

The
LEGAL, ETHICAL,
and
REGULATORY
ENVIRONMENT
of
BUSINESS

Sixth Edition

Bruce D. Fisher and Michael J. Phillips

..... *The*

LEGAL, ETHICAL,

..... *and*

REGULATORY
ENVIRONMENT

..... *of*

B U S I N E S S

Sixth Edition

Bruce D. Fisher

COLLEGE OF BUSINESS ADMINISTRATION, UNIVERSITY OF TENNESSEE

Michael J. Phillips

SCHOOL OF BUSINESS, INDIANA UNIVERSITY

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Principal cases in this text are listed below. References are to chapter and page numbers.

- Afros S.p.A. v. Krauss-Maffei Corp. 14-381
 Aimone by Aimone v. Walgreen's Co. 23-706
 Airline Pilots Association v. O'Neill 18-511
 Alessi v. Raybestos-Manhattan, Inc. 16-449
 Allison by Fox v. Page 13-352
 Allossery v. Employers Temporary Serv., Inc. 16-454
 Arthur Rubloff & Co. v. Drovers Nat. Bank of Chicago 12-330
 Atlantic Richfield v. USA Petroleum Co. 21-609
 Auciello Iron Works, Inc. v. NLRB 18-500
 Ausherman v. Stump 6-184
 Auto Workers v. Johnson Controls, Inc. 17-462
 Autocephalus Greek-Orthodox Church v. Goldberg 13-339
- Baby M, in the Matter of 1-25
 Berlinger v. Suburban Apartment Management 13-359
 Blow v. Shaughnessy 19-556
 BMW of North America v. Gore 4-144
 Board of Sch. Trustees v. Indiana Ed. Employment Relations Bd. 15-420
 Boothby v. Texon, Inc. 15-405
 Brady v. Fulghum 19-517
 Brady v. Heckler 16-454
 Brooke Group LTD v. Brown and Williamson Tobacco Corp. 21-626
 Brousseau v. Maine Employment Security Com'n 16-454
 Brown v. Gerstein 19-556
 Brunner v. Al Attar 1-39
 Business Electronics Corporation v. Sharp Electronics Corporation 21-606
- Carpenter v. United States 20-595
 Centaur Communications Ltd. V. A/S/M Communications, Inc. 14-382
 Central Bank v. First Interstate Bank 20-594
 Champagne Chrysler-Plymouth, Inc. v. Giles 12-324
 Charrier v. Bell 13-359
 Chevron v. National Resources Defense Council 25-733
 Chiarella v. United States 20-596
 Ciardello v. Maxfli 24-720
 City of Dallas v. Stanglin 4-146
 Clayco Petroleum Corp. v. Occidental Petroleum Corp. 10-271
 Coil Spring Company v. National Labor Relations Board 18-494
 Colding v. Williams 23-662
 Committee on Professional Ethics v. Chipokas 4-100
 Construction Associates Inc. v. Fargo Water Equipment Company 24-736
 Cook v. Chrysler Corporation 17-468
 Cormier v. Resthaven Nursing Home 15-424
 Costello v. Oppenheimer & Co. 20-595
 Crowden v. Grantland 13-358
- Dal-Tex Optical 18-510
 Dalton v. Austin 19-521
 Daughtrey v. Ashe 24-714
 Davis v. Jacoby 12-311
 Delaware Tire Center v. Fox 1-22
 Diamond v. Diehr 14-378
 Dirks v. SEC 20-585
 Donovan v. Burger King Corporation 16-435

