

# **LAW FOR BUSINESS**

**DONNELL BARNES METZGER**

**LAW FOR BUSINESS**

---

A GIFT OF  
**THE ASIA FOUNDATION**  
BOOKS FOR ASIA  
SAN FRANCISCO, CALIFORNIA, U.S.A.  
NOT FOR SALE

## PREFACE

---

We have been pleased by the response of students and adopting faculty members to the first edition of *Law for Business*. Their comments indicate that we reached our goal of presenting a clear, easy-to-read text that accurately describes much of the complex and ever-changing interaction between law and business.

An understanding of this interaction is essential for those who desire to be successful in business. This is not less true because it now appears that the 1980s is a period of slower expansion of government regulation of business than the 1970s. If the present depressed economy continues, governments are likely to increase their regulatory efforts. Barring that or a major war, however, we do not expect another surge of regulation such as that mentioned in the Preface to the first edition. Nor do we see a general repeal of the mass of statutes and administrative rules that govern even the smallest business.

Courts are not likely, in this decade, to abdicate their historic role in American and English law. As they have in the past, they will continue to change and remold the law to try to do justice in a world of accelerating technological, economic, and social change. Students of business can learn to anticipate and understand these changes only if they understand the basic principles of the legal environment of business.

It is the continuing change in the law as a result of new court decisions as well as new interpretations of old statutes that make a new edition of this text desirable. Included are many recent court decisions. We have also revised the text itself to reflect recent changes in the law. For example, in Chapter 4 the treatment of comparative negligence has been expanded to reflect the increased importance of this doctrine. Chapters 5 and 12 have been revised to indicate the growing use of promissory estoppel to enforce promises. A section on the recent trend for courts to provide a remedy for wrongful discharge has been added to Chapter 21. Chapter 32 on close corporations and Chapter 34 on accountants' liability are entirely new. Chapter 47 contains new cases decided under the 1978 Amendments to the Bankruptcy Act.

Chapter 49 has been dramatically expanded by the inclusion of a new section on the constitutional limits on government regulation. Subjects treated in this section include: the Commerce Clause, the Due Process Clause, the Equal Protection Clause, the Contract Clause, and the first amendment protection of "commercial speech."

As in the first edition, we have tried to select cases that teach something about business practices as well as the law. While keeping them brief, we have tried to include enough of the facts to make both the business situation and the legal issues understandable.

L. Thomas Bowers, Jane P. Mallor, Michael J. Phillips, and Eric L. Richards, all colleagues of ours at Indiana, have again prepared the student workbook and instructor's test manual. We think they have done an unusually fine job with these important aids. An instructor's manual and test bank are also available from the publisher.

We have profited from the suggestions of many adopters of the first edition. Suggestions are seldom consistent, so we have had to use our own judgment in determining which ones to follow. Therefore, responsibility for any shortcomings in the book remain ours. We do prize comments and suggestions from instructors and students. We solicit them from users of this edition.

We also wish to acknowledge with appreciation the suggestions of our colleagues named above and also the contributions of Andrew Mallor to Chapters 2 and 32 and of Sarah Jane Hughes to Chapter 51. Grateful thanks also to William Lockhart, Noel Knox, Martin McCrory, and Steven Litz, all Indiana University School of Law students, for their assistance. In addition we appreciate the cooperation of the staff of the library of the Indiana University School of Law, especially Keith Buckley.

This edition is the authors' first experience producing a book using the remarkable capabilities of a word processor. New technologies always bring new problems. We want especially to express appreciation to Amber Shacklett-McLaughlin. Her quick grasp of the characteristics of this machine and her willingness to take many hours from her leisure time permitted us to keep close to the publication schedule. We also wish to thank the members of the staff of our publisher who contributed so much to the success of the first edition and to the preparation of this second edition.

John D. Donnell  
A. James Barnes  
Michael B. Metzger

# CONTENTS

## PART ONE

## INTRODUCTION TO THE LAW

---

### CHAPTER 1

### LAW AND ITS SOURCES 5

*Introduction: Law in Business. Preventive Law. The Authors' Objectives. The Nature of Law: What Is Law? The Legal System. A Definition. A Limited Meaning. Functions of Law. Classifications of Law: Substantive and Procedural Law. Criminal and Civil Law. The American Legal System: Law and Government. Checks and Balances. Constitutional Powers. Constitutional Limitations. Fifty-one Legal Systems. Sources of Law: Federal and State Sources. Constitutions. Treaties. Statutes. Administrative Rules and Decisions. Executive Orders. Court Decisions. How the Law Changes: Predictability versus Adaptability. Predictability. Adaptability. The Adversary System: The Function of the Lawyers. The Function of the Judge. Advantages and Disadvantages.*

