

THE·ELEMENTS·OF
BUSINESS·LAW

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THE ELEMENTS OF BUSINESS LAW

*WITH ILLUSTRATIVE
EXAMPLES AND PROBLEMS*

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PREFATORY NOTE

An effort has been made in this book to state as concisely and clearly as possible the leading and fundamental principles of business law, and in place of extended abstract explanations of them to substitute simple concrete examples showing them in their actual application to business transactions. In order that the conclusions drawn in these examples may be verified and not rest upon mere conjecture, the examples have for the most part been taken from cases decided in the courts. At the end of each chapter are given a number of concrete problems without the conclusions, intended to afford an exercise in the application of the principles drawn from the text and the examples. These also have been taken mainly from the decided cases. The drill in the examples and problems should be constant and thorough, and will be found far more interesting and instructive and far better calculated to develop intelligent thinking and reasoning than the memorizing and repeating of abstract dogmatic statements.

The arrangement of the book has kept in view a logical analysis and unfolding of the subject. But if for any reason it should be thought desirable to deal with negotiable instruments earlier in the course, it would do equally well to interchange Parts II and III, giving the latter first.

Should the book prove too extended for the time allotted, Parts V and VI may be omitted, although it would be well to cover, if possible, the chapter on partnership. The last three chapters do not fall clearly within the scope of business law, and for this reason and because it has been the object not unduly to extend them, the examples and problems have been for the most part omitted and numerous facsimiles of formal

documents substituted. While these chapters deal with somewhat technical matters, the subjects involved are of great importance to all who have property interests.

The glossary of legal terms should be constantly referred to in order that the nomenclature of the law may be correctly understood. While the glossary has been made as complete as practicable, it would be well to supplement it by a good law dictionary in which more extended definitions and explanations may be found.

The work is based necessarily upon the common law. While the nature of statutory changes has been indicated, the precise provisions of statutes are rarely given because these vary so widely in the different states that such a course would prove misleading. The difficulties of an accurate statement of the statutory law in a book of this size are in fact insurmountable. Should the teacher be fortunate enough to secure the coöperation of a local attorney, some progress in this direction might be made.

It will be found in setting examinations that concrete problems are better calculated to disclose the practical value of the student's work than questions calling mainly for definitions, rules, or abstract statements.

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ELEMENTS OF BUSINESS LAW

CHAPTER I

PRELIMINARY TOPICS

BUSINESS LAW AND COGNATE SUBJECTS

1. Business. Business concerns itself with property, credit, and services, and with contracts pertaining to these things.

The term business embraces every kind of industrial activity by which men acquire, manufacture, or otherwise produce property; by which they sell or transfer it; by which they store, transport, or insure it; by which they borrow or lend money and give or secure credit; by which they combine with others to these ends; and by which they furnish or obtain services in these and similar enterprises. This is by no means an exhaustive list of commercial operations, but it indicates the variety and extent of those human activities that pass under the name of business.

2. Law. The term law includes all those rules by which courts are controlled in the administration of justice. The same rules must also govern men in their relations to each other, because if they be violated, the courts will either give reparation to the injured party or refuse to aid the one who has violated them.

Rules of law are of two kinds, — first, those that have been worked out by the courts themselves in deciding actual cases brought before them by litigants, and second, those enacted by the legislatures. The first are known as the common law, and

the second as statute law. The common law is sometimes called the unwritten law, and statute law is sometimes called the written law.

1. *Common law.* The common law is therefore the law declared by judges in the decision of cases. It rests primarily upon custom, because in deciding cases the judges seek to give effect to the prevailing customs of the people in their relations and dealings with each other. But when a point of law is once decided, subsequent judges in the same jurisdiction follow it as a precedent, and the point is said to be decisively settled. This is known as the doctrine of *stare decisis*, — the doctrine that courts must stand by decided cases, uphold precedents, and maintain former adjudications. With the lapse of time, therefore, the greater number of the ordinary questions that may arise have been thus settled and the common law established. The rules must be sought in the printed reports of the decisions of the courts.

2. *Statute law.* Statute law consists of the enactments of legislatures. These may be for the purpose of changing some rule established by the courts when, for example, the development of society makes the continuance of the old rule inexpedient, or for the purpose of codifying into a brief statute the rules scattered through hundreds or even thousands of volumes of reported cases. The whole law of negotiable instruments has been thus codified in England and in many of our American states (see sec. 97 *post*).

In any state, therefore, one must consult for the law the statutes of that state and the reports of its courts. In some states the reports are very numerous. For example, there are in New York upwards of one thousand volumes and in Massachusetts nearly two hundred volumes, and in all the states combined over five thousand volumes. A statute or decision is not binding except in the state where enacted or rendered. Hence it follows that the law may be one way in Massachusetts and just the opposite in New York. As we have the federal Congress and courts and forty-five state legislatures and courts, not to mention territories and dependencies, it will be seen that the American law may present many diverse enactments or decisions upon the same question. This is what makes it very difficult to present in this country a statement of the law which is correct for every jurisdiction.

3. Business law. Business law is that portion of the general law which governs business transactions. While the term is frequently used as if it denoted a distinct body of law susceptible of accurate definition, it is in reality a term of vague meaning. One engaged in business transactions may be confronted with legal questions involving almost any topic of the law, and hence might need advice from an expert or might in simple cases be able to solve the difficulty for himself. The most that any law book for business men can well undertake to do is to present the elementary principles governing the ordinary business transactions, leaving for lawyers the more intricate or technical problems. The chief aim of such a book should be to inform the business man how to keep out of difficulties, rather than to enable him to extricate himself after he is once involved.

Business law is, therefore, merely such a selection from the general body of the law, and especially the law of contract, as a particular author may think it profitable for a business man to know.

4. Divisions of the law. The law may be divided into two great branches, public law and private law.

1. *Public law.* Public law includes those topics with which the state, that is, the public as a whole, is especially concerned, namely: (a) international law, or the law governing the relations of one nation to other nations; (b) constitutional law, or the fundamental law governing a nation or state in its relations to its citizens; (c) criminal law, or the law by which the public protects itself against crimes and offenses prejudicial to its well-being; and (d) administrative law, or the law under which governmental affairs are carried on, as tax laws, highway laws, and the like.

2. *Private law.* Private law includes those topics with which individuals are particularly concerned in their private relations. These are very numerous but may be roughly grouped under three main heads, namely: (a) the law of property, including acquisition, ownership, possession, security, alienation, descent, and the like; (b) the law of obligation, including contracts, torts, trusts, and the like; and (c) the law of procedure, or the