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Black

THE LEGAL ENVIRONMENT OF BUSINESS

Sixth Edition

THE LEGAL ENVIRONMENT OF BUSINESS

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PREFACE

The sixth edition of *The Legal Environment of Business* continues and expands upon the philosophy and approach of former editions. Since courses in the legal environment of business have now taken their place alongside the traditional business law course as an integral part of the business curriculum, our primary task was to update and to refine the materials developed in earlier editions. A secondary task was to add new materials in response to the needs of our users. Most notably we added materials to meet AACSB requirements for materials on ethics and social responsibility. The sixth edition is a three-year revision because of the many changes in the law during the period and because of the dramatic changes in approach to the regulatory process brought about by the Reagan administration.

This edition continues our basic belief that essentially traditional courses emphasize private law and business transactions whereas environmental courses emphasize public law, relationships, and the regulation of business. Environmental courses are more concerned with trends in the law than with what the law is or has been. Precedent is more important for what it portends for the future than for what it has meant in the past. In addition, this text has always emphasized macro-law (the nature, formation, and application of law in general) as contrasted with the traditional preoccupation with the micro-law (the detailed substantive rules in areas such as contracts, agency, and commercial paper).

Among the relationships covered in various chapters are those of debtor-creditor, employer-employee, labor-management, and buyer-seller of goods. Other relationships such as that between government and business are developed in the materials in many chapters. While each of these relationships involves a variety of transactions, the emphasis is on the relationship rather than on the transaction creating it. Relationships are discussed in light of their importance in decision making.

In preparing these materials for an environmental course in law for future business managers, we have been guided by several basic principles, in addition to those just noted. Among them is the conviction that we should seek to design a course in law for business persons rather than a compact version of law courses related to business as they are taught in law schools. In our view, such a course not only contributes to the general

education of students in the social sciences but also plays a vital role in the training of managers for the decision-making process, since the law is, in fact, a tool for generating policy. Believing law to be the most important of the social sciences, we conclude that our purpose should be not to educate lawyers or even clients but to familiarize citizens with the predominant system of our society—the legal system. We are influenced by the fact that law is a cultural subject and as such plays a significant role in education at all levels.

Among other ideas which materially influenced the preparation of this text is the belief that the law must be understood by all Americans as a means of social, political, and economic change. We feel a deep obligation to make students aware of the importance of the “rule of law” in our society. We are concerned not with the legal equivalent of a first-aid course in medicine but with a course which emphasizes jurisprudence and espouses justice as the ultimate goal of humanity and a civilized society. In short, rather than merely mimicking law school courses, we attempt to stress the legal system and to approach law from the standpoint of its sources and its philosophy, with special emphasis on business relations and the role of government in affecting them. In addition, we want to stress contemporary legal problems, such as discrimination in employment and the law and the environment.

NEW FEATURES

This sixth edition contains several new features. Among the more important are:

- 1 At the end of each chapter there are extensive discussions of ethical issues relating to the legal subject matter of the chapter. These are added to assist in the discussion of issues of public and social policy. Since the law provides the floor above which individual and business conduct may rise, we feel it appropriate to note these ethical considerations in each chapter. Moreover, the material is designed to meet the AACSB standard for the inclusion of materials on business ethics.
- 2 A new chapter (Chapter 14) on tort liability of businesses was added. Since ours is the most litigious society in the history of mankind and tort litigation comprises most of our litigation, we believe that a greatly expanded coverage of torts is required.
- 3 As a result of the change of attitude by the FTC and the Justice Department on the legal aspects of mergers and acquisitions, the material dealing with the legality of mergers and acquisitions has been consolidated with the rest of the materials on the Clayton Act in Chapter 12.
- 4 The materials on the SEC and the regulation of securities have been expanded into a separate chapter. The chapter on Securities Regulation (Chapter 8) is of special importance to accounting majors because of the liability issues covered.

- 5 The materials on business organizations also have been expanded into a separate chapter (Chapter 7) with major emphasis on liability issues. The trend toward increased liability of directors and officers prompted this increased coverage.
- 6 The materials dealing with labor management relations have been consolidated into one chapter. This is not intended to downgrade the importance of labor law but to supply a more succinct coverage of this important area.

