

Business



Law

Principles &
Practices

Goldman/
Sigismond



F O U R T H E D I T I O N

BUSINESS LAW

Principles and *Fourth Edition* Practices

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Preface

The fourth edition of *Business Law: Principles and Practices*, retains the overall organization and chapter format of the third edition. Each chapter contains a topical outline; a brief introduction to alert students to what will be covered in the chapter; narrative text; a summary, which aids in a general review of the chapter; key legal terms found in the chapter; and questions, problems, and cases. In many instances, material in the chapters has been rewritten or reorganized to improve clarity. Some chapters have been expanded to cover timely new topics, while others have been thoroughly updated to reflect changes in the law. As in previous editions, the material is presented in a nontechnical, succinct manner, yet in depth sufficient enough to provide comprehensive, authoritative coverage of the basic rules and principles. It is written in a clear, conversational style that avoids confusing courtroom language in both the text narrative and the case examples at the end of the chapters. Legal terms are clearly defined and highlighted, and there is an abundance of real-world examples.

This text is designed for use in business law courses offered at postsecondary schools. It begins with an introduction to the study of law through a brief look at these topics: how law developed; the legal system in the United States; the function, organization, and work of the federal and state court systems; criminal and civil law; and the steps in a civil law suit. The text then presents all of the important areas of business law students need to know, such as contracts, sales, commercial paper, agency and employment law, business organizations, property, and bailments. Other important and timely topics are also covered, including insurance, wills and estate planning, and consumer and creditor protection.

COURSE OBJECTIVES

Before beginning the study of the various chapters in *Business Law: Principles and Practices*, Fourth Edition, students should review the broad course

objectives listed below. These broad objectives describe the desired outcomes of the course—that is, what students should get out of the entire course. After completing the business law course using this text, students will:

- Become legally literate—more informed about what laws are “on the books,” how these laws affect their lives, what their legal rights and responsibilities are, and how legal disputes in which they become involved can be resolved.
- Recognize when it is important to seek professional advice from an attorney as common legal problems arise in their personal lives or work sites.
- Develop a basic understanding of legal terms used in personal, consumer, and business situations.
- Grasp the legal implications of various business transactions.
- Gain familiarity with a variety of legal documents common to personal and business transactions.
- Develop analytical skills and reasoning power.

In addition to the broad course objectives, there are specific objectives at the beginning of each part of the text to help students focus on the key points to be learned.

A SPECIAL NOTE TO STUDENTS

Business law affects everyone—it is the one aspect of law that people deal with on a daily basis. Therefore, we have written this text to provide you with a readily understandable explanation of business and general law topics that are of practical use as you live each day “on the street,” so to speak. As you read the text narrative, you will honestly be able to say that you understand the material. The material covered in the text will also serve as background for advanced law courses you may elect to take in the future. To help reinforce your learning of the legal principles presented in the text narrative, to motivate you to do your best, and to facilitate instruction, we’ve presented study materials at the end of each of the chapters, at the end of each unit, and in a separate study guide. Some of the distinctive features of this text’s coverage are listed below.

1. Chapter summaries. At the end of each chapter is a summary of the narrative information presented in the chapter. You should read this summary before proceeding to the questions and case problems.

2. Questions and case problems. At the end of each chapter there is a series of questions and problems designed to help you review the basic concepts discussed in the chapter and to apply the basic rules of law to factual situations.

3. Key legal terms. Within the chapters, key terms are boldfaced where defined. They are also compiled in a list at the end of each chapter. In

addition, key terms (many more than are in the chapters) are defined in the glossary, which contains over 900 entries.

4. *"You Be the Judge."* At the end of each unit is an expanded case problem that requires you to apply legal principles you learned in the unit. These cases will challenge you since there are no easy answers.

5. *Appendixes.* The text contains three appendixes. Appendix A will guide you when "briefing" cases; Appendix B will help you make the transition from the study of contracts under the common law to the study of contracts under the Uniform Commercial Code; and Appendix C, the Constitution of the United States, will be a point of reference throughout the text but especially as your instructor covers Part I of the text.

6. *Study Guide.* The study guide, which includes several types of questions based on material presented in the text, can be used for individualized study and self-testing.

We hope that the good instruction you will receive, your continued effort to attend class regularly, and the material presented in this text along with the study materials provided, will motivate you to do your best in the course. Good luck.

