West's Legal Environment of Business

Text
Cases
Ethical, Regulatory,
and International Issues



THIRD EDITION

Frank B. Cross
Roger LeRoy Miller

WEST'S LEGAL ENVIRONMENT OF BUSINESS

TEXT
CASES
ETHICAL, REGULATORY,
AND INTERNATIONAL ISSUES

THIRD EDITION

Frank B. Cross

Associate Director, Center for Legal and Regulatory Studies University of Texas at Austin

Roger LeRoy Miller

Institute for University Studies Arlington, Texas

WEST

WEST EDUCATIONAL PUBLISHING

An International Thomson Publishing Company

Publisher/Team Director: Jack Calhoun

Acquisitions Editor: Rob Dewey Development Editor: Jan Lamar Production Editor: Bill Stryker Marketing Manager: Scott Person Cover Design: Doug Abbott Internal Design: Bill Stryker

Copyright © 1992, 1995 Copyright © 1998 by West Educational Publishing Company

I(T)P® An International Thomson Publishing Company

ALL RIGHTS RESERVED

The text of this publication, or any part thereof, may not be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying, recording, storage in any information retrieval system, or otherwise, without the prior written permission of the publisher.

Library of Congress Cataloging-in-Publication Data

Cross, Frank B.

West's legal environment of business: text, cases, ethical, regulatory, and international issues / Frank B. Cross, Roger LeRoy Miller, — 3rd ed.

p. cm. Includes index. ISBN 0-538-87965-3 (hc)

1. Industrial laws and legislation—United States. 2. Trade regulation— United States. 3. Commercial law—United States.

I. Miller, Roger LeRoy. II. Title.

KF1600.C76 1998 346.7307 - dc21

> 97-22498 CIP

23456789 WCBS 543210987

Printed in the United States of America

 $I(T)P^{\otimes}$

International Thomson Publishing West Educational Publishing is an ITP Company. The ITP trademark is used under license.

PREFACE TO THE INSTRUCTOR

X

The legal environment of business has universal applicability. A student entering virtually any field of business must have at least a passing understanding of the legal environment of business in order to function in the real world. Additionally, students preparing for a career in accounting, government and political science, economics, and even medicine can fruitfully use much of the information they learn in a business law and legal environment course.

KEY AREAS OF EMPHASIS

To make sure that instructors and students alike can rely on the coverage, accuracy, and applicability of West's Legal Environment of Business, Third Edition, we emphasize the following throughout the text:

- Cyberlaw—Your students will find that the Third Edition of West's Legal Environment of Business offers the most up-to-date coverage of technological developments as they affect business law. Throughout this text, whenever relevant, we have incorporated discussions of the new legal challenges created by cyberspace transactions via the Internet and the growing body of cyberlaw governing such transactions.
- Access to Technology—Most of the chapters in the text conclude with a special section, called Accessing the Internet: The Legal Environment of Business. These sections describe—and provide Internet addresses for—resources available on the Internet relating to topics covered in the chapters. Finally, instructors and students alike can access the West's Legal Environment of Business Home Page at http://www.westbuslaw.com (see below).
- Comprehensiveness Virtually every important topic in the legal environment is covered in this book. We have made the text extremely comprehensive to allow instructors complete flexibility in choosing those areas of the legal environment that they wish to emphasize.

- Authoritativeness—We have fully researched every aspect of the legal environment included in this text. Instructors can rely on its accuracy and can find references to case and statutory law, as needed, for any authority. Complete parallel citations are given throughout the text. An extensive set of appendices includes excerpts from uniform codes and statutes. Accuracy is the watchword of West's Legal Environment of Business.
- Ethics—Because of the importance of ethics, there is an early chapter on the subject, with continuing references to ethics throughout. Many of the cases presented in the text conclude with a section entitled Ethical Considerations, in which the authors indicate some of the ethical implications of the issue being addressed by the court. Additionally, a special question, called A Question of Ethics, concludes the Questions and Case Problems sections in all of the chapters. Finally, Focus on Ethics sections, which conclude all of the units in the text, deal solely with ethical aspects of selected topics covered within the unit.
- International and Comparative Law—As the world gets smaller, a knowledge of the international and comparative aspects of the law must become part of any student's background. To this end, West's Legal Environment of Busines includes a full chapter on comparative law (Chapter 7) and presents a full chapter on international law (Chapter 8). Additionally, International Considerations, which conclude many of the cases presented in the text, offer further glimpses at comparative law. Finally, as will be discussed next, several of the cases are preceded by a special section entitled Historical and International Setting.
- AACSB Curriculum Requirements—This text explicitly addresses the AACSB's broad array of curriculum requirements by focusing on the global, political, ethical, social, environmental, technological, and cultural-diversity context of

many of the cases presented. Specifically, selected cases are preceded by a Historical and [Social, Economic, Political, Technological, Environmental, or International] Setting, which places the case in a particular political, ethical, social, or other setting. Additionally, Company Profiles precede many of the cases in this edition. Finally, the materials in all units explore virtually every facet of the AACSB's curriculum requirements. The AACSB's emphasis on the global and ethical context of the law is addressed throughout the rest of the text in features already mentioned: the International and Ethical Considerations that follow many of the cases and the Focus on Ethics section found at the end of each unit.