### CHAPTER 2

### DISPUTE SETTLEMENT 20

*Means of Dispute Settlement: Negotiation. Mediation and Fact Finding. Arbitration. Other Alternatives to the Courts. The Courts. Confusion of Terminology. Federal Courts: Jurisdiction. District Court. Court of Appeals. The Supreme Court. Special Courts. State Courts: Jurisdiction. Inferior Courts. Trial Courts. Appeals Courts. Procedure: The Functions of Procedure. Summons. The Complaint. The Answer. Reply. Pleadings. Discovery. Pretrial Hearing. Trial Procedure: Setting the Case for Trial. Opening the Case. Presentation of Testimony. Closing the Case. Appeal Procedure: When an Appeal Is Possible. The Appeal. Oral Argument. Court Problems and Proposed Solutions: Some Criticisms. Proposals.*

### CHAPTER 3

### CRIMES AND INTENTIONAL TORTS 40

*Crimes: The Essentials of Crime. Criminal Procedure. Crime and People in Business. Intentional Torts: Interference with Personal Rights. Interference with Property Rights. Interference with Economic Relations.*

**CHAPTER 4**

**NEGLIGENCE AND STRICT LIABILITY 57**

*Negligence: Duty. Breach. Causation. General Causation Rules. Defenses to Negligence. Negligent Infliction of Mental Distress. Recklessness. Strict Liability.*

**PART TWO**

**CONTRACTS**

---

**CHAPTER 5**

**THE NATURE AND ORIGINS OF CONTRACTS 73**

*What Is a Contract? Why Have Contracts? How Has Contract Law Developed? Types of Contracts: Unilateral and Bilateral Contracts. Valid, Unenforceable, Voidable, and Void Contracts. Express and Implied Contracts. Executed and Executory Contracts. Quasi Contract. Promissory Estoppel. The Uniform Commercial Code.*

**CHAPTER 6**

**CREATING A CONTRACT: OFFERS 84**

*Introduction. What Is an Offer? Definiteness. Communication to the Offeree. Special Problems with Offers: Advertisements. Rewards. Auctions. Bids. What Terms Are Included in Offers? How Long Do Offers Last? Terms of the Offer. Lapse of Time. Revocation. Options. Estoppel. Revocation of Offers for Unilateral Contracts. The Effectiveness of Revocations. Rejection. Death or Insanity of Either Party. Destruction of Subject Matter. Intervening Illegality.*

**CHAPTER 7**

**CREATING A CONTRACT: ACCEPTANCES 98**

*What Is an Acceptance? Accepting an Offer for a Unilateral Contract. Accepting an Offer for a Bilateral Contract. Silence as Acceptance. Who Can Accept an Offer? Acceptance When a Writing Is Anticipated. Communication of Acceptance: Manner of Communication. When Is Acceptance Communicated? Authorized Means of Communication. Stipulated Means of Communication.*

**CHAPTER 8**

**VOLUNTARY CONSENT 110**

*Introduction: The Need for Real Consent. The Parties' Duty of Care. The Remedy. Ratification. Misrepresentation: Knowledge of Falsity. Materiality. Fact versus Opinion. Justifiable Reliance. Detriment. Fraud: What Is a "Knowingly Made" Misstatement? Intent to Deceive. Fraud by Silence. The Remedy for Fraud. Duress and Undue Influence: General Nature. Duress. Undue Influence. Mistake: The Nature of Mistake. Mutual Mistake. Unilateral Mistake.*

**CHAPTER 9**

**CAPACITY TO CONTRACT 123**

*Minors' Contracts: The Reason for Minors' Incapacity. The Age of Majority. The Right to Disaffirm. The Consequences of Disaffirming. Misrepresentation of Age by Minors. Ratification. Necessaries. Contracts of Insane and Drunken Persons: Theory of Incapacity. The Test of Insanity. The Effect of Insanity. Necessaries. The Right to Disaffirm. Ratification.*

**CHAPTER 10**

**CONSIDERATION 133**

*The Idea of Consideration: Legal Value. Bargained for and Given in Exchange. Solving Consideration Problems. Rules of Consideration: Preexisting Duties. Promises Not to Commit Crimes or Torts. Promises by Public Officials to Perform Official Duties. Promises to Perform Preexisting Contractual Duties. Promises to*

*Discharge Debts for Part Payment. Composition Agreements. Past Consideration. Forbearance to Sue. Mutuality of Obligation. Adequacy of Consideration. Exceptions to the Requirement of Consideration. Promissory Estoppel. Charitable Subscriptions. Debts Barred by Bankruptcy Discharge or the Statute of Limitations. Promises to Perform a Conditional Duty.*