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This text is dedicated to our wives Lynn Goldman, Mary Beth Sigismond (in her memory), and to our children Jonathan Goldman, Lisa Goldman Pelta, Ruth Goldman Heller, Jacquelyn Sigismond Mery, and Todd Sigismond.

A.J.G. W.D.S.

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PART I

UNDERSTANDING THE LAW

*After studying Part I,
you should be able to*

- 1** Define law.
- 2** Demonstrate a knowledge for the need of a legal system.
- 3** Trace the development of our own law from Roman law and the English common law.
- 4** Demonstrate a knowledge of the four primary sources of law for the American legal system.
- 5** Discuss the differences between civil law and criminal law.
- 6** Outline the structure of the federal and state court systems in the United States.
- 7** Distinguish between a private wrong and a public wrong.
- 8** Demonstrate a knowledge of legal wrongs, both criminal and civil.
- 9** Compare the procedures in a civil action and a criminal action.
- 10** Evaluate alternative ways to settle disputes between two or more parties other than by litigation (a lawsuit).

Chapter 1

Foundations of Law

CHAPTER PREVIEW

Why Laws Are Needed

The Nature of Law

The Relationship Between Law and Ethics

Functions of Law

Protection of the Individual

Protection of Society

Protection of Property

Promotion of Worthwhile Social
Objectives

Development of Law

Roman Law

Common Law

Sources of Law

Constitutions

Statutes

Court Decisions

Administrative Regulations

Civil Law Versus Criminal Law

The Role of Business Law

The Changing Nature of Law

This opening chapter focuses on law and ethics, what law is, why it is needed, where it came from, what functions it serves, and how it is affected by moral concepts. The chapter points out that, although the modern emphasis in the United States is on statutory law, Americans also rely heavily on case law and rules of administrative agencies to protect a right or to correct a wrong. Civil law, which protects individuals from harm by other individuals, is discussed in contrast to criminal law, which protects society (a neighborhood, a town, a city, a state, a nation, or the entire world), from harmful acts of individuals. The chapter ends by pointing out that our laws will be changed over time in response to the changes and needs of our society.

WHY LAWS ARE NEEDED

Suppose someone broke into your house, did extensive damage, and, in addition, stole many of your valuables. And suppose you found out the thief's identity. Isn't it reasonable to believe that you might seek revenge on the thief and on his or her family? Isn't it also reasonable to believe that the thief and his or her family might in turn seek revenge on you? Can you imagine what it would be like to live in a society in which these situations would occur but there would be no laws? Maybe your first reaction is that you'd like that because no one could stop you from taking revenge. But remember, no one could stop the thief from taking revenge, either. You can be sure that if you and the thief and your families decided to take revenge, injury or death would result. If we are to avoid chaos and live together in peace, we must have laws.

Since the earliest times in history, and as society developed, it has become obvious that the only alternative to chaos is some system of rules of order for society's members. At first, these rules were customs or practices, but they had the same effect as laws. Through a gradual process, law has become more formalized, and today it governs almost everything we do. It is therefore important for all of us to understand our legal duties to other people and to society as a whole.

THE NATURE OF LAW

Law can be defined as an enforceable set of rules established by a government—federal, state, or local—to regulate the conduct of individuals and groups in a society. Just as there are rules for playing a game, so there are rules for living with other people in society—whether that society is a neighborhood, a town, a city, a state, a nation, or the entire world. The rules that make up law are actually legal duties that are imposed on people and that require them to act in a certain way. When people do not follow these rules, they violate the law. Through the courts, individuals injured by those who violate the law are provided with legal remedies, such as requiring the

wrongdoer either to pay money damages, go to prison, or in some cases both.

THE RELATIONSHIP BETWEEN LAW AND ETHICS

Ethics is the study of what is right or good for human beings as they live each day. People are moved to deal with others because of their own ideas of what is right and wrong. Often their conscience is their guide, and they do what they think they ought to do based on religious upbringing and family customs and traditions. Legal action is not generally taken against a person who does something that is only ethically wrong.

■ While driving home from a shopping center one evening, you saw a car strike a pedestrian crossing the street at a designated intersection. Without stopping, the driver of the car drove away. The following day, the newspaper reported the hit-and-run accident and stated that the victim was in critical condition. Since you did not want to get involved, you did not tell the police what you had seen. ■

In this example, failing to report the incident might be considered ethically wrong on your part; however, it was not legally wrong, since you have broken no law.