WEST'S LEGAL ENVIRONMENT OF BUSINESS ON THE WEB

When you visit us at http://www.westbuslaw.com you will find, at a minimum, the following:

- Current legal events updated regularly and keyed to chapters in this text.
- Summaries of new cases from various West legal publications, as well as many other legal publications, all linked to this text.
- Professors' Exchange: You will be able to e-mail your questions about West's Legal Environment of Business to Frank Cross.
- Online with Frank Cross: At scheduled times, you will be able to chat with Frank Cross about issues relating to West's Legal Environment of Business.
- A variety of classroom material will be made available.
- There will be more as we continue to improve our Home Page to make it better for you and your students.

AN EFFECTIVE CASE FORMAT

To ensure that West's Legal Environment of Business, Third Edition, meets the needs of instructors and students alike, we have devoted significant efforts to finding cases that not only effectively illustrate the principles of the legal environment discussed in the text but also are of high interest to students. Our selection includes classic, landmark cases as well as some of the most modern examples of the legal environment. For those instructors who like to see the entire court opinions for cases presented in the text, we also offer a

supplement called Case Printouts to Accompany West's Business Law, Seventh Edition. This supplement contains the output from WESTLAW (without headnotes) for virtually every case that is included in each chapter. If the instructor wishes, the full court opinions may be copied and handed out to students.

BASIC CASE FORMAT

Each case in West's Business Law is presented in the following basic format:

- Case Title and Full Case Citation—The case title and full case citation (including all parallel citations) are presented at the beginning of each case.
- Background and Facts—This section contains a summary, in the authors' own words, of the events leading up to the lawsuit.
- In the Language of the Court Following the summary of the background of the case, an excerpt from the actual court opinion is presented in a contrasting type size to differentiate it from the surrounding textual material. Whenever the court opinion contains a term or phrase that may be difficult for the student to understand, we provide a brief explanation of the term in brackets. When important phrases and sentences are italicized, bracketed notes clearly indicate that the emphasis was added by the authors, not by the court.
- Decision and Remedy—In this section, the authors summarize, in their own words, the outcome of the case.

ADDITIONAL SECTIONS IN THE CASES

Many cases include one of the following sections, which have already been described.

- Company Profiles—Numerous companies are profiled before appropriate cases. Each profile, which describes the history of the company involved in a particular case, is designed to give your students the real-world context of the case before the court.
- Historical and [Social or Other] Settings—When appropriate, the global, political, ethical, social, environmental, technological, or cultural context of a case is presented in one of these Settings.
- Ethical Considerations—These sections, as mentioned previously, discuss ethical aspects of the law or laws under consideration.

PREFACE XV

 International Considerations—As explained above, these sections let your students know how the particular issue at bar is treated in other countries.

OTHER SPECIAL FEATURES OF THIS TEXT

We have included in West's Legal Environment of Business, Third Edition, a number of additional pedagogical devices and special features, including those discussed here.

EMERGING TRENDS

Many chapters in this edition include a special feature entitled *Emerging Trends*. These two-page spreads emphasize policy issues that are currently arising with respect to certain aspects of the legal environment. The following *Emerging Trends* are among those included in this edition:

- Jurisdictional Issues in Cyberspace (Chapter 3).
- Electronic Sales Contracts (Chapter 11).
- The Use of "Intelligent Agents" (Chapter 19).

CONCEPT SUMMARIES

Whenever key areas of the legal environment need additional emphasis, we provide a *Concept Summary*. These summaries have always been a popular pedagogical tool in this text. There are many such summaries, including the following:

- The Common Law Tradition (Chapter 1).
- Pretrial Procedures (Chapter 3).
- Intentional Torts (Chapter 12).

EXHIBITS

When appropriate, we have illustrated important aspects of the legal environment in graphic or summary form in exhibits. In all, forty-six exhibits are featured in West's Legal Environment of Business, Third Edition, including the following:

- Civil and Criminal Law Compared (Exhibit 1–3).
- Stages in a Typical Lawsuit (Exhibit 3–4).
- The Legal Systems of Nations (Exhibit 7–2).
- Multilateral International Organizations in Which the United States Participates (Exhibit 8–1).
- Federal Environment Statutes (Exhibit 24–1).
- Comparison of Coverage, Application, and Liabilities under Rule 10b-5 and Section 16(b) (Exhibit 28–7).

VOCABULARY STRESSED

In addition to including bracketed explanations of difficult terms and phrases within the court opinions presented in the text, we also boldface and fully define every important legal term when it is first introduced. Additionally, at the end of each chapter, all terms that were boldfaced within the chapter are listed in alphabetical order under the heading *Terms and Concepts to Review*. The page on which the term is defined is given after each term. For selected terms, particularly those of Latin origin, a special pronunciation guide has been included in footnotes within the chapters as well as in the Glossary at the end of the text. For the Third Edition, we have also increased, by almost 30 percent, the number of terms included in the Glossary.

