



B U S I N E S S L A W

ANDERSON, FOX & TWOMEY

UCC COMPREHENSIVE VOLUME

REVISED EDITION

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TEXTBOOK SERIES

RONALD A. ANDERSON

Professor of Law and Government, Drexel University

Member of the Pennsylvania and Philadelphia Bars

IVAN FOX

Professor of Law and Chairman,

Business Law Department, Pace University

Member of the New York Bar

DAVID P. TWOMEY

Professor of Law, School of Management, Boston College

Member of the Massachusetts and Florida Bars

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P R E F A C E

Much has been written over the years about what ought to be taught in an introductory business law course and about how it ought to be taught. Some have advocated an environmental approach, some a traditional approach, and a growing number something in between. Our focus in preparing this revised edition of BUSINESS LAW: UCC COMPREHENSIVE VOLUME has been 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 ensure 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 should be 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 simple 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 1000. The beginning law student is given one book. Obviously, careful choice is necessary to bring the great mass of the law down into a one-volume book

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. Conversely, it means avoiding the unusual, the bizarre, the headline cases which 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 life. 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-the-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 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 above set forth have guided the writing of this book for more than a third of a century. 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 Code and other uniform and model acts. Most recently, current curriculum trends have us placing increasing emphasis on environmental and regulatory topics in this Revised Edition.

THE LEGAL AND SOCIAL ENVIRONMENT OF BUSINESS.

This is the title of an expanded Part I of the book. It brings together in one part 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 the student recognize that the "legal environment of business" is the sum total of the macro and micro areas.

More specifically, the new 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 the 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 which focuses on public law. While every chapter in the text possesses the raw 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 Enforcement Agencies
2. Law as an Expression of Social Forces
3. The Constitution as the Foundation of the Legal Environment
4. Government Regulation of Business
44. Employment (Government Regulation of Employment)
49. Corporate Stock and Shareholders (Securities Regulation)
21. Personal Property (Protection of Trademarks, Copyrights, Patents, Computer Software and Chips)
5. International Legal Environment
6. Administrative Agencies
7. Environmental Law and Community Planning
8. Consumer Protection
9. Crimes
10. Torts
38. Bankruptcy

(or)

Chapters:

1. Law and Enforcement Agencies
2. Law as an Expression of Social Forces
3. The Constitution as the Foundation of the Legal Environment
4. Government Regulation of Business
5. International Legal Environment
6. Administrative Agencies
7. Environmental Law and Community Planning
8. Consumer Protection
9. Crimes
10. Torts
21. Personal Property (Protection of Trademarks, Copyrights, Patents, Computer Software and Chips)
38. Bankruptcy
44. Employment
49. Corporate Stock and Shareholders (Securities Regulation)

An introductory course which 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 on the ability level of the students and 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 Revised Edition includes material on topics essential to preparation for the business law section of the CPA exam. Topics generally tested on this exam (along with relative weight expressed as a percent) 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 testing 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 Revised Edition are chapters on Constitutional Law and International Law designed to satisfy AACSB curriculum requirements. Also new is the expanded coverage of white collar crimes and white collar torts in two separate chapters. Other chapters contain substantial updating, reflecting the Revised Model Business Corporations Act, new amendments to the Bankruptcy Act, and electronic funds transfer, among others.

CASE SUMMARIES

As in previous editions, this Revised Edition contains ample case summaries integrated with the text of each chapter. Popular summaries from previous editions have been retained while at the same time adding many new summaries (over 100 of which have been handed down since 1980).

NEW FEATURES

New to this edition are end-of-chapter summaries designed to assist students in assimilating the material presented in each chapter. Students will find the summaries helpful in highlighting important chapter concepts.

Also new is the addition of the text of the Constitution of the United States, excerpts from the ABA Revised Model Business Corporations Act, the

Uniform Limited Partnership Act, and a brief guide to legal research to the Appendix. Both instructor and student should find this expanded Appendix a convenient reference source.

STUDENT STUDY GUIDE

Accompanying this Revised Edition is a new student study guide authored by E. Clayton Hipp of Clemson University. This new, 100% larger study guide contains highlights of each chapter in the text, a new mix of questions and problems, and special exercises designed to demonstrate real-life application of legal rules and principles.

INSTRUCTOR'S MATERIALS

A completely revised and repackaged instructor's manual prepared by Kim Tyler of Shasta College and the authors contains a complete set of instructional transparencies, chapter outlines, lecture notes and teaching suggestions, and answers to end-of-chapter questions and case questions all packaged in a three-ring binder for ease of use. A set of 23 pre-printed achievement tests is separately available. The examination package is also available in an easy-to-use software package.

ABOUT THE AUTHORS

Ronald A. Anderson, Professor of Law and Government at Drexel University for nearly 40 years, is the internationally renowned author of the definitive, 10-volume treatise on the Uniform Commercial Code and other well-respected professional and educational works.

Professor Anderson graduated from the University of Pennsylvania in 1933 and earned his *Juris Doctor* degree from that school in 1936. He is a member of the American, Pennsylvania, and Philadelphia Bar Associations, and an active member of the legal community.