- Eastman Kodak Co. v. Image Technical Services, Inc. 21-616
- Eastman Pub. and Advertising, Inc. v. Chesapeake Pub. and Advertising, Inc. 14-381
- Erie Railroad v. Tompkins 3-79
- Ernst & Ernst v. Hochfelder 7-207
- Escott v. BarChris Construction 20-572
- Ethyl Corp. v. Environmental Protection Agency 7-203
- Fall River Dyeing & Finishing Corp. v. NLRB 18-503
- Federal Crop Ins. Corp. v. Merrill 5-167
- Federal Trade Commission v. Patriot Alcohol Testers, Inc. 22-642
- Federal Trade Commission v. Superior Court Trial Lawyers Association 22-639
- First Florida Bank v. Max Mitchell & Co. 11-278
- Fite v. Retail Credit Company 23-706
- Flannery v. U.S. 6-183
- Florida Bar v. Went For It 4-103
- 44 Liquormart v. Rhode Island 5-141
- Fowler v. Land Management Groupe, Inc. 17-458
- Fruit v. Schreiner 15-388
- FTC v. Indiana Federation of Dentists 21-612
- GATX Leasing Corp. v. DBM Drilling Corp. 10-254
- Gear, Inc. v. L.A. Gear California, Inc. 14-382
- Geary v. U.S. Steel Corporation 1-19
- Geise v. Phoenix Co. of Chicago, Inc. 15-402
- Geritrex Corp. v. DermaRite Industries, LLC 14-366
- Gibbs v. American Sav. & Loan Ass'n 12-320
- Golding v. Williams 23-662
- Gortarez v. Smitty's Super Valu, Inc. 11-306
- Griffith v. Keystone Steel and Wire 17-466
- Groden v. Random House, Inc. 22-649
- Gulf South Insulation v. Consumer Prod. Safety Com'n 23-672
- Hallmark Builders Inc. v. Gaylord Broadcasting Co. 11-306
- Halvorson v. Voeller 11-286
- Hamburger v. Eastman 11-306
- Hamer v. Sidway 12-327
- Harkey v. Abate 11-295
- Hawaii Housing Authority v. Midkiff 13-355
- Hewlett v. Hewlett 11-291
- Holly Farms Corp. v. NLRB 18-485
- Houghton v. Ins. Crime Prevention Institute 23-680
- HPPL Ohio, Inc. 16-454
- Humphrey v. National Semiconductor Corp. 11-306
- Indiana Harbor Belt Railroad Co. v. American Cyanamid Co. 1-288
- INS v. Delgado 8-231
- Islamic Republic of Iran v. Pahlavi 3-89
- J.M. Schultz Seed Co. v. Roberts 19-556
- James v. City Home Service, Inc. 23-706
- Jenkins v. Wal-Mart Stores, Inc. 11-302
- Jiminez v. Sears Roebuck and Company 24-740
- Johnson v. Calvert 1-36
- Johnson v. Wells 6-183
- Joslyn Mfg. Co. v. T.L. James & Co., Inc. 19-543
- K Mart Corporation v. Cartier, Inc. 10-258
- Kaplan v. Michtom 14-363
- Kearns v. Chrysler Corp. 14-376
- Keaton v. A.B.C. Drug Co. 24-716
- Kennedy, In Re Estate of 13-358
- Kopycinski v. Aserkoff 3-74
- Landreth Timber Co. v. Landreth 20-564
- Levine v. Smith 19-556
- Lewis v. W.F. Smith & Co. 13-359
- Lockheed Corporation v. Speink 16-446
- Lucas v. South Carolina Coastal Council 4-154
- Lynch v. Household Finance Corporation 5-158
- Marshall v. Barlow's, Inc. 8-221
- Martin v. Peyton 19-556
- McBoyle v. United Steel 3-84
- Merrill v. County Stores, Inc. 14-382
- Meyers v. Moody 20-595
- Milborn, Matter of Estate of 12-314
- Mintzberg v. Golestaneh 12-330
- Mintzmyer v. Department of the Interior 6-173
- Monge v. Beebe Rubber Co. 15-420