STUDENT AIDS

The text continues to include a glossary which contains definitions of legal terms used throughout the text so that students will not require access to a legal dictionary while reading. The appendixes include the United States Constitution and excerpts from the antitrust laws and labor laws for student reference. We feel that students often benefit from reading the exact language of the Constitution and of some of the major statutes which furnish the basic legal principles for substantial portions of the text.

Following this preface, there is a special section addressed to students. In this section, we provide step-by-step instructions on how to study this textbook. We include as a part of the instructions a written example of the case briefing system in order that the students will know how to brief a case if the instructor asks them to do so.

CASE TREATMENT

The materials in this book include text discussions, summaries of important legislation, articles, and decided cases—both landmark decisions and very recent ones. We have deleted most of the procedural issues from the cases and have omitted case references and footnotes. Since we believe that students should be required to study the language and reasoning of the courts on substantive issues, we include those portions of the cases that show the arguments of each party and the court's resolution of the issues raised. We have attempted to shorten long cases significantly without deleting the heart of the court's opinion.

SUPPLEMENTARY MATERIALS

To augment the coverage of the book, a comprehensive instructor's manual and test bank are available to adopters. The test bank was prepared by Philip DiMarzio, assistant

professor at Northern Illinois University. Annually, the authors furnish instructors with a supplement to the instructor's manual which up-dates every chapter in the book. In this way you are provided with the latest cases and the most recent developments in the law.

For students there is a study guide prepared by Professor O. Lee Reed. As one of the co-authors of the text, his special insight has enabled him to prepare a study guide which complements and supplements the text. As a teaching tool, it should aid in understanding the more difficult subjects of the text.

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TO THE STUDENT

How to Study *The Legal Environment of Business*

In order to gain a maximum of learning from this textbook, you should first learn how to study written material generally, then how to analyze the cases which make up a significant part of each chapter. The purpose of this section is to aid you in taking these two steps. You can achieve step 1 through use of the SQ3R method, a method widely taught by study-skills psychologists for learning textual material. Step 2 involves mastery of the case briefing system used in studying law.

SQ3R stands for *survey, question, read, recite, and review*. As a study method, it has dramatically improved the grade-point averages of most students who have practiced it. It is based upon the concept that active study of written material improves retention and comprehension of information far better than a passive reading of the material. Unfortunately, many students have not recognized the difference between active study and mere passive reading.

Students often tend to read a textbook chapter exactly as they would read a novel or a magazine article. They begin with the first sentence of the chapter and read straight through the material, pausing only to underline occasionally. Whereas this way of reading may be suitable for a novel, it is quite inappropriate for a textbook. Psychologists insist that an active study method must begin with a *survey* of the material to be read. Thus, if you plan to spend two hours studying a thirty-page chapter, you should take three-to-five minutes at the outset and survey the chapter. First, you should read the boldface section headings (each chapter of this book is divided into numbered sections). Second, you should read a sentence or two from the text of each section. The purpose of this survey is to familiarize you with the topics covered in the chapter. Fight the tendency to stop your surveying process and to try to comprehend all of the concepts you are surveying. Comprehension is not the goal of surveying.

Following the survey of the chapter sections, you should ask yourself a *question* before reading each section. This question should be asked aloud, if possible, but it may be asked silently if circumstances demand. The important thing is actually to “talk to

yourself.” Normally, each section heading can easily be turned into a question. If the section heading reads *Stare Decisis*, you should ask yourself the question, “What does stare decisis mean?”

Only after asking a question are you finally ready to read a chapter section. In reading you should keep your question in mind. By so doing you will be reading for a purpose: to discover the answer to this question.

Upon finishing each section, you should stop and *recite* the answer to your question. An example of this process would be at the end of the section on stare decisis to say to yourself, “Stare decisis refers to the legal tradition that a judge in a given case will follow the precedent established in similar cases decided by courts in that jurisdiction.” To recite this way greatly aids your memory, according to psychologists who have tested the procedure. Recitation also lets you know whether or not you have understood the material you have just read.

