

BUSINESS



L A W

AND THE LEGAL ENVIRONMENT

ANDERSON, FOX, & TWOMEY
COMPREHENSIVE VOLUME
FOURTEENTH EDITION

BUSINESS L A W AND THE LEGAL ENVIRONMENT

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PREFACE

Our focus in preparing this Fourteenth Edition of BUSINESS LAW AND THE LEGAL ENVIRONMENT continues to be to create a flexible teaching tool with universally desirable qualities that can be adapted to each instructor's personal teaching philosophy. We have sought, in presenting a broad range of materials, to make this book (1) accurate, (2) understandable, (3) balanced, (4) life-oriented, and (5) thought provoking.

By *accurate*, we mean that we have done everything possible to insure that the content of the book is as up-to-date as modern publishing technology will permit. Accurate also means that new doctrines and minority trends have been identified. Accordingly, we have endeavored to make this book anticipatory as well as retrospective. In the process of so doing, we hope to emphasize the dynamic character of the law.

Understandable means that legalistic jargon and words of art must be translated into ordinary English. We have replaced linguistic provincialisms and obscure words with ordinary language that can be understood by the modern student.

Balanced means that from the myriad discrete legal topics that might have some significance for undergraduate students of business law, those with the greatest relevance have been selected. If all the volumes of professional treatises relating to business were added together, the number would exceed 1,000. The business law student is given one book. Obviously, careful choice is necessary to bring the great mass of the law down into a one-volume text for beginners. In addition, great care must be exercised to treat all portions of the student's book with the appropriate degree of intensity.

Life-oriented requires the book to be devoted to those areas that the undergraduate student of today will most likely meet in future years. Consequently, it means avoiding the unusual, the bizarre, the headline cases that have no real value for the business person. Above all, life-oriented brings out the interrelationship between the

law and life: the law is shaped by the environment, and the law gives direction to the environment. For the purpose of curriculum compartmentalization, "law" is a separate subject but as far as life is concerned it is an inseparable part of living. The more the student can appreciate this interrelationship, the better will be the student's understanding both of law and of life.

Thought provoking means there are end-of-chapter materials that call for the student's developing skill in the analysis of data to identify basic questions, to apply existing principles to the solution of such basic questions, and to make intelligent decisions when there are no preexisting principles to govern the exact basic questions that are involved. This system not only brings the student back to the orientation of law to life but also assures the teaching of law a permanent place in the pattern of higher education.

The objectives set forth above have guided the writing of this book for more than four decades. Though our focus on these objectives has never wavered, the specific content of the book has evolved to keep pace with changing times. The early 1960s witnessed the integration of the Uniform Commercial Code in the Seventh Edition as a result of the growth in the number of states adopting the UCC. In subsequent years that coverage has been continually updated to keep pace with amendments to the UCC and other uniform and model acts. This modernizing is seen in the inclusion in this edition of the text and an analysis of the new UCC Article 2A, "Leases." Curriculum trends have us placing increasing emphasis upon environmental and regulatory topics.

THE LEGAL AND SOCIAL ENVIRONMENT OF BUSINESS

Part I of the book brings together various chapters relating to societal or public law that form the general background for individual business transactions. To borrow terms familiar to the economist, Part I deals with macro law while much of the balance of the book relates to micro law. It is important that the student see the background of macro law. It is also important that the student recognize that the legal environment of business is the sum total of the macro and micro areas.

More specifically, Part I deals with the regulatory environment in which business operates. The social forces behind the creation and evolution of the specific principles and substantive rules that govern disputes and transactions between individuals are explored. A comprehensive discussion of the federal and state court structure and the procedures involved in a lawsuit, from commencement to execution of the judgment, is included. The Constitution, as the foundation of the legal environment of business, is presented. The increasing role played by the administrative agencies in the government regulation of business is fully discussed.

This allocation of the indicated material to Part I is in harmony with the increased concern for an environmental approach to the

teaching of business law. At the same time, this focusing on societal or public law is not made at the expense of the treatment of the areas of private law. There has been no lessening of attention to accuracy of content, clarity of expression, and thoroughness of subject matter coverage.

In addition to the topics discussed in Part I, other chapters throughout the book are appropriate for a course that focuses on public law. Although every chapter in the text possesses the potential for an environmental approach, some chapters lend themselves to this mode of teaching more readily than others. An outline of chapters emphasizing public law follows:

SUGGESTED LEGAL ENVIRONMENT OUTLINES

Chapters:

1. Law and Determination of Legal Rights
2. Ethics, Social Forces, and the Law
3. The Constitution as the Foundation of the Legal Environment
4. Government Regulation
45. Employment (Government Regulation of Employment)
51. Corporate Stock and Shareholders (Securities Regulation)
24. Personal Property (Protection of Trademarks, Copyrights, Patents, Computer Software and Chips)
5. The Legal Environment of International Trade
6. Administrative Agencies
7. Environmental Law and Community Planning
8. Consumer Protection
9. Crimes
10. Torts
39. Bankruptcy