The distinction between law and business ethics is especially important. Business ethics is the branch of ethics that relates to what is right or good in business settings. In the past, businesses felt only an obligation to act legally in determining a course of action. Today, while some businesspeople still feel this way, others have acknowledged that businesses have an obligation to consider their ethical as well as legal responsibilities—especially in sensitive areas such as the marketing of dangerous products, fairness in hiring and firing practices, and controlling pollution in the communities in which they operate.

■ The Myers Company legally continued to promote, advertise, and sell its brand of cigarettes after learning through research that cigarette smoking causes or predisposes people to lung cancer, contributes to heart disease, and might cause emphysema. ■

In the above example, some would assert that the Myers Company, although operating within the law, has an ethical responsibility to discontinue the manufacture of cigarettes based on its research findings, whereas others would contend that the only responsibility of the Myers Company is to make a profit (while obviously staying within the law) and that this obligation overrides any ethical responsibility.

Thus, while it is tempting to say that what is legal is also ethical, such a proposition is not necessarily true. But it could be said that law is strongly affected by ethical concepts. For example, laws that people feel are unethical are often successfully challenged through intensive lobbying and court challenges. These tactics positively influence government bodies as they consider future changes to present laws or as they enact new laws.

FUNCTIONS OF LAW

Early in the chapter, it was pointed out that if people are to live together peacefully, law must be an important part of their lives. This need for law presents a dilemma: Every time a law is created, a person's freedom to act is in some way restricted; at the same time, trying to settle disputes without resorting to law will produce chaos. Given this dilemma, what functions can law legitimately serve without unduly restricting a person's freedom? These are four functions of law (see Figure 1.1):

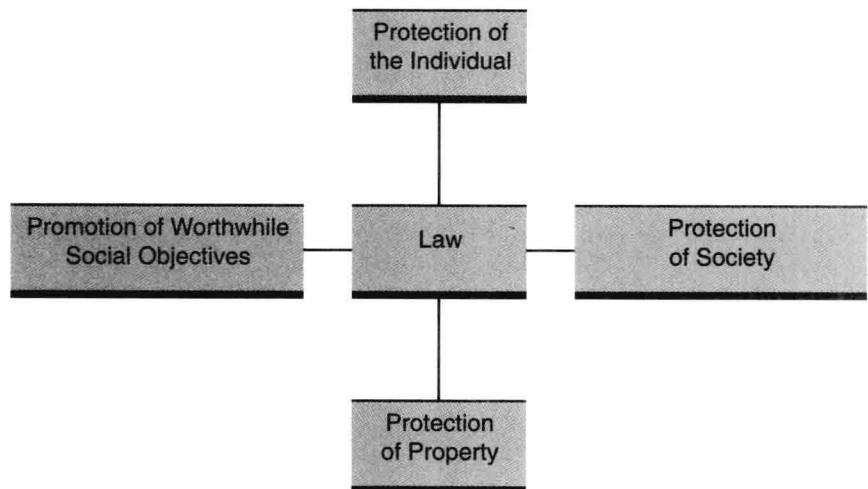
- Protection of the individual
- Protection of society
- Protection of property
- Promotion of worthwhile social objectives

Protection of the Individual

One of the major reasons for the development of law was to protect the individual. People in a society do not all behave in the same manner, and sometimes it's hard to tell where one person's rights end and another's begin. The rules of law guide people in a society in deciding what an individual's rights are. For example, the U.S. Constitution guarantees the right of free speech. But local laws may say that if you exercise that right at 3 A.M. in your front yard, your neighbor can call the police and have you arrested for disturbing the peace. You have violated your neighbor's right to peace and quiet.

Law thus serves to protect the rights of each individual and to regulate conduct between persons in a society. Law provides stability, allowing people to develop their own interests without infringing on the rights of others.

Figure 1.1
The Four Functions of Law



Protection of Society

Protecting society is an equally important task of the law. All people are members of one group or another. Just as individuals need protection and stability, so does the group as a whole. For example, a person who refuses to hire a qualified job applicant just because she or he is of Asian parentage harms not only the individual but also society as a whole.