## CHAPTER 11

**THE FORM AND MEANING OF CONTRACTS 146**

*The Statute of Frauds: The Effect of Failure to Comply. Contracts Covered by the Statute of Frauds: Executors' Agreements to Personally Pay Their Decedents' Debts. Contracts to Answer for the Debt of Another. Contracts Transferring an Interest in Land. Bilateral Contracts Not Capable of Being Performed within One Year. What Kind of Writing Is Required? Interpreting Contracts: The Necessity of Interpretation. Rules of Construction. The Parol Evidence Rule: The Purpose of the Rule. Exceptions to the Parol Evidence Rule.*

## CHAPTER 12

**ILLEGALITY 160**

*Introduction: Illegality. Types of Illegality: The Presumption of Legality. The Effect of Illegality: General Rule. Ignorance of Fact or Special Regulation. Rights of Protected Parties. Rescission before Performance of Illegal Act. Illegality and Divisible Contracts. Contracts to Commit Illegal Acts: Agreements to Commit Crimes. Agreements to Commit Torts. Contracts Made Illegal by Statute: Wagering Statutes. Statutes Declaring Bargains Void. Regulatory Statutes. Contracts Contrary to Public Policy: The Idea of Public Policy. Contracts Injurious to Public Service. Contracts to Influence Fiduciaries. Exculpatory Clauses. Contracts in Restraint of Trade. Unequal Bargains.*

## CHAPTER 13

**THIRD PARTIES' CONTRACT RIGHTS 174**

*Assignment of Contracts: Definition. What Contracts Are Assignable? Delegation of Duties. The Consequences of Assignment: The Rights and Duties of Assignees. The Duties of Assignors. Third-Party Beneficiary Contracts: Donee Beneficiaries. Creditor Beneficiaries. Incidental Beneficiaries.*

## CHAPTER 14

**PERFORMANCE AND REMEDIES 183**

*Conditions: Definition. Types of Conditions. The Creation of Conditions. Standards of Performance: Complete or Satisfactory Performance. Substantial Performance. Material Breach. Special Performance Problems. The Time for Performance. Excuses for Nonperformance: Prevention. Impossibility. Discharge: The Nature of Discharge. Discharge by Agreement. Discharge by Waiver. Discharge by Alteration. Discharge by Statute of Limitations. Remedies: The Theory of Remedies. Damages in Contracts Cases. The Duty to Mitigate Damages. Equitable Remedies.*

## PART THREE

**SALES**

## CHAPTER 15

**INTRODUCTION TO SALES 201**

*When and How Does Article 2 Apply? How Does Article 2 Differ from Contract Law? The Creation of Sales Contracts. Offers and the Code: Firm Offers. Acceptance and the Code: The Battle of the Forms. Manner and Medium of Acceptance. Acceptance by Shipment. Consideration and the Code: Modification of Sales Contracts. Voluntary Consent and the Code. Unconscionable Contracts. Writing and the Code.*

## CHAPTER 16

**TITLE, RISK OF LOSS, AND THE TERMS OF SALES CONTRACTS 220**

*The Terms of Sales Contracts: Price Terms. Quantity Terms. Delivery Terms. Time Terms. Title and the Code. Title and Third Parties: Transfers of Voidable Title. Buyers in the Ordinary Course of Business. Entrusting Goods. Risk of Loss: The Terms of the Agreement. Shipment Contracts. Destination Contracts. Goods in the Possession of Third Parties. Risk Generally. Breach of Contract and Risk. Insurable Interest. Sales on Trial: Sale or Return. Sale on Approval. Sale on Consignment. Bulk Transfers.*

## CHAPTER 17

**PRODUCT LIABILITY 236**

*Introduction: Expectations about Product Quality. Historical Development of the Law. Warranties: Warranties in General. Express Warranties. Creating an Express Warranty. Implied Warranties: Nature of Implied Warranties. Implied Warranty of Merchantability. Implied Warranty of Fitness for a Particular Purpose. Implied Warranty of Title. Exclusions and Modifications of Warranties: General Rules. Limitation of Express Warranties. Exclusion of Implied Warranties. Unconscionable Disclaimers. Who Benefits from a Warranty? Purchaser. Privity of Contract. Nonpurchasers. Federal Trade Commission Warranty Rules: Magnuson-Moss Warranty Act. Purpose of the Act. Requirements of the Act. Full Warranties. Limited Warranties. Availability of Warranties. Enforcement. Negligence: Product Liability in General. Negligence. Privity Not Required. Disclaimers. Strict Liability: Reasons for Development of Strict Liability. Elements of Strict Liability. State of the Art. Intended Use. Possible Limitations on Strict Liability. Statutes of Repose.*