(or)

Chapters:

1. Law and Determination of Legal Rights
2. Ethics, Social Forces, and the Law
3. The Constitution as the Foundation of the Legal Environment
4. Government Regulation
5. The Legal Environment of International Trade
6. Administrative Agencies
7. Environmental Law and Community Planning
8. Consumer Protection
9. Crimes
10. Torts
24. Personal Property (Protection of Trademarks, Copyrights, Patents, Computer Software and Chips)
39. Bankruptcy

- 45. Employment
- 51. Corporate Stock and Shareholders (Securities Regulation)

An introductory course that emphasizes societal or public law may include the chapters contained in either of the above outlines and other appropriate chapters selected for the course. An introductory course emphasizing private law may cover selected chapters from Part I, "The Legal and Social Environment of Business," and chapters on contracts, personal property, or agency. The instructor may choose to cover additional topics in this introductory course, depending upon the ability level of the students and the time allotted to the course at the institution. The remainder of the book may be covered in advanced courses.

PREPARATION FOR CPA EXAM

As was true in previous editions, this Fourteenth Edition includes material on topics essential to preparation for the business law section of the CPA exam. Topics generally tested on this exam (shown with relative weight expressed as a percentage) are:

- The CPA and the Law (10%)
- Business Organizations (20%)
- Contracts (15%)
- Debtor-Creditor Relationships (10%)
- Government Regulation of Business (10%)
- Uniform Commercial Code (25%)
- Property (10%)

As this list suggests, the breadth and depth of CPA texting in the business law section necessitate inclusion of a great deal of material in any text purporting to prepare students for the exam. Adequate coverage of all these topics requires at least six semester hours. Consequently, this text is designed to accommodate a two-semester program in business law.

NEW TOPICS

New in this Fourteenth Edition are the chapters "Computers and the Law" and "Accountants' Liability and Malpractice." In Part 4, "Sales," coverage of international law is increased by discussion of pertinent sections of the United Nations Convention on Contracts for the International Sale of Goods. Chapter 42, Section 14, presents the law relating to "Disability of the Principal Under the Uniform Durable Power of Attorney Act." Chapter 45 includes coverage of "Employer-Related Immigration Laws." Chapter 49 contains a new section, "Liability of Successor Corporations." The currently developing law relating to liability of corporate directors

is presented in Chapter 52. The UCC appendix has been expanded to include the text of the new Article 2A, “Leases,” and an appendix analyzing Article 2A has been added.

CASE SUMMARIES

As in previous editions, this Fourteenth Edition contains ample case summaries integrated with the text of each chapter. Popular, precedent-setting cases have been retained while at the same time adding many new summaries.

FEATURES

Chapter objectives presented at the beginning of each chapter identify main points to be learned from the chapter. Concepts in the text have been enhanced by the use of illustrations. End-of-chapter summaries designed to assist students in assimilating the material are presented in each chapter.

A section on “Analysis of Case Summaries” is presented on page xii. This section includes a chart designed to assist students in identifying and analyzing ethical issues in the case summaries.

A glossary and a subject index are included, as well as appendices “How to Find the Law,” the “U.S. Constitution,” and selected model or uniform business statutes.

ACKNOWLEDGMENTS

We thank the faculty and students who have provided valuable suggestions that have influenced this text.

STUDENT STUDY GUIDE

Accompanying this Fourteenth Edition is a student study guide. The study guide contains highlights of each text chapter, a mix of questions and problems, and special exercises designed to demonstrate real-life application of legal rules and principles.

INSTRUCTOR’S MATERIALS

An instructor’s manual prepared by Kim Tyler (of Shasta College) and the authors contains chapter outlines, teaching suggestions, answers to chapter objectives, and answers to end-of-chapter questions and case problems. Transparencies and tests are available. The test questions are also available in an easy-to-use software package.

ANALYSIS OF CASE SUMMARIES

Case summaries are presented in each chapter of the book. Each case summary sets forth the facts of a case and the court's decision and reasoning. In addition to the study of the legal principles set forth in each court decision, in many instances it is worthwhile to consider what are the social objectives advanced by the decision (see Chapter 2) and what are the ethical issues involved in the case.

