenced and Corrupt Organizations, 488

Summary, 488

Key Terms, 489

Chapter Exercises, 490

Ethical Analysis

Ethical Dilemmas in Business

Organizations, 492

Fiduciary Duty and Agency Theory, 492

Fiduciary Duties of Agents, 492

Ethical Analysis of Agency, 493

Ethical Analysis of Corporate
Management, 493

Ethical Analysis of Securities Market
Problems, 494

Ethical Questions, 495

State Action, 510

Regulated Industries, 511

Professions and Professional Sports, 511

Monopolies, 512

Monopoly Power, 512

Relevant Market, 512

Monopolization, 516

Attempts to Monopolize, 519

Mergers, 520

Types of Mergers and Business Combinations, 520

Horizontal Merger Analysis, 523

Vertical Merger Analysis, 527

Conglomerate Merger Analysis, 529

Merger Defenses, 532

Merger Enforcement Priorities and Procedures, 533

Summary, 533

Key Terms, 534

Chapter Exercises, 535

Part 5

Antitrust Law, 497

Chapter 14

Monopolies and Mergers, 498

Key Concepts, 498

Introduction . . . Past, Present, Future, 499

Overview, 500

The Sherman Act, 501

The Clayton Act, 501

The Federal Trade Commission Act, 502

Additional Antitrust Laws, 503

Trusts and Monopolies, 503

Characteristics of a Trust, 503

Market Structures, 504

Economic Analysis and Antitrust

Enforcement, 505

Approaches to Antitrust Enforcement, 506

*The Harvard School versus the Chicago
School*, 507

Enforcement of Antitrust Law, 508

Criminal Penalties, 508

Civil Remedies, 509

Antitrust Exemptions, 509

Agricultural Cooperatives, 510

Labor Organizations, 510

Chapter 15

Restraints of Trade, Price Discrimination,
and Unfair Trade Practices, 536

Key Concepts, 536

Introduction . . . Past, Present, Future, 537

Overview, 537

Horizontal Combinations and Restraints of
Trade, 538

Rule of Reason, 538

Per Se Violations, 539

Proof of an Illegal Agreement or Combination, 544

Vertical Restraints of Trade, 546

Controversy over Vertical Restraints, 546

Vertical Price Restraint: Resale Price

Maintenance, 547

Vertical Nonprice Restraints, 552

Justice Department Vertical Restraint

Guidelines, 561

Price Discrimination, 561

Conditions Leading to Price Discrimination, 562

Proof of Price Discrimination, 562

Competitive Injuries from Price

Discrimination, 563

Price Discrimination Defenses, 568