## CHAPTER 18

**PERFORMANCE OF SALES CONTRACTS 258**

*General Rules: Good Faith. Course of Dealing. Usage of Trade. Modification. Waiver. Assignment. Delivery: Basic Obligation. Place of Delivery. Seller's Duty of Delivery. Inspection and Payment. Buyer's Right of Inspection. Payment. Acceptance, Revocation, and Rejection: Acceptance. Effect of Acceptance. Revocation of Acceptance. Buyer's Rights on Improper Delivery. Rejection. Buyer's Duties after Rejection. Assurance, Repudiation, and Excuse: Assurance. Anticipatory Repudiation. Excuse. Commercial Impracticability.*

## CHAPTER 19

**REMEDIES FOR BREACH OF SALES CONTRACTS 272**

*Introduction: Remedies in General: Agreements as to Remedies. Statute of Limitations. Seller's Remedies: Remedies Available to an Injured Seller. Cancellation and Withholding of Delivery. Resale of Goods. Recovery of the Purchase Price. Damages for Rejection or Repudiation. Liquidated Damages. Seller's Remedies Where Buyer Is Insolvent. Buyer's Remedies: Buyer's Remedies in General. Buyer's Right to Cover. Incidental Damages. Consequential Damages. Damages for Nondelivery. Damages for Defective Goods. Buyer's Right to Specific Performance. Buyer and Seller Agreements as to Remedies.*

## PART FOUR

**AGENCY AND EMPLOYMENT**

## CHAPTER 20

**INTRODUCTION TO AGENCY AND EMPLOYMENT 289**

*Overview: Examples of Agents. Nature of Agency. Background. Important Terms: Agent. Professional Agent. Independent Contractor. General and Special*



*Agents. Brokers. Franchisees. Attorney-in-Fact. Capacity to Be Principal or Agent: Who Can Be a Principal? Who Can Be an Agent? Scope of Agency Law: Basic Issues. Employment Law.*

## CHAPTER 21

**AGENCY AUTHORITY AND TERMINATION 297**

*Authority to Bind the Principal: Liability of Principal. Express Authority. Implied Authority. Apparent Authority. Apparent Agent. Duty of Third Person to Determine Agent's Authority. Ratification: Nature of Ratification. Requirements for Ratification. Effect of Ratification. Termination of Agent's Powers: Termination by Will of Parties. Termination by Operation of Law. Damages. Agency Coupled with an Interest. Notice to Third Persons. Termination of Employment: Employment at Will. Wrongful Discharge.*

## CHAPTER 22

**LIABILITY OF PRINCIPALS AND AGENTS TO THIRD PERSONS 309**

*Disclosed, Undisclosed, and Partially Disclosed Principals: Disclosed Principal. Undisclosed Principal. Partially Disclosed Principal. Liability of Agent: Unauthorized Actions. Nonexistent or Incompetent Principal. Other Situations. Liability of Principal: Where the Agent Has Made Representations. Exculpatory Clauses. Where the Agent Has Given a Warranty. Payment to the Agent. Credit Contracts. Negotiable Instruments. Notice to or Knowledge of Agent: Effect of Notice. When There Is a Conflict of Interest. Liability of Principal for Acts of Subagents: Agent's Authority to Appoint Subagents. Agents May Have Employees. Liability for Acts of Subagents. Liability for Torts—General: General Rule as to Agents and Employees. General Rule as to Employers. Scope of Employment. Liability for Physical Torts of Professional Agents. Liability for Certain Torts: Liability of Agent for Deceit. Liability of Principal for Deceit of Agent. Liability for Conversion. Intentional Physical Acts. Liability for Negligence. Liability to Third Persons for Breach of Duty to Principal. Liability for Crimes: Liability of Agent or Employee. Liability of Employer.*

## CHAPTER 23

**DUTIES OF PRINCIPALS AND AGENTS TO EACH OTHER 324**

*Duties of Agents to Principals: Duty of Loyalty. Dual Agency. Duty to Obey Instructions. Duty to Exercise Care and Skill. Duty to Communicate Information. Duty to Account. Embezzlement. Duties of Principals to Agents: Sources of Duties. Duty to Compensate. Duty to Reimburse and Indemnify. Duty to Keep Accounts. Duration of Employment. Enforcement of Liabilities between Principals and Agents: Breach of Duty by Agent. Breach of Duty by Principal.*