OUESTIONS AND CASE PROBLEMS

Nearly every chapter of this text ends with ten or more questions and case problems. The first three to six of these are hypothetical questions. The remainder are actual case problems, many of which are from 1995, 1996, and 1997. Complete answers are given in a separate manual for all questions and case problems in the text, including the ethical questions and case briefing assignments.

ALTERNATE PROBLEM SETS WITH ANSWERS

To expand the number of case problems available to instructors, for each chapter of West's Legal Environment of Business, Third Edition, we have created a set of five or more alternate case problems. These alternate case problems, along with their answers, are included at the end of the Answers to Questions and Case Problems and Alternate Problem Sets with Answers. They are presented on perforated pages for easy removal and copying.

CASE BRIEFING ASSIGNMENTS

Some professors prefer to have their students brief a few cases. To make these assignments more manageable for both students and professors, we provide in Appendix A a short explanation of how to brief a case, followed by a briefed version of the sample court case presented in the appendix to Chapter 1 as Exhibit 1A–3. We then present selected cases for briefing. Case briefing assignments, including ques-

tions that should be answered for each of the cases chosen for briefing, are found at the end of the problem sets in eleven of the chapters in the text (one for each unit). Sample answers to the questions listed in the case briefing assignments are found in the Answers to Ouestions and Case Problems manual.

UNIT-ENDING HYPOTHETICALS

New to this edition are unit-ending cumulative hypothetical questions. These questions first posit a scenario—such as a small business just getting underway—and then pose a series of questions for the student to answer. The questions provide an excellent means of reviewing legal concepts covered throughout the unit. Suggested answers for these hypotheticals are included in the Answers to Questions and Case Problems.

APPENDICES

Because the majority of students keep their business law texts as a reference source, we have included a full set of appendices. Due to the growing importance of the limited liability company as a business organizational form, we have added a special new appendix to this edition. This appendix (Appendix Q) presents excerpts from the Uniform Limited Liability Company Act. In all, the following appendices are included in West's Legal Environment of Business Law, Third Edition:

- A Briefing Cases—Instructions and Selected Cases.
- **B** The Constitution of the United States.
- C The Administrative Procedure Act of 1946 (Excerpts).
- D The Uniform Commercial Code (Excerpts).
- E The National Labor Relations Act of 1914 (Excerpts).
- F The Sherman Act of 1890 (Excerpts).
- G The Clayton Act of 1914 (Excerpts).
- H The Federal Trade Commission Act of 1914 (Excerpts).
- I The Robinson-Patman Act of 1936 (Excerpts).
- I Securities Act of 1933 (Excerpts).
- K Securities Exchange Act of 1934 (Excerpts).
- L Title VII of the Civil Rights Act of 1964 (Excerpts).
- M Civil Rights Act of 1991 (Excerpts).
- N Americans with Disabilities Act of 1990 (Excerpts).

- O The Uniform Partnership Act.
- P The Revised Uniform Partnership Act (Excerpts).
- Q The Uniform Limited Liability Company Act (Excerpts).
- R The General Agreement on Tariffs and Trade of 1994 (Excerpts).
- S The North American Free Trade Agreement of 1993 (Excerpts).
- T The Small Business Regulatory Enforcement Fairness Act of 1996 (Excerpts).
- U Spanish Equivalents for Important Legal Terms in English.

THE COMPLETE SUPPLEMENTS PACKAGE

This edition of West's Legal Environment of Business is accompanied by a vastly expanded number of teaching and learning supplements. For further information on the West's Legal Environment of Business teaching/learning package, contact your local West/ITP sales representative. An additional source of information is our West's Legal Environment of Business Home Page at

http://www.westbuslaw.com

PRINTED SUPPLEMENTS

- Instructor's Course Planning Guide and Media Handbook.
- Instructor's Manual (also available in computerized form).
- Study Guide and Test Preparation with Quicken Business Law Partner CD-ROM (prepared by Aaron Abrams, William Eric Hollowell, and text author Roger LeRoy Miller)—Includes a value-added CD-ROM, Quicken Business Law Partner. Exercises based on the CD-ROM are included in this Study Guide.
- A comprehensive *Test Bank* (co-written by text author Roger LeRoy Miller)—Contains approximately 1,000 multiple-choice questions with answers and over 950 true-false questions with answers; also available on software.
- Answers to Questions and Case Problems and Alternate Problem Sets with Answers.
- Case Printouts.
- Internet Activities for West's Legal Environment of Business.
- Lecture Outline System.
- Law and the Entrepreneur.

- Landmark Cases in Business Law and the Legal Environment.
- Advanced Topics and Contemporary Issues: Expanded Coverage, Third Edition, by Frank B. Cross.
- Personal Law Handbook.
- Handbook of Selected Statutes.
- Handbook on Critical Thinking and Writing in Business Law and Legal Environment.
- Instructor's Manual for the Drama of the Law video series.
- Transparency Acetates.
- Regional Reporters.