- Morton, In Re Estate of 13-359
Moss v. Morgan Stanley, Inc. 20-595
Munford, Inc. v. Peterson 11-282
Mutual of Omaha Insurance Co. v. Novak 14-373
Myers v. A.O. Smith Harvestore Products, Inc. 24-736
- NLRB v. Vemco, Inc. 18-491
National Tour Bankers Association v. United States 7-195
National Woodwork Manufacturers Ass'n v. NLRB 18-506
New York Tel. Co. v. New York St. Dept. of Labor 16-439
New York v. Burger 8-231
Northington v. Dairyland Insurance Co. 15-396
Northwest Airlines Inc. v. Goldschmidt 7-211
Nuclear Resources Defense Council v. U.S.E.P.A. 25-784
- O'Brien v. A.B.P., Inc. 15-419
O'Connor v. Consolidated Coin Caterers Corporation 17-471
Oakes v. W.C.A.B. 16-454
Oclander v. First Nat. Bank of Louisville 23-677
Ognibene v. Citibank, N.A. 23-692
Ohio v. Kovacs 25-797
Old Colony Trust Co. v. Lawyers Title and Trust Co 10-271
Omnipoint Corp. v. F.C.C. 7-190
Orkin Exterminating Co. v. Federal Trade Commission 22-644
Overstreet v. Norman 15-399
Overt v. Environmental Research and Development 19-530
- Pabst Brewing Co. v. Kalmanovitz 20-595
Paisley v. C.I.A. 6-184
Palsgraf v. Long Island Railroad Co. 11-284
Patel v. Patel 19-527
Perez v. Campbell 1-38
Perez v. Campbell 23-697
Pieper v. Pontiff 13-342
Pittman v. Beebe 19-547
Portland Cement Association v. Ruckelshaus 7-211
- R.M.J., Matter of 4-126
Radisson Plaza Minneapolis v. NLRB 18-498
Regina v. Dudley and Stephens 1-21
Rice, In re 23-705
Riedel v. Buncam, SA 10-261
Riggs v. Palmer 1-15
Robertson v. Levy 19-540
Roderiguez de Quijas v. Shearson/American Express, Inc. 4-95
Romer v. Evans 5-158
Rushing v. Powell 1-8
- San Francisco Arts & Athletics, Inc. v. United States Olympic Committee 5-139
Sarsycki v. United Parcel Service 17-474
Schreiber v. Burlington Northern, Inc. 20-589
SEC v. Platt 20-596
SEC v. Texas Gulf Sulphur Company 20-582
Skinner v. Railway Labor Executives' Assn. 1-37
Smith v. Fleming 13-358
Smolowe v. Delendo Corp. 20-596
Southwestern Bell Media, Inc. v. Trans Western Pub., Inc. 14-381
Spindler v. North Central Harvestore, Inc. 24-727
State ex rel. Beacon Journal Pub. v. Akron 6-170
Symons v. Chrysler Corp. Loan Guarantee Bd. 6-184
Sztejn v. J. Schroeder Banking Corp 10-254
- Tandon Corp. v. U.S. International Trade Com'n 14-382
Texaco, Inc. v. Pennzoil, Co. 11-298
Thornhill v. Sharpstown Dodge Sales, Inc. 23-706
Tondreau, In re 23-699
Toyota Motor Sales v. Superior Court 15-392
Trans-Aire International, Inc. v. Northern Adhesive Co. 24-718
- U.S. v. Fleet Factors, Corp. 25-788
U.S. v. Frezzo Brothers, Inc. 25-761
U.S. v. Usery 2-48
Union Carbide Corp. Gas Plant Disaster, In re 10-265
United Paperworks International Union v. Misco, Inc. 18-501

- United States Brewers Ass'n v. EPA 25-797
- United States v. Baker Hughes, Inc. 21-621
- United States v. Booker 1-38
- United States v. Gaubert 6-178
- United States v. Gibson Products Co., Inc.
15-411
- United States v. Haney Chevrolet, Inc.
25-775
- United States v. Johnson & Towers, Inc.
25-780
- United States v. Lopez 5-134
- United States v. Ward 8-224

- Venes v. Professional Service Bureau, Inc.
23-688

- Walters v. National Association of Radiation
Survivors 8-231
- Wasson v. Securities and Exchange
Commission 8-228
- West v. Searle & Co. 24-722