BUSINESS ETHICS	
SELECTED ETHICAL PRINCIPLES OR ISSUES TO DISCUSS IN RELATION TO CASES	ELEMENTARY GUIDELINES FOR AN ETHICAL ANALYSIS OF CONTEMPLATED ACTION
1. INTEGRITY AND TRUTHFULNESS.	1. IDENTIFY THE ETHICAL PRINCIPLE(S) INVOLVED IN THE CASE.
2. PROMISE-KEEPING.	2. DEFINE THE PROBLEM FROM THE DECISION MAKER'S POINT OF VIEW.
3. LOYALTY.	3. IDENTIFY WHO COULD BE INJURED BY THE CONTEMPLATED ACTION.
4. FAIRNESS.	4. DEFINE THE PROBLEM FROM THE OPPOSING POINT OF VIEW.
5. DOING NO HARM.	5. WOULD YOU (AS THE DECISION MAKER) BE WILLING TO TELL YOUR FAMILY, YOUR SUPERVISOR, YOUR CEO, AND THE BOARD OF DIRECTORS ABOUT THE PLANNED ACTION?
6. MAINTAINING CONFIDENTIALITY.	6. WOULD YOU BE WILLING TO GO BEFORE A COMMUNITY MEETING, A CONGRESSIONAL HEARING, OR A PUBLIC FORUM TO DESCRIBE THE ACTION?
7. AVOIDING CONFLICT OF INTEREST.	7. WITH MORAL COMMON SENSE AND FULL CONSIDERATION OF THE FACTS AND ALTERNATIVES, REACH A DECISION ABOUT WHETHER THE CONTEMPLATED ACTION SHOULD BE TAKEN.
8. WHISTLEBLOWING.	
9. EFFICIENCY AND EFFECTIVENESS (CREATE NEW JOBS AND THE PRODUCTS NECESSARY FOR A HUMANE LIFE).	
10. INNOVATION.	

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PART ONE

THE LEGAL AND SOCIAL ENVIRONMENT OF BUSINESS

- 1 Law and Determination of Legal Rights
- 2 Ethics, Social Forces, and the Law
- 3 The Constitution as the Foundation
of the Legal Environment
- 4 Government Regulation
- 5 The Legal Environment of International
Trade
- 6 Administrative Agencies
- 7 Environmental Law and Community
Planning
- 8 Consumer Protection
- 9 Crimes
- 10 Torts
- 11 Computers and the Law

CHAPTER 1

LAW AND DETERMINATION OF LEGAL RIGHTS

CHAPTER OBJECTIVES

After studying this chapter you will be able to:

1. Give two examples of the evolutionary character of legal rights.
2. List the agencies or bodies that interpret and apply law.
3. Name six alternatives for resolving disputes without a formal court trial.
4. Describe the basic structure of federal and state court systems.
5. List the steps that may be involved in a lawsuit.

Why have law?

If you have ever been stuck in a traffic jam on a turnpike or crowded in a mob leaving a stadium, then you have been in a position to observe the need for order to keep things running smoothly and efficiently. What is true on a small scale for traffic jams and crowds is true on a large scale for society in general. The order, or pattern of rules, that society establishes to govern the conduct of individuals and the relationships among them we call law. Law is society's way of keeping things running smoothly and efficiently.

Stated another way, law is merely management at the societal level. You personally have objectives and make decisions to manage your life. Business people have objectives and make decisions to manage their businesses. Likewise, when society governs itself it determines its objectives and makes management decisions, albeit through a much more complex process. That which we call law is merely a particular aspect of the broad problem of management: the management of society.

In this text we will look generally at the process of managing society through the system of laws and enforcement agencies. We

will examine specifically those aspects of the system that deal with business. Perhaps the best place to start is with an explanation of the nature of law and legal rights.

A. NATURE OF LAW AND LEGAL RIGHTS

Law consists of the body of principles that govern conduct and that can be enforced in courts or by administrative agencies. Much of the difficulty in seeking to understand the law is the result of regarding it as an absolute and exact science. The ideal of a definite body of law is attractive not only to the student but to everyone. Long-revered is the maxim that “in the known certainty of the law lies the safety of all.” The purpose of establishing our Constitution was to enable us to have a government of laws and not of people.

Actually, the certainty, precision, and logic of the law are very relative matters. In truth the law is an arbitrary set of rules that we have agreed upon to govern ourselves. Our reason for so doing is the quest for justice and the advancement of our social objectives.

§ 1:1 Legal Rights

What are legal rights? Who has them? In answering these questions, we tend to make the mistake of thinking of the present as being characteristic of what was and what will be. But consider the evolution of the concept of the “rights of the human being” and the right of privacy.

(a) The “Rights of the Human Being” Concept. Our belief in the American way of life and in the concepts on which our society or government is based should not obscure the fact that at one time there was no American way of life. While in the past many religious leaders, philosophers, and poets spoke of the rights and dignity of people, rulers disregarded such pretensions and held people tightly in a society based on status. A noble had the rights of a noble. A warrior had the rights of a warrior. A slave had very few rights at all. In each case, the law recognized only status; rights attached not to the human beings but to their status.

In the course of time, serfdom displaced slavery in much of the Western world. Eventually feudalism disappeared and, with the end of the Thirty Years War, the modern nation-state began to emerge. Surely one might say that in such a “new order,” a human being had legal rights. But the person had rights not as a human being — only as a subject. Even when the English colonists settled in America, they brought with them not the rights of human beings but the rights of British subjects. Even when the colonies were within one year of war, the Second Continental Congress presented to King George III the Olive Branch Petition, which beseeched the king to recognize the colonists’ rights as English subjects. For almost a year the destiny of the colonies hung in the balance with the colonists