SOFTWARE AND VIDEO SUPPLEMENTS

- Quicken Business Law Partner (business forms on CD-ROM).
- Computerized Instructor's Manual.
- WESTEST (computerized versions of the Test Banks).
- Lecture Outline System.
- PowerPoint slides.
- "The Legal Tutor on Contracts" software.
- "The Legal Tutor on Sales" software.
- Interactive software—Contracts.
- Interactive software—Sales.
- "You Be the Judge" software.
- Case-Problem Cases on Diskette.
- WESTLAW.
- CD-ROM Resources for Business Law and Legal Environment.
- West's Business Law and Legal Environment Audiocassette Library.
- Videocassettes, including those discussed next.

CNN LEGAL ISSUES UPDATE VIDEO

You can update your coverage of legal issues, as well as spark lively classroom discussion and deeper understanding of business law, by using the CNN Legal Issues update video. This video is produced by Turner Learning, Inc., using the resources of CNN, the world's first twenty-four-hour, all-news network.

With the introduction of the CNN Legal Issues update video, West Educational Publishing is proud to be the educational partner of CNN for textbook/video integration for legal issues. By making use of the CNN Legal Issues update video, you can bring the power of CNN, the network known for providing live, in-depth coverage and analysis of breaking news events, to your classroom.

ADDITIONAL VIDEOS

South-Western's *Business Law* video series, a set of situational videos, covers a range of topics for the full legal environment course, including the Uniform Commercial Code and employment law.

FOR USERS OF THE SECOND EDITION

First of all, we want to thank you for helping make West's Legal Environment of Business the best-selling legal environment text in America today. Second, we want to make you aware of the numerous additions and changes that we have made in this edition. The major additions and changes are summarized below.

SIGNIFICANTLY REVISED CHAPTERS

- This chapter has been revised and reorganized to streamline the presentation and to make the chapter more relevant to legal environment students. The section discussing jurisprudential thought has been condensed and rewritten. A new subsection explains the steps involved in the legal reasoning process and shows students how they can use this process when working through case problems or other assignments. We have also expanded the discussion of civil law versus criminal law—and added an exhibit—to clarify the differences between civil and criminal law actions.
- Chapter 2 (Business Ethics)—This chapter has been extensively revised to place more emphasis on the process of ethical decision making in the real-world context. New sections focus on how businesspersons can determine whether their actions are not only profitable and legal but also ethical; the distinction between maximum profits and optimum profits; and the role played by public opinion in establishing the boundaries of ethical business behavior. Also included in the chapter is a fold-out exhibit showing PriceCostco's Code of Ethics, which we have annotated to show how it relates to legal environment topics covered in this text.
- Chapter 3 (The Court System)—This chapter has been reorganized and rewritten as necessary to ensure that the topics covered flow more logically from one to another. The chapter now opens with a section explaining the judiciary's role in American government. A first-level section on

xviii Preface

"Basic Judicial Requirements" includes subsections focusing on the concepts of jurisdiction, venue, and standing to sue. The chapter also includes an *Emerging Trends* dealing with jurisdictional issues posed by online transactions.

- Chapter 5 (Constitutional Laws)—The sections on freedom of speech and freedom of religion were revised to create more clarity and to make them more relevant to students. For example, the freedom of speech section was revised so that protected speech was discussed first; then commercial speech (advertising) and corporate political speech; and, finally, unprotected speech. In the freedom of religion section, we included some examples of church-state issues, such as prayer in the schools, evolution versus creation, and government aid to parochial schools. A major section entitled "Constitutional Law in Cyberspace" looks at some of the free speech issues that have arisen in the online context. The section discusses the latest case law on the topic, including the United States Supreme Court's June 1997 decision on the unconstitutionality of key provisions of the 1996 Communications Decency Act.
- Chapter 6 (Administrative Law)—This chapter has been reorganized and, to a significant extent, rewritten to make it more manageable for business law students in terms of readability and clarity. A new exhibit entitled "Organization of the Federal Trade Commission" has been added, and the exhibit showing a page from the Federal Register (Exhibit 6–4) now shows a page from the Environmental Protection Agency's recently proposed rule on particulate standards.
- Chapter 11 (Sales and Leases)—This chapter now covers both sales and lease contracts and includes references to Article 2A of the Uniform Commercial Code (UCC), as well as references to Article 2.
- Chapter 12 (Torts and Strict Liability) and Chapter 13 (Torts and Crimes Related to Business)—Both of these chapters now include sections discussing online defamation, including (in Chapter 13) the liability of online service providers.
- Chapter 15 (Intellectual Property and Cyberlaw) Now included in this chapter is an entirely new section entitled "Cyberlaw: Protecting Intellectual Property in Cyberspace." Topics discussed in this section include domain names and trademark law, patents for cyberproducts, and copyrights in cyberspace. This section is followed by an *Emerging*