- Whelan Associates, Inc. v. Jaslow Dental
Laboratories, Inc. 14-369
- Whirlpool Corp. v. Marshall 16-430
- William Henry Brophy College v. Tovar
13-358
- Williams v. Walker-Thomas Furniture
Company 23-665
- Wisconsin Public Intervenor v. Mortier 4-152
- Wlasiuk v. Whirlpool Corp. 15-415
- Wolfe v. American Airlines, Inc. 14-364
- Wright v. United States 11-306
- Wyoming v. Oklahoma 4-150

- Yancy v. State Personnel Board 1-17

- Zanac, Inc. v. Frazier Neon Signs, Inc. 15-420
- Zaretsky v. E.F. Hutton & Co., Inc. 20-580
- Zweig v. Hearst Corp. 20-595

**dedicated to Yves,
Patron Saint of Lawyers
(1253 circa to 1303)
and Marvin R. Wollin
and Beatrice M. Wollin**

PREFACE

This is the sixth edition of *The Legal, Ethical, and Regulatory Environment of Business*. Since publication of the fifth edition, a number of major changes have occurred in the U.S. political environment that could have a substantial impact on several broad areas of the legal environment of business. First is the reelection of a “New Democrat” in the White House in the form of Bill Clinton, along with a Republican-dominated Congress. This lays the foundation for a uniquely U.S. paradox in regulatory affairs: U.S. citizens are philosophically conservative (and, therefore, dislike much government regulation) but are functionally liberal (and thus want government to protect their safety as airline passengers, as consumers of hamburgers and other food, and as citizens in their everyday lives). Materials in this edition try to reflect this deep, philosophical schism.

At least three areas are prominent in the legal environment of today's business: greater impact of *intellectual property and technology* (evidenced by the widespread use of the Internet and, of course, computers; “leaner” organizations and contingent work and the ultra-competitive atmosphere that marks today's business environment; and the *increased need for practical legal knowledge*. Of course, areas that this text's previous adopters have found popular—the environment and environmental law; ethics and ethical considerations; the regulatory process; constitutional powers and limits; employer and employee law; and other areas of the legal environment—have been updated.

THREE NEW EMPHASES

Impact of Technology and Business Technology has left its imprint on today's business. The computer's impact on society in general and business in particular is well documented. In fact, almost a decade ago *Time* magazine's “Person of the Year” was the computer. The sixth edition of this book takes the computer into account in at least three ways: First, there are **Internet exercises in every chapter**. These are designed to acquaint students with sites on the Internet containing legal sources germane to law encountered in the chapter at hand. There is an astounding wealth of information related to law on the Internet. For instance, chapter 2, “Overview and Finding Law,” includes Internet addresses to help students find judicial branch sites so they can read court opinions; also, an Internet site provides access to federal statutes and legislative histories. Second, technology is recognized by the inclusion of a **new chapter, “Law and Technology: Protecting Inventions and Intellectual Property** (chapter 14). This chapter surveys several legal protections available to businesses seeking to protect intellectual property and technology. A third means of recognizing technology is

the presentation of cases specifically related to protection of computer programs in chapter 14.

Leaner Organizations, Contingent Employment, and Ultracompetitiveness The concept of leaner organizations refers to the fact that many overhead positions in firms—personnel specialists and community outreach staff, to say nothing of marketing and other staffs (legal and engineering), are now being recognized for what they are: overhead. This is not to say that such components of large organizations are worthless. Rather, managers are forced to means test such staffs: Are the benefits of employing such staffs commensurate with their costs? If not, given the fact that many U.S. firms must now compete with foreign competitors who frequently lack such overhead, U.S. businesses have been forced to cut such staffs. Outsourcing to less costly plants, collective bargaining, and scope of the federal labor laws are dealt with in chapter 18, “Federal Labor Law: Unionization and Collective Bargaining.” Included are several new cases.