Ivan Fox, with Pace University since 1958, and currently Professor of Law and Chairman of the Business Law Department, is widely known for his work with the Fox-Kirschbaum-Lambers CPA Review Course, and has lectured extensively to professional and banking groups on various business law topics.

Professor Fox graduated from Pace University in 1954, earned his *Juris Doctor* from New York Law School in 1957 and received his LL.M. from New York University in 1963. He is a member of the New York Bar and the New York State Bar Association.

David P. Twomey is Professor of Law at Boston College and a nationally known labor arbitrator, having served as arbitrator in numerous disputes throughout the country in the private and public sectors. He has written a great number of books and articles on labor law and business law topics, and was elected to membership in the National Academy of Arbitrators in 1979.

Professor Twomey graduated from Boston College in 1962 and earned his MBA at the University of Massachusetts at Amherst in 1963. After two years of business experience, he entered Boston College Law School and earned his *Juris Doctor* in 1968. He is a member of the Massachusetts, Florida, and Federal Bars. Professor Twomey joined the faculty of the Boston College School of Management in 1968 and was promoted to professor in 1978. His special interest in curriculum development is demonstrated by his three-year chairmanship of his school's Educational Policy Committee.

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PART 1

THE LEGAL AND SOCIAL ENVIRONMENT OF BUSINESS

- Chapter 1 Law and Enforcement Agencies
- Chapter 2 Law as an Expression of Social Forces
- Chapter 3 The Constitution as the Foundation of the Legal Environment
- Chapter 4 Government Regulation of Business
- Chapter 5 The International Legal Environment
- Chapter 6 Administrative Agencies
- Chapter 7 Environmental Law and Community Planning
- Chapter 8 Consumer Protection
- Chapter 9 Crimes
- Chapter 10 Torts

CHAPTER 1

LAW AND ENFORCEMENT

AGENCIES

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. Describe the basic structure of federal and state court systems.
4. Name the officers of a court.
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, which 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, and we will examine specifically those aspects of the system that deal with business. Perhaps the

best place to start our study 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 not only attractive to the student but is dear to the heart of 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 the end that we may have a government of laws and not of people.

The truth of the matter is that the certainty, the precision, and the 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. And our reason for so doing is the quest for justice and the advancement of the various social objectives that we hold dear.

§ 1:1. Legal Rights.

What are legal rights? And 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 many religious leaders, philosophers, and poets spoke of the rights and dignity of people, rulers laughed at 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 saw only status; rights attached not to the human being but to the 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. The person had rights, but 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 unable to decide between remaining loyal to the Crown, seeking to obtain recognition of their rights as English subjects (a “status” recognition), or doing something else.

Finally, the ill-advised policies of George III and the eloquence of Thomas Paine’s *Common Sense* tipped the scales and the colonies spoke on

July 4, 1776, not in terms of the rights of English subjects but in terms of the rights of people existing independently of any government. Had the American Revolution been lost, the Declaration of Independence would have gone rattling down the corridors of time with many other failures. But the American Revolution was won, and the new government that was established was based upon “human beings” as the building blocks rather than upon “subjects.” Rights of human beings replaced the concept of rights of subjects. With this transition, the obligations of a monarch to faithful subjects were replaced by the rights of human beings existing without regard to will or authority of any kind. Since then, America has been going through additional stages of determining what is embraced by the concept of “rights of human beings.”

(b) **The Right of Privacy.** Today everyone recognizes that there is a right of privacy. Before 1890, however, this right did not exist in American law. Certainly those who wrote the Declaration of Independence and the Bill of Rights were conscious of rights. How can we explain that the law did not recognize a right of privacy until a full century later?

The answer is that at a particular time people worry about the problems which face them. Note the extent of the fears and concern of the framers of the Bill of Rights. The Fourth Amendment states, “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.” The people of 1790 were afraid of a recurrence of the days of George III.

The framers of the Fourth Amendment declared what we today would regard as a segment of privacy—protection from police invasion of privacy. The people of 1790 just were not concerned with invasion of privacy by a private person. While a snooping person could be prosecuted to some extent under a Peeping Tom statute, this was a criminal liability. The victim could not sue for damages for the invasion of privacy.

If we are honest with history, all that we can say is that modern people think highly of privacy and want it to be protected. And, knowing that the law is responsive to the wishes of society, we can also say that the right is protected by government. But note that we should go no further than to say that it is a right which society wishes to protect at the present time. If circumstances arise in our national life of such a nature that the general welfare is opposed to the right of privacy we can expect that the “right” of privacy will be limited or modified. For example, although the right of privacy prevents a bank from giving out information about a customer’s bank account, the federal government, acting under a 1969 statute, can require such information to see if income taxes are due or if money has been paid or received in criminal transactions.¹

§ 1:2. What Is the Law?

The expression, “a law,” is ordinarily used in connection with a statute enacted by a state legislature or the Congress of the United States,

¹United States v Biscaglia, 420 US 141 (1975). But see § 35:4(a) of this book.