- Trends discussing online copyright infringement. Also included in the chapter are discussions of the Lanham Act, the Trademark Dilution Act of 1995, and an updated and expanded section on international protection for intellectual property.
- Chapter 16 (Creditor-Debtor Relations and Bankruptcy)—This chapter has been rewritten as necessary to conform with the Bankruptcy Code as amended by the 1994 Bankruptcy Reform Act. A new exhibit entitled "Collection and Distribution of Property in Most Voluntary Bankruptcies" has been added.
- Chapter 17 (Business Organizations)—This chapter has been reorganized and rewritten as necessary to include limited liability companies (LLCs), limited liability partnerships (LLLPs), and limited liability limited partnerships (LLLPs), as well as major business forms. Major sections on LLCs and LLPs present up-to-date discussions of the increased use of these business forms and their significance for businesspersons. Additionally, an *Emerging Trends* looks at the implications of recent Internal Revenue Service tax rules that will make the use of LLCs even simpler in the future.
- Chapter 20 (Employment Relationships)—This chapter now opens with a discussion of the employment-at-will doctrine. A discussion of AIDS testing in the employment context has been added to the section discussing privacy issues.
- Chapter 21 (Employment Discrimination)—An examination of the major provisions of the Equal Pay Act of 1963 has been added, as has a brief discussion of English-language-only policies in the workplace. The section on the Americans with Disabilities Act of 1990 has been expanded, and the *Emerging Trends* on this topic has been totally rewritten to reflect current concerns. Also discussed are the latest developments in the area of affirmative action.
- Protection)—This chapter has been extensively revised and updated to include the latest developments in this area—including the United States Supreme Court's June 1997 ruling on the misappropriation theory of liability. The key functions and expanding powers of the Securities and Exchange Commission (SEC) are now given fuller treatment, and the discussion of exempt transactions under the 1993 Securities Act has been streamlined to make these exemptions more understandable for students. The chapter also now

PREFACE

offers expanded coverage of the sanctions and penalties that can be imposed for violations of securities laws and a discussion of the key provisions of the 1995 Private Securities Litigation Reform Act. The section on state securities now includes references to Article 8 of the UCC and examines the effect of the National Securities Markets Improvement Act of 1996 on state authority to regulate investment securities traded on national markets. Concluding the chapter is a new major section, entitled "Technology and Securities Law," that discusses online developments with respect to securities transactions and applicable SEC rules.

WHAT ELSE IS NEW?

In addition to the changes already noted, we have included in the Third Edition text a number of new pedagogical features and have expanded the supplements package. The new features and elements are listed below.

NEW FEATURES We have added the following entirely new features to the Third Edition:

- Accessing the Internet: The Legal Environment of Business.
- Unit-ending cumulative hypothetical questions.

NEW EMERGING TRENDS All of these features have been either newly created for the Third Edition or completely rewritten.

NEW EXHIBITS Of the forty-six exhibits in this edition, the following sixteen exhibits are new to the Third Edition:

- Exhibit 1–1 Equitable Maxims.
- Exhibit 1–3—Civil and Criminal Law Compared.
- Exhibit 1A–3 A Sample Court Case.
- Fold-Out Exhibit—PriceCostco's Code of Ethics, Annotated.
- Exhibit 3–2 The Federal and State Court Systems.
- Exhibit 3–4 Stages in a Typical Lawsuit.
- Exhibit 6-1—Organization of the Federal Trade Commission.
- Exhibit 6–4—A Page from the Federal Register.
- Exhibit 6–6—The Process of Formal Administrative Adjudication.
- Exhibit 7-4—Hourly Labor Costs in Manufacturing in Selected Countries.

■ Exhibit 12–1—Tort Lawsuit and Criminal Prosecution for the Same Act.

- Exhibit 16–1—Collection and Distribution of Property in Most Voluntary Bankruptcies.
- Exhibit 22-1—Unfair Labor Practice Complaint Form.
- Exhibit 22–2 Basic Unfair Labor Practices.
- *Exhibit 25–1*—Tenancy in Common and Joint Tenancy.
- Exhibit 26–1 FTC Notification Form.

NEW CASES Of the over 150 cases presented in the chapters of this text, over half are new to the Third Edition. In all, approximately 65 percent of the cases presented in West's Legal Environment of Business, Third Edition, are from 1995, 1996, and 1997. Many classic cases have been retained from the Second Edition, and some others have been added.

NEW CASE PROBLEMS Of the over 200 case problems included in this text, over a third are new to the Third Edition. Of the new case problems, over two dozen are from 1995, 1996, and 1997. In addition, alternate sets of five or more case problems (and answers) for each chapter are now available—see the list of new supplements below.

NEW APPENDICES We have added to this edition two new appendices: Appendix Q, entitled "The Uniform Limited Liability Company Act (Excerpts)," and Appendix T, entitled "The Small Business Regulatory Enforcement Fairness Act of 1996 (Excerpts)."

A NEW LIST OF ABBREVIATIONS For the Third Edition, we have added a list of selected abbreviations to the inside front cover of the book.