## CHAPTER 24

**EMPLOYMENT LAWS 337**

*Health and Safety Legislation: State Legislation. OSHA. Workers' Compensation. Wages and Hours: Fair Labor Standards Act. State Wage Statutes. Collective Bargaining and Union Activities: The Norris-LaGuardia Act. The National Labor Relations Act. The Labor-Management Relations Act. Unfair Labor Practices—Employer. Unfair Labor Practices—Union. Discrimination in Employment: Title VII, The Civil Rights Act of 1964. The Equal Pay Act of 1963. Age Discrimination Act. State Legislation. Handicapped. Employment Retirement Income Security Act: Coverage. Requirements. Pension Guaranty Corporation.*

## CHAPTER 25

**INTRODUCTION TO BUSINESS ORGANIZATIONS 357**

*Types of Business Organizations. Sole Proprietorship. Partnership: Nature of a Partnership. Carrying on a Business. Co-ownership. Disputes on the Existence of a Partnership. A Partnership as an Entity. Limited Partnership. Corporation: Nature of a Corporation. Types of Corporations. "Piercing the Corporate Veil." Franchising: The Nature of Franchising. Advantages of Franchising. Franchisee Complaints. Franchisor Problems. Government Regulation.*

## CHAPTER 26

**FORMATION AND OPERATION OF PARTNERSHIPS 370**

*Formation of Partnerships: No Formalities. Purpose. Name. Articles of Partnership. Persons Represented to Be Partners: Holding Out as Partner. Requirements for Liability. Capacity to Be a Partner: Corporations. Minors and Insane Persons. Management and Authority of Partners: Voice in Management. Express Authority. Implied Authority. Apparent Authority. Trading and Nontrading Partnerships. Where Unanimous Consent Is Required. Property of Partnerships: What Is Partnership Property? Title to Partnership Property. Ownership and Possession. Creditors of Partners. Compensation of Partners: Right to Compensation. Profits and Losses. Duties of Partners: Duty of Loyalty and Good Faith. Duty of Care in Partnership Business. Duty to Inform. Duty to Account. Enforcement of Partnership Rights and Liabilities: Suits by and against Partnerships. Liability for Torts. Liability for Crimes.*

## CHAPTER 27

**DISSOLUTION OF PARTNERSHIPS 385**

*Introduction: When Termination Occurs. Definitions. Dissolution: Dissolution without Violation of the Agreement. Dissolution in Violation of the Agreement. Dissolution by Operation of Law. Dissolution by Court Order. Dissolution after Assignment. Effect of Dissolution. Winding up Partnership Business: Right to Wind Up. Powers during Winding Up. Duties of Partners during Winding Up. Compensation for Winding Up. When the Business Is Continued: Right to Continue. Continuation without Winding Up. Liability for Prior Obligations. Liability for New Obligations. Rights of Noncontinuing Partner. Distribution of Assets: Solvent Partnerships. Insolvent Partnerships: Illustration of Distribution Rules. Individual and Partnership Creditors. Liabilities among Parties.*

## CHAPTER 28

**LIMITED PARTNERSHIPS AND RELATED FORMS 399**

*Limited Partnerships: Definition. Purpose. Use of Limited Partnerships. Formalities. Rights and Liabilities of Partners in Limited Partnerships: General. Liabilities When Formalities Are Absent. Rights of Limited Partners. Liabilities of Limited Partners. Other Provisions of the RULPA. Dissolution of a Limited Partnership: When the Certificate Must Be Canceled or Amended. Distribution of Assets. Other Forms Related to Partnerships: Joint Ventures. Mining Associations.*

## CHAPTER 29

**FORMATION AND TERMINATION OF CORPORATIONS 412**

*Relationship of Corporation and State: The Charter or Articles of Incorporation. Powers of a Corporation. Domicile of the Corporation. Domestic*

*and Foreign Corporations. Doing Business in a State. Jurisdiction of Courts. Taxation. Qualifying to Do Business. Means of Regulating Corporations. First Steps in Forming a Corporation: Promoters. Liability of the Promoter to the Corporation. Liability of Corporation to Promoter. The Corporation's Liability on the Promoter's Contracts. Liability of Promoter on Contracts. Next Steps in Forming a Corporation: A Certificate of Incorporation. The Model Business Corporation Act. Contents of the Articles of Incorporation. Who May Be Incorporators? Organization Meeting. Bylaws. Financing the Corporation: Sources. Equity Securities. Warrants, Rights, and Options. Treasury Stock. Debt Securities. Securities Laws. Termination of the Corporation: Dissolution by Agreement. Involuntary Dissolution.*

## CHAPTER 30

**MANAGEMENT OF THE CORPORATE BUSINESS 429**

*Corporate Powers: Sources of Powers. Limitations. The Ultra Vires Doctrine. Management of the Corporation. The Board of Directors: Powers and Duties. Powers and Rights of the Director as an Individual. Election of Directors. Removal of Directors. Directors' Meetings. Compensation of Directors. Recent Changes in Board Operation. Officers of the Corporation: Powers. President or Chairman. Vice President. Corporate Secretary. Treasurer. Ratification. Duties of Directors and Officers. Liability for Torts and Crimes: Torts. Crimes. Indemnification and Insurance.*