The term *contingent employment* refers to the practice of reducing the number of permanent workers in a firm’s workforce. An almost daily feature of any business section of the newspaper is a report of a firm’s “downsizing” or “right-sizing” of its workforce. Efforts to protect workers subject to dismissal, common law protections (such as they are) and whistleblower protections are mentioned in various chapters.

Increased Emphasis on Practicality Although this book has always had a practical bent, this edition makes a special attempt to emphasize practicality. To this end, cases have been added that represent common situations with respect to a legal doctrine. For example, in the area of workers’ compensation, a new case presents the *single most common employee complaint*: back injuries and the attendant problem of dealing with malingers. In the environmental area, a new National Environmental Policy Act (NEPA) case shows the interconnection of environmental assessments (EAs) and environmental impact statements (EISs). Practicality even creeps into chapter 1’s discussion of ethics and positive law through introduction of a very common problem: failure of a small business to have a specific occupational license and a client’s use of this fact to chisel the businessperson out of a fee for satisfactorily rendered services. In the first regulatory chapter (chapter 6), privacy rights concerning employer *use of Social Security numbers* is presented in a new case. This case discusses the disturbing ability of strangers to access personal information about individuals once they possess their Social Security numbers. In the third regulatory chapter (chapter 8), practicality is evidenced by a case involving a *pro se* claimant for Social Security disability benefits. Because one in six individuals in the entire U.S. population currently receives some type of Social Security benefit and because many represent themselves without the assistance of attorneys in Social Security matters, this case takes on great significance.

Perhaps the most practical new feature of this sixth edition is the use of the already-mentioned Internet exercises in each chapter. The Internet enables law students to access a virtual law library using a computer with a modem. The number of sites on the Internet related to the law is vast. This book enables students to access many of the more practical sites.

INTERNET EXERCISES IN EACH CHAPTER

Each of the 25 chapters in this book contains several exercises using a specific Internet page that was accessible as of the date this book was written (obviously, given the volatility of this rapidly changing area of technology, it is impossible to guarantee the continuance of a particular Internet address). The Internet exercises are noted below.

- *Chapter 1:* The *Dred Scott* case has interesting legal and philosophical language pitting positive law against natural law. The site where one can read an earlier opinion by Justice Taney dealing with slavery is given.
- *Chapter 2:* An address that allows students to access the judicial branch sites is given so that students can look up cases on the Internet. Also, the U.S. Government Printing Office Internet address allows one to order government documents not available over the Internet.
- *Chapter 3:* An agency that almost every U.S. citizen must deal with is the Internal Revenue Service. Its Internet address is given so that students can read tax regulations and obtain tax forms.
- *Chapter 4:* An Internet exercise shows students how to obtain an Internet address so they can find a Supreme Court opinion to answer a new Manager's Ethical Dilemma dealing with a CPA's right to advertise. A second Internet address gives another way to access Supreme Court opinions. A third Internet address allows students to research the personal backgrounds of U.S. Supreme Court justices.
- *Chapter 5:* Issues related to the exercise of religious freedom under the U.S. Constitution have been prominent in public affairs in recent times. An Internet address helps students obtain U.S. Supreme Court decisions regarding religious symbols on public property and prayer in public schools.
- *Chapter 6:* Finding federal agencies can be frustrating. An Internet address provides a way to locate particular federal agencies on the Internet. One specific federal agency's Internet address—that of the Environmental Protection Agency (EPA)—is provided. Also, the regulation of nicotine in tobacco by the Food and Drug Administration (FDA) with respect to minors has proven controversial. An Internet address is provided so that students can read this regulation.
- *Chapter 7:* Few people can afford to subscribe to the *Federal Register*. However, an Internet site in this chapter enables persons to read about proposed federal regulations in the *Federal Register*. Also, some agencies now allow citizens to comment on proposed regulations over the Internet. One such agency's Internet page is presented. The *Congressional Record* is also available over the Internet. An address is given to allow users to access this important document.
- *Chapter 8:* The Occupational Safety and Health Administration (OSHA) is an important agency. Its Internet address is provided so that students can learn of its past and current activities. Frequently cited OSHA regulations are available.
- *Chapter 9:* Businesspeople travel the globe. This chapter on international law provides the international traveler with an Internet address to consult city street maps in foreign cities as well as maps of other nations. Also, the Travel Channel's Internet address is given.
- *Chapter 10:* A second international law chapter presents an Internet address to access international antitrust law. Japanese and German antitrust documents can be found at this site. Also the U.S. State Department's Internet home page is given. This provides many useful travel tips such as travel warnings to keep in mind when planning trips to other nations and business assistance to international travelers.
- *Chapter 11:* Tort cases can be found on the Internet at an address provided. Tort cases are available on several Internet sites, including a second Internet address in this chapter.
- *Chapter 12:* Being able to locate contract law is helpful to business students. The Uniform Commercial Code (UCC), part of which deals with contract law for the sale of goods, is available on the Internet. An address is provided where the UCC can be found. The UCC for each state is available at this site.