The last step of the SQ3R method is *review*. When devoting two hours to the study of a chapter, you should take the final fifteen minutes of that time to review the material. This review should take the form once again of asking the questions taken from the headings of each chapter section and reciting the answers to them, rereading material if necessary to recite properly.

While the SQ3R method may be used effectively to study any subject, the case briefing system is uniquely designed to aid in the study of court decisions. In studying law, students frequently write up case briefs of each decision they read. Whether you are required to write up every decision is up to your individual instructor. However, the case briefing system provides an excellent framework for comprehending complicated judicial reasoning processes, and you should brief cases whether required to do so or not.

To avoid getting lost in a maze of judicial terminology, you should ask yourself a standard set of questions about each case decision and read to discover the answers to these questions. These standard questions lie at the heart of the case briefing system. They are:

- 1 Who is the plaintiff and who is the defendant?
- 2 What are the facts of the case? (Who did what to whom? What is the behavior complained of?)
- 3 Did the plaintiff or the defendant win in the lower court(s), and which party is appealing? (All decisions in this textbook come from appellate courts.)
- 4 What was the legal issue or issues appealed?
- 5 Does the plaintiff or the defendant win on the appeal?
- 6 What rules of law and reasoning does the appellate court use in deciding the issue?

Here is an illustration of a written case brief. It is a brief on the first case in the book, which is found on page 36. Before looking at the brief you should now read that case. To understand the case you need to know that the term “diversity jurisdiction” refers to the power of the federal courts to try cases on subjects of state law. Such juris-

diction is appropriate only where there is complete “diversity of citizenship,” i.e., where every plaintiff is from a different state than every defendant.

Case Brief

NAVARRO SAV. ASS’N v LEE, 100 S.Ct. 1779 (1980) [The notation following the name of the case means that the case may be found in volume 100 of the Supreme Court Reporter, starting at page 1779. The case was decided in 1980.]

Plaintiff and Defendant

The plaintiffs are eight individual trustees of Fidelity Mortgage Investors. The defendant is the Navarro Savings and Loan Association.

Facts

In 1971, the trustees who controlled Fidelity Mortgage Investors, a real estate investment trust organized under Massachusetts law, loaned \$850,000 to a Texas firm in return for a promissory note. The note was secured in part by the commitment letter of Navarro Savings and Loan Association to loan the Texas firm the money necessary to repay the note. In 1973, the trustees demanded that Navarro honor its commitment, but Navarro refused. The trustees (none of whom were from Texas) sued Navarro (a Texas S & L) in federal district court, alleging that the court had diversity jurisdiction.

Lower Courts

The district court dismissed the case for lack of proper jurisdiction. When the U.S. court of appeals reversed the district court’s decision, Navarro (called the *petitioner*) petitioned the Supreme Court to decide the issue. (The trustees are called the *respondents* because they respond to the petition.) The Supreme Court agreed to hear the case (the proper phrase is *granted certiorari*).

Issue Appealed

In a case involving a business trust is diversity of citizenship determined by the states of citizenship of the trustees or by those of the trust’s beneficiaries?

Who Wins

The plaintiffs

Reasoning

Prior Supreme Court cases establish that the trustees of business trusts may bring diversity of citizenship cases based on their own states of citizenship. In the present case this applies even though some beneficiaries of the trust are citizens of Texas, as is the defendant Navarro. The trustees have complete legal power over the investment monies they control, and the trust beneficiaries have no say-so over investment decisions. [*The judgment of the court of appeals is affirmed.*]

As with the SQ3R method, the case briefing system assists you best when you pause after reading each case to recite answers to the questions raised by the system. These

questions should be either memorized or written down for easy reference while reading case material.

Regular use of the SQ3R method and the case briefing system will substantially raise the grades of most students. The secret to your own success, however, is for you to continue to practice these methods despite an initial awkwardness in their use. The temptation to slide back into a passive reading of the material must be overcome.

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