## CHAPTER 31

**SHAREHOLDER FUNCTIONS, RIGHTS, AND LIABILITIES 448**

*Introduction: The Role of Shareholders. Functions of Shareholders. Becoming a Shareholder: Means of Acquiring Stock. The Federal Securities Acts. Antifraud Provisions of the Securities Acts. Blue-Sky Laws. Shareholders' Meetings: Annual Meeting. Special Meetings. Notice of Meetings. Shareholders Entitled to Vote. Proxy Voting. Conduct of the Meeting. Shareholder Proposals and Right to Speak. SEC Proxy Rules. Cumulative Voting. Right of Inspection and Preemptive Right: The Shareholder's Right to Inspect. Preemptive Rights. Dividends: Directors' Discretion to Pay Dividends. Types of Dividends. Legal Limits on Dividends. Stock Splits. Dividends on Preferred Stock. Effect of Dividend Declaration. Shareholder Rights in Extraordinary Corporate Transactions: Amendment of Articles. Other Extraordinary Transactions. Appraisal Rights. Lawsuits by Shareholders: Individual Actions. Class Actions. Derivative Actions. Shareholder Liability: Liability on Shares. Liability for Illegal Dividends. Transfer and Redemption of Shares.*

## CHAPTER 32

**CLOSE CORPORATIONS 470**

*Introduction: Characteristics. Special Problems of Close Corporations. Attempts to Solve Close Corporation Problems: Transferability of Shares. Assured Market for Shares. Control. Shareholder Decisions. Director Decisions. Resolution of Intracorporate Disputes. Traditional Court View of Such Devices. Modern View of Courts. Close Corporations and Special Statutes: History. Nature of Special Statutes. Special Section or Chapter. Scattered Provisions. Flexibility without Special Provisions.*

## CHAPTER 33

**WHICH FORM OF BUSINESS ORGANIZATION? 484**

*Introduction: Starting a New Business. Frequency. Forms of Business Organization: Individual Proprietorships. Partnerships. Corporations. Subchapter*

*S Corporations. Less Common Types. Factors to Consider in Choosing a Form of Business Organization: Limited Liability. Taxation. Tax-Free Exchanges. Lack of Formalities. Financing. Management. Freeze-Outs in Close Corporations. Life of the Business. Liquidity of Investment. Making the Choice.*

## CHAPTER 34

**LEGAL LIABILITY OF ACCOUNTANTS 494**

*Introduction: Bases for Liability. GAAP and GAAS. Liability to Clients: Duty to Client. Liability for Tax Work. Liability to Third Persons: Common Law. Federal Securities Acts. Criminal Liability of Accountants: Federal Securities Acts. State Securities Acts. Protection of Accountants' Papers: Working Papers. Accountant-Client Privilege.*

## PART SIX

**PROPERTY**

---

## CHAPTER 35

**PERSONAL PROPERTY 509**

*Nature and Classification: Property. Real and Personal Property. Tangible and Intangible Property. Public and Private Property. Acquiring Ownership of Personal Property: Possession. Production or Purchase. Lost and Mislaid Property. Gift. Confusion. Accession. Co-ownership of Property: Tenancy in Common. Joint Tenants. Tenancy by the Entirety. Community Property.*

## CHAPTER 36

**BAILMENTS 522**

*Nature of Bailments: Elements of a Bailment. Delivery and Acceptance of Possession. Custody. Types of Bailments. Rights and Duties: Duties of the Bailee. Bailee's Duty of Care. Bailee's Duty to Return the Property. Limitations on Liability. Right to Compensation. Bailor's Liability for Defects in the Bailed Property. Special Bailment Situations: Common Carriers. Hotelkeepers. Safe-Deposit Boxes. Involuntary Bailments.*

## CHAPTER 37

**REAL PROPERTY 535**

*Fixtures: Nature of Fixtures. Express Agreement. Attachment. Use with Real Property. Additions by Owners. Additions by Tenants. Fee Simple. Life Estate. Leasehold. Easement. License. Private Restrictions. Co-ownership of Real Property: Forms of Co-ownership. Condominium Ownership. Cooperative Ownership. Acquisition of Real Property: Acquisition by Purchase. Acquisition by Gift. Acquisition by Will or Inheritance. Acquisition by Tax Sale. Acquisition by Adverse Possession. Transfer by Sale: Steps in a Sale. Real Estate Brokers. Contract for Sale. Financing the Purchase. Transfer by Deed. Recording Deeds. Warranties in the Sale of a House. Public Controls on the Use of Land: Societal Restraints. Nuisance Control. Zoning and Subdivision Ordinances. Eminent Domain.*