EXPANDED GLOSSARY The Glossary of the Third Edition lists and defines about 30 percent more terms than were included in the Second Edition.

NEW SUPPLEMENTS AND SPECIAL RESOURCES

- CNN Legal Issues update video.
- South-Western's Business Law video series.
- "The Legal Tutor on Contracts" software.
- "The Legal Tutor on Sales" software.
- Alternate Problem Sets with Answers—Included, on perforated sheets, at the end of the Answers to

Questions and Case Problems and Alternate Problem Sets with Answers.

- Internet Activities for West's Legal Environment of Business.
- Lecture Outline System.
- PowerPoint slides.
- Law and the Entrepreneur.
- Landmark Cases in Business Law and the Legal Environment.
- Advanced Topics and Contemporary Issues: Expanded Coverage, Third Edition, by Frank Cross.
- Quicken Business Law Partner (business forms on CD-ROM).
- West's Legal Environment of Business Internet Home Page.

Larry D. Strate

ACKNOWLEDGMENTS FOR SECOND EDITION

The extensive revision of West's Legal Environment of Business could never have been done without the extremely helpful criticisms, comments, and suggestions that we received from the following professors:

Wm. Dennis Ames

Indiana University of Pennsylvania

Anne C. Levy

Michigan State University

University of Nevada at Las Vegas

Wayne L. Anderson

SW Missouri State University

Richard A. Mills

Cypress College

Daphyne Saunders Thomas James Madison University

Betty Kendall

North Adams State College

Michael J. O'Hara

University of Nebraska at Omaha

ACKNOWLEDGMENTS FOR THE THIRD EDITION

In preparing the Third Edition of West's Legal Environment of Business, we worked closely with the following reviewers, each of whom offered us valuable suggestions for how to improve the text.

Wm. Dennis Ames Indiana University of

Pennslyvania

Angela Cerino Villanova University

David Cooper Fullerton College Gamewell Gant Idaho State University

Arlene M. Hibschweiler

SUNY Fredonia

Marty Salley McGee South Carolina State University

Kathleen A. Phillips University of Houston

Brian Terry

Iohnson and Wales University

Michael G. Walsh Villanova University

As in all past editions, we owe a debt of extreme gratitude to the numerous individuals who worked directly with us or at West Publishing Company. We especially wish to thank Lavina Leed Miller for her management of the entire project, as well as for the application of her superb editorial skills. William Eric Hollowell, who also coauthored the Instructor's Manual, Study Guide, and Test Bank, helped with much of the research. We were again fortunate enough to have the copyediting services of Beverly Peavler. Literally dozens of individuals helped proofread the galleys and pages of this edition over many, many months. They include Lavina Leed Miller, William Eric Hollowell, Suzie Franklin DeFazio, and Roxanna Lee.

We continue to be the fortunate recipients of an incredibly skilled and dedicated editorial, production, and printing and manufacturing team at West Publishing Company. In particular, we wish to thank Clyde Perlee, Jr., for his helpful advice and guidance during the planning stages of West's Legal Environment of Business, Third Edition. We also wish to thank Rob Dewey and Scott Person for their overall supervision of the project. Our long-time developmental editor, Jan Lamar, also helped us plan this project and made sure we addressed all reviewers' criticisms and suggestions. She additionally made sure that the preparation of supplements went smoothly and on time. Also, we would like to thank the following content specialists: Kathleen M. Knutson (contributor), College of St. Catherine; and John T. Wendt (author of *Drama of the Law Interactivity*), University of St. Thomas. Their contributions are greatly appreciated.

Our production manager at West, Bill Stryker, made sure that we came out with an error-free, visually appealing edition. We will always be in his debt.

Through the years, we have enjoyed a continuing correspondence with many of you who have found points on which you wish to comment. We continue to welcome all comments and promise to respond promptly. By incorporating your ideas, we can continue to write a business law text that is best for you and best for your students.

R.L.M. F.B.C.

Dedication

To my parents and sisters.

Frank B. Cross

R.L.M. dedicates this edition to Mike Elia. Thanks for your support and friendship for so many years.

R.L.M.