Many laws that are designed to protect society help to make our cities and towns safe places in which to live and work. For example, society needs protection from thieves, muggers, murderers, vandals, and others who violate all individuals' rights when they commit harmful acts.

Protection of Property

Law protects property as well as people. Our society places much value on the importance of property and the need to protect it. Our laws protect property in many ways. Those who destroy or damage property may be punished or may have to compensate the injured party. The government may not take private property for public use without just compensation. Governments may tax property, but only if the tax is fair and reasonable. Those who own property may, upon dying, pass it on to other persons, subject only to reasonable rules.

Promotion of Worthwhile Social Objectives

Law is not limited to regulating conduct between individuals or between individuals and their society. Law may also be used as a positive force to promote worthwhile social goals. The Social Security system is a good example. The system was established by Congress to aid the aged, the poor, and the disabled. Through a system of contributions and salary deductions required by law, our government helps those who need some form of public assistance.

Promoting good health and educational opportunities is another example of the use of law to promote worthwhile objectives. Congress has enacted many laws establishing and financing medical centers and research facilities. Grants are given each year for extensive medical research, treatment programs, and immunization. Both federal and state governments assist education through legislation. Tax dollars help support many colleges, and many students receive government scholarships to study in this country and in other countries. Many states help pay for the high cost of education by giving tax deductions for educational expenses.

Promoting commerce is also an important goal. Our society believes that law should not be limited to regulating competition in promoting trade. It should also be used to assist in other ways. One example is the use of tax dollars for research to improve trade and develop new products. Another

example is the use of public funds to finance businesses and business expansion. By providing direct loans or insuring private loans, government enables many small businesses to get started and to expand as the need arises.

DEVELOPMENT OF LAW

Although many societies and nations have contributed to the development of law, Roman law and English common law were the most important influences on law as we know it today.

Roman Law

Prior to the Romans, most law was oral. Decisions were made by judges or juries, but a written record of those decisions was not kept. Instead, the decisions were passed on by word of mouth from generation to generation. The Romans developed the concept of written codes that everyone could know and understand. These codes, or laws, were to be so complete that they would guide almost every aspect of life. During the reign of the Emperor Justinian (527–565 A.D.), a great body of law was developed and written. It eventually became known as the Justinian Code. When this code was revised by Napoleon I of France in 1804, it became known as the Napoleonic Code. The Napoleonic Code is the basis of much of the law of Europe today, as well as the law of Louisiana. Louisiana state law is based upon the Roman law because the state was settled primarily by people of French descent.

Common Law

The second great influence on the development of law was the English system of law. Developed in England following the Norman conquest of 1066 A.D., the English system of law is called common law. **Common law** refers to the body of legal decisions made by English court judges over a period of many years. Unlike the written Roman law, the common law in its early stages was oral. Judges traveled to various communities to hold court and try cases. They made legally binding decisions based on local customs but did not write those decisions down. As a result, common law is often referred to as the “unwritten law.” Each case produced a new oral law that served as a **precedent**, an example or standard for deciding later, similar cases. This practice of judges following the precedents established by previously decided cases is called *stare decisis*, which means “to stand by a decision.”

After many years, these oral laws became so numerous that they were put in writing so that anyone could become familiar with them. One of the first printed books containing important decisions of English court judges was *Blackstone's Commentaries*, published in several volumes from 1765 to 1769. The English common law system became the model for the legal system of the United States.

SOURCES OF LAW

Although much of our law originated in English common law, we also rely on other sources of law to meet the changing needs of our society. Our primary sources of law are constitutions, statutes, court decisions, and administrative regulations (see Figure 1.2).

Constitutions

A **constitution** is the fundamental written law of a state or nation. It defines the individual's rights and duties and describes the government's power and limitations.

There are fifty-one constitutions in the United States—the federal or U.S. Constitution and one for each of the fifty states. Most state constitutions are modeled after the U.S. Constitution. The U.S. Constitution, the supreme law of the land, takes precedence over all state constitutions. No law, whether enacted by Congress or by a state legislature, may conflict with the basic principles of the U.S. Constitution. If it does, a court may declare the law invalid or “unconstitutional” and, thus, unenforceable. Each state has its own constitution, which is the supreme law within its boundaries. If a state or local government passes a law that conflicts with the state constitution, that law may also be declared invalid by a court of law.

Figure 1.2 Sources of Law in the United States