## CHAPTER 38

**LANDLORD AND TENANT 561**

*The Nature of Leases: Landlord-Tenant Relationship. Term of the Lease. Execution of a Lease. Rights, Duties, and Liabilities of the Parties. Rights, Duties, and Liabilities of the Landlord: Landlord's Duties. Landlord's Rights. Habitability. Housing Codes. Protection of Tenants against Criminal Conduct. Landlord Liability for Injuries. Security Deposits. Rights, Duties, and*

*Liabilities of the Tenant: Rights of the Tenant. Duties of the Tenant. Liability for Injuries to Third Persons. Assignment and Subleasing. Termination: Termination of the Lease. Constructive Eviction. Abandonment. Eviction.*

## CHAPTER 39

**ESTATES AND TRUSTS 575**

*Introduction: Disposition of Property on Death of Owner. Dying Intestate. Example of Intestacy Law. Special Rules. Murder Disqualification. Simultaneous Death. Wills: Right of Disposition by Will. Execution of Will. Limitations on Disposition by Will. Revocation of Will. Codicils. Administration of Estates: Executor or Administrator. Steps in Administration. Trusts: Introduction. Definitions. Creation of Express Trusts. Creation of Implied Trusts. Transfer of the Beneficiary's Interest. Termination and Modifications of Trust. Duties of a Trustee.*

## PART SEVEN

**COMMERCIAL PAPER**

## CHAPTER 40

**NEGOTIABLE INSTRUMENTS 597**

*Nature of Negotiable Instruments: Introduction. Negotiability. Kinds of Commercial Paper: Promissory Notes. Certificates of Deposit. Draft. Checks. Rights of an Assignee of a Contract. Rights of a Holder of a Negotiable Instrument. Formal Requirements for Negotiability: Basic Requirements. Importance of Form. Writing. Signed. Unconditional Promise or Order: Requirement of a Promise or Order. Promise or Order Must Be Unconditional. Sum Certain in Money: Sum Certain. Payable in Money. Payable on Demand or at a Definite Time. Payable to Order or Bearer. Special Terms: Additional Terms. Ambiguous Terms.*

## CHAPTER 41

**NEGOTIATION AND HOLDER IN DUE COURSE 611**

*Negotiation: Nature of Negotiation. Formal Requirements for Negotiation. Nature of Indorsement. Indorsements: Effects of an Indorsement. Kinds of Indorsements. Holder in Due Course: General Requirements. Holder. For Value. Good Faith. Overdue and Dishonored. Notice of Defenses. Rights of a Holder in Due Course: Importance of Being a Holder in Due Course. Personal Defenses. Real Defenses. Changes in the Holder in Due Course Rule: Consumer Disadvantages. Changes by Some States. Federal Trade Commission Rules.*

## CHAPTER 42

**LIABILITY OF PARTIES 627**

*Liability in General. Contractual Liability: Primary and Secondary Liability. Contract of a Maker. Contract of a Drawee. Contract of a Drawer. Contract of an Indorser. Contract of an Accommodation Party. Signing an Instrument. Signature by an Authorized Agent. Unauthorized Signature. Contractual Liability in Operation: Presentment of a Note. Presentment of a Check or a Draft. Warranties: Transferor's Warranties. Presentment Warranties. Operation of Warranties. Other Liability Rules: Negligence. Imposter Rule. Fictitious Payee Rule. Conversion. Discharge of Negotiable Instruments: Discharge of Liability. Discharge by Cancellation. Discharge by Alteration.*

## CHAPTER 43

**CHECKS AND BANK COLLECTIONS 645**

*The Drawer-Drawee Relationship: The Bank's Duty to Pay. Stop Payment Order. Bank's Liability for Payment After Stop Payment Order. The Drawee Bank: Bank's Right to Charge to Customer's Account. Certified Checks. Cashier's Checks. Death or Incompetence of Customer. Forged and Altered Checks: Bank's Right to Charge Account. Customer's Duty to Report Forgeries and Alterations. Electronic Banking: Electronic Funds Transfer Act.*

## PART EIGHT

**CREDIT TRANSACTIONS**

## CHAPTER 44

**INTRODUCTION TO SECURED TRANSACTIONS 661**

*Credit: Nature of Credit. Unsecured Credit. Secured Credit. Security Interests in Personal Property and Fixtures. Liens on Personal Property: Common Law Liens. Statutory Liens. Characteristics of Liens. Foreclosure of Lien. Security Interests in Real Property: Real Estate Mortgage. Deed of Trust. Land Contracts. Mechanic's and Materialman's Liens. Suretyship: Sureties and Guarantors. Creation of Principal and Surety Relationship. Defenses of a Surety. Creditor's Duties to Surety. Subrogation and Contribution.*