CONTENTS IN BRIEF

UNIT ONE 18 ■ Rights and Duties within the Corporation 369 The Foundations 1 FOCUS ON ETHICS: The Private Environment 383 1 ■ Business and Its Legal Environment 2 2 ■ Business Ethics 24 UNIT FOUR 3 ■ The Court System 38 The Employment Environment 389 4 ■ Alternative Dispute Resolution 71 19 ■ Agency 390 FOCUS ON ETHICS: Ethics and the Legal Environment of Business 89 20 ■ Employment Relationships 416 21 ■ Employment Discrimination 431 UNIT TWO 22 ■ Labor Law 450 The Public and Focus on Ethics: The Employment Environment 473 International Environment 95 5 Constitutional Law 96 UNIT FIVE 6 ■ Administrative Law 115 The Regulatory Environment 477 7 ■ Comparative Law 133 23 ■ Consumer Protection 478 8 ■ International Law 150 24 Environmental Law 495 FOCUS ON ETHICS: The Public and International **Environment 167** 25 ■ Land-Use Control and Real Property 511 26 ■ Antitrust and Monopoly 530 UNIT THREE 27 Antitrust and Restraints of Trade 551 The Private Environment 173 28 ■ Securities Regulation and Investor Protection 572 9 ■ Contracts: Part 1 174 FOCUS ON ETHICS: The Regulatory Environment 595 10 ■ Contracts: Part 2 199 11 ■ Sales 217 **Appendices** 12 ■ Torts and Strict Liability 244 Briefing Cases—Instructions and Selected 13 ■ Torts and Crimes Related to Business 267 Cases A-1 14 ■ Product Liability 288 The Constitution of the United States A-11 15 ■ Intellectual Property and Cyberlaw 299 The Administrative Procedure Act of 1946

16 ■ Creditor-Debtor Relations and

17 ■ Business Organizations 343

Bankruptcy 319

(Excerpts) A-20

(Excerpts) A-23

The Uniform Commercial Code

- E The National Labor Relations Act of 1935 (Excerpts) A-44
- F The Sherman Act of 1890 (Excerpts) A-46
- G The Clayton Act of 1914 (Excerpts) A-48
- H The Federal Trade Commission Act of 1914 (Excerpts) A-50
- I The Robinson-Patman Act of 1936 (Excerpts) A–51
- J Securities Act of 1933 (Excerpts) A-53
- K Securities Exchange Act of 1934 (Excerpts) A–55
- L Title VII of the Civil Rights Act of 1964 (Excerpts) A-56
- M The Civil Rights Act of 1991 (Excerpts) A-58
- N Americans with Disabilities Act of 1990 (Excerpts) A–60
- O The Uniform Partnership Act A-62

- P The Revised Uniform Partnership Act (Excerpts) A-71
- Q The Uniform Limited Liability Company Act (Excerpts) A–75
- R The General Agreement on Tariffs and Trade of 1994 (Excerpts) A–78
- S The North American Free Trade Agreement of 1993 (Excerpts) A–82
- The Small Business Regulatory Enforcement Fairness Act of 1996 (Excerpts) A–86
- U Spanish Equivalents for Important Legal Terms in English A–88

Glossary G-1
Table of Cases TC-1
Index I-1

CONTENTS





UNIT ONE

The Foundations 1

Chapter 1 ■ Business and Its Legal **Environment 2**

What Is Law? 3 The Common Law Tradition 4 Sources of American Law 9 Civil Law versus Criminal Law 11 Terms and Concepts to Review 13 Questions and Case Problems 13 Accessing the Internet 14 Appendix to Chapter 1 - Finding and Analyzing the Law 16

Finding Statutory Law 16 Finding Administrative Law 16 Finding Case Law 16 How to Read and Understand Case Law 21

Chapter 2 ■ Business Ethics 24

What Is Ethics? 25 The Nature of Business Ethics 25 Ethical Decision Making 26 CASE 2.1 Valdak Corp. v. Occupational Safety and Health Review Commission 27 Ethical Issues in Business 30 CASE 2.2 Varity Corp. v. Howe 32 CASE 2.3 Mazda Motor of America, Inc. v. Rogowski 34 The Ever-Changing Ethical Landscape 35 Terms and Concepts to Review 35 Questions and Case Problems 35 Accessing the Internet 37

Chapter 3 ■ The Court System 38

The Judiciary's Role in American Government 39 Basic Judicial Requirements 39 CASE 3.1 A. Uberti and Co. v. Leonardo 40 CASE 3.2 Friends of the Earth, Inc. v. Crown Central Petroleum Corp. 45 The State and Federal Court Systems 46 Judicial Procedures: Following a Case through the Courts 50 CASE 3.3 Wohl v. Spectrum Manufacturing, Inc. 57

CASE 3.4 Ohio v. Lessin 62

CASE 3.5 Powell v. Allstate Insurance Co. 64

Terms and Concepts to Review 67 Questions and Case Problems 68 Accessing the Internet 69

Chapter 4 ■ Alternative Dispute Resolution 71

The Search for Alternatives to Litigation 72 Negotiation and Mediation 72 Arbitration 74 CASE 4.1 Allied-Bruce Terminix Companies, Inc. v. Dobson 74 CASE 4.2 Gilmer v. Interstate/Johnson Lane Corp. 78 CASE 4.3 Orlando v. Interstate Container Corp. 80 CASE 4.4 Meehan v. Nassau Community College 81 The Integration of ADR and Formal Court Procedures 83 ADR Forums and Services 85 Terms and Concepts to Review 85 Questions and Case Problems 86 Accessing the Internet 88