## CHAPTER 45

**SECURED CONSUMER TRANSACTIONS 679**

*Introduction: Article 9 of the Uniform Commercial Code. Security Interests in Consumer Goods. Obtaining a Security Interest. Attachment of the Security Interest: Attachment. The Security Agreement. Future Advances. After-Acquired Property. Proceeds. Assignment. Perfecting the Security Interest: Perfection. Perfection by Public Filing. Possession by Secured Party as Public Notice. Perfection by Attachment. Motor Vehicles. Fixtures. Special Priority Rules: Artisan's and Mechanic's Liens. Fixtures. Default and Foreclosure: Default. Right to Possession. Sale of the Collateral. Distribution of Proceeds. Liability of Creditor.*

## CHAPTER 46

**SECURED COMMERCIAL TRANSACTIONS 697**

*Introduction: Security Interests in Commercial Personal Property. Types of Collateral. Obtaining a Security Interest: Attachment. Future Advances. After-Acquired Property. Proceeds. Perfecting the Security Interest: Public Filing. Possession by the Secured Party. Removal of Collateral. Priorities: Importance of Determining Priority. Basic Priority Rule. Exceptions to General Priority Rule. Buyers in the Ordinary Course of Business. Fixtures. Default and Foreclosure.*

## CHAPTER 47

**BANKRUPTCY 709**

*Introduction: The Bankruptcy Act. Types of Bankruptcy Proceedings: Liquidations. Reorganizations. Consumer Debt Adjustments. Chapter 7: Liquidation Proceedings: Involuntary Petitions. Automatic Stay Provisions. The Bankruptcy Courts. Order of Relief. Election of Trustee. Duties of the Trustee. Exemptions. Avoidance of Liens. Claims. Allowable Claims. Secured Claims. Priority Claims. Preferential Payments. Preferential Liens. Fraudulent Transfers. Discharge in Bankruptcy. Nondischargeable Debts. Objections to Discharge. Acts That Bar Discharges. Reaffirmation Agreements. Chapter 11: Reorganizations: Relief for Businesses. Administration. Chapter 13: Consumer Debt Adjustments: Relief for Individuals. Procedure. Discharge. Advantages of Chapter 13.*

## CHAPTER 48

**INSURANCE 725**

Life Insurance Contracts: *Whole Life Insurance. Term Life Insurance. Fire Insurance Contracts. Insurance Policies as Contracts: Offer and Acceptance. Misrepresentation. Warranties. Capacity. Form and Content. Interpreting Insurance Contracts. Third Parties and Insurance Contracts. Insurable Interest: Insurable Interest in Life Insurance. Insurable Interest in Fire Insurance. Notice and Proof of Loss. Cancellation and Lapse: Cancellation. Lapse.*

## PART NINE

**GOVERNMENT REGULATION**

---

## CHAPTER 49

**GOVERNMENT REGULATION OF BUSINESS 743**

Introduction: *Early Regulation. The Growth of Regulation. State Regulation of Business. Federal Regulation of Business. The Constitution and Government's Power to Regulate Business: The Due Process Clause. Equal Protection Clause. The Contract Clause. The First Amendment. Administrative Agencies: Rise of Agencies. Characteristics of Agencies. Limits on Agencies' Powers. Breadth of Agency Regulation. The Federal Trade Commission Act.*

## CHAPTER 50

**THE ANTITRUST LAWS 760**

The Antitrust Policy Debate. The Sherman Act: *Section 1—Restraints on Trade. Section 2—Monopolization. The Clayton Act: Section 3. Section 7. Section 8. The Robinson-Patman Act: Direct Price Discrimination. Indirect Price Discrimination. Buyer Inducements. Antitrust Exceptions and Exemptions: Regulated Industries. The Parker Doctrine. The Noerr Doctrine. Patent Licensing.*

## CHAPTER 51

**CONSUMER PROTECTION LAWS 786**

Introduction: *Federal Trade Commission Act. Consumer Credit Laws: Consumer Credit Protection Act. Fair Credit Reporting Act. Consumer Leasing Act. Fair Credit Billing Act. Equal Credit Opportunity Act. Fair Debt Collection Practices Act. FTC Holder in Due Course Rule.*

**APPENDIXES 801**

Uniform Commercial Code 802

Glossary of Legal Terms and Definitions 927

**INDEX OF CASES 959****SUBJECT INDEX 965**

## **LAW FOR BUSINESS**

---