FOCUS ON ETHICS: Ethics and the Legal Environment of Business 89

UNIT TWO

The Public and International Environment 95

Chapter 5 ■ Constitutional Law 96

The Constitutional Powers of Government 97 CASE 5.1 Oregon Waste Systems, Inc. v. Department of Environmental Quality of the State of Oregon 98 Business and the Bill of Rights 100 CASE 5.2 McIntyre v. Ohio Elections Commission 101 CASE 5.3 Rubin v. Coors Brewing Co. 102 Other Constitutional Protections 106 Constitutional Law in Cyberspace 109 CASE 5.4 Bernstein v. U.S. Department of State 111 Terms and Concepts to Review 112 Questions and Case Problems 112 Accessing the Internet 114

Chapter 6 ■ Administrative Law 115

Agency Creation and Powers 116 Administrative Process 119

CASE 6.1 American Dental Association v. Martin 121

CASE 6.2 Federal Deposit Insurance Corp. v. Wentz 123

CASE 6.3 Buck Creek Coal, Inc. v. Federal Mine Safety and

Health Administration 125

Limitations on Agency Powers 126

CASE 6.4 Sierra Club v. Thomas 127

Public Accountability 128

State Administrative Agencies 129

Terms and Concepts to Review 130

Questions and Case Problems 130

Accessing the Internet 132

Chapter 7 ■ Comparative Law 133

Doing Business Abroad 134

Comparative Legal Systems 135

National Laws Compared 139

CASE 7.1 Re Product Liability (Case VI ZR 103/89) 140

CASE 7.2 Fong Fung-Ying and Attorney General 144

The European Union 146

CASE 7.3 Alsatel-Société Alsacienne et Lorraine de

Télécommunications et d'Electronique v. S.A. Novasam 146

Expanding Business Opportunities Abroad 147

Terms and Concepts to Review 148

Questions and Case Problems 148

Accessing the Internet 149

Chapter 8 ■ International Law 150

The Nature and Sources of International Law 151

Legal Principles and Doctrines 153

CASE 8.1 Holden v. Canadian Consulate 154

Doing Business Internationally 155

The Regulation of Specific Business Activities 156

U.S. Laws in a Global Context 158

CASE 8.2 United States v. Nippon Paper

Industries Co. 159

CASE 8.3 Fortino v. Quasar Co., A Division of Matsushita

Electric Corp. of America 160

Resolving International Contract Disputes 161

The Bribery of Foreign Officials 162

Terms and Concepts to Review 167

Questions and Case Problems 163

Accessing the Internet 166

FOCUS ON ETHICS: The Public and International

Environment 167

UNIT THREE

The Private Environment 173

Chapter 9 ■ Contracts: Part I 174

The Basic Requirements of a Contract 175

The Objective Theory of Contracts 175

Types of Contracts 176

Agreement 177

CASE 9.1 Ruud v. Great Plains Supply, Inc. 180

Consideration 184

CASE 9.2 Hamer v. Sidway 184

CASE 9.3 Percy J. Matherne Contractor, Inc. v. Grinnell Fire

Protection Systems Co. 187

Capacity 187

Genuineness of Assent 188

CASE 9.4 Raffles v. Wichelhaus 189

Legality 191

CASE 9.5 Metropolitan Creditors Service of Sacramento v.

Sadri 192

Statute of Frauds 192

Third Party Rights 193

CASE 9.6 Reynolds and Reynolds Co. v. Hardee 194

Terms and Concepts to Review 195

Questions and Case Problems 196

Accessing the Internet 197

Chapter 10 ■ Contracts: Part II 199

Performance and Discharge 200

CASE 10.1 Jacobs & Young, Inc. v. Kent 201

CASE 10.2 Ellenbogan & Goldstein, P.C. v. Brandes 204

Breach of Contract and Remedies 206

CASE 10.3 Hadley v. Baxendale 208

CASE 10.4 Parker v. Twentieth Century-Fox Film Corp. 209

CASE 10.5 AFLAC, Inc. v. Williams 210

Terms and Concepts to Review 214

Ouestions and Case Problems 215

Accessing the Internet 216

Chapter 11 ■ Sales and Leases 217

The Scope of Article 2—The Sale of Goods 218

The Scope of Article 2A—Leases 218

The Formation of Sales and Lease Contracts 219

Consideration 222

Statute of Frauds 223

Title, Risk, and Insurable Interest 223

CASE 11.1 Synergistic Technologies, Inc. v. IDB Mobile

Communications, Inc. 224

Performance of Sales and Lease Contracts 230

Remedies for Breach of Sales and Lease Contracts 233

CASE 11.2 Royal Jones & Associates, Inc. v. First Thermal

Systems, Inc. 233

CASE 11.3 McCalif Grower Supplies, Inc. v. Reed 235

Sales and Lease Warranties 236

CASE 11.4 Harris v. Ford Motor Co. 237

CASE 11.5 Keaton v. A.B.C. Drug Co. 239

Terms and Concepts to Review 241

Questions and Case Problems 241

Accessing the Internet 243

Chapter 12 ■ Torts and Strict Liability 244

The Basis of Tort Law 245

Intentional Torts against Persons 246

Case 12.1 Food Lion, Inc. v. Melton 248