- *Chapter 13:* Many people are unaware that the U.S. government owns almost 29 percent of all land in the United States. The home page Internet address of the federal agency that owns most of this land—the Bureau of Land Management—is given. The nature and extent of the functions of this agency are presented at this site.
- *Chapter 14:* This chapter on technology presents the U.S. Patent Office's Internet home page address. Information about patents and trademarks can be obtained here, along with information about filing fees and patent searches.
- *Chapter 15:* Some states' employer–employee laws can be obtained over the Internet. This chapter contains an address to obtain such information. Also, daily newspapers can provide up-to-date information on employer–employee law. This chapter contains the *New York Times* Internet address so that students can read this newspaper daily.
- *Chapter 16:* Statutes regulating the employer–employee relationship are available over the Internet. A listed address that all persons will find useful is that of the Social Security Administration. Ways to obtain your “PEBES” document showing total contributions made to your Social Security account are also available here.
- *Chapter 17:* Many people would like to be able to read basic civil rights laws. Using the Internet site given in this chapter, one can access statutes dealing with civil rights and civil liberties. Also, civil rights laws of other nations are available at this site as well as law review articles on this topic.
- *Chapter 18:* This chapter on labor law deals extensively with the National Labor Relations Board (NLRB). The Internet address of this federal agency is given. Field offices and NLRB decisions are available here, provided you have special software.
- *Chapter 19:* In the area of business organizations, one state stands out as providing corporate law favoring the entrepreneur: Delaware. An Internet site is given that enables students to access features of Delaware corporate law. This helps students understand why half of the Fortune 500 companies are incorporated under Delaware's laws.
- *Chapter 20:* Securities law is available on the Internet. An Internet address to the Securities and Exchange Commission home page is given. This enables students to learn about EDGAR (an SEC engine to access data on regulated companies) and to obtain registration documents and current reports of registered companies. Some Internet addresses to assist students in checking up-to-the-minute stock quotes are also provided.
- *Chapter 21:* One of the major enforcers of the Sherman Act is the U.S. Department of Justice's Antitrust Division. An Internet address enables students to obtain much useful information, including telephone numbers.
- *Chapter 22:* The Federal Trade Commission (FTC) has authority to enforce U.S. antitrust laws. The Internet address of the FTC is provided.
- *Chapter 23:* This chapter on consumer protection provides the Internet address of the Federal Trade Commission. The Telemarketing Sales Rule is accessible at this site. You can download this document onto your own computer. The *New York Times* Internet address also provides a way to read Times newspaper articles related to consumer protection.
- *Chapter 24:* Product liability law is state law. An Internet address to state law enables students to find state tort law, which is the basis for strict liability, negligence, and fraud suits for defective products.
- *Chapter 25:* This chapter on environmental law contains several Internet addresses for those interested in researching this topic. The Environmental Protection Agency's (EPA) address is given. Also the Internet address of a leading private environmental group, the National Resources Defense Council (NRDC), is provided.

PROVOCATIVE NEW CASES THROUGHOUT THE BOOK

Approximately 15 percent to 20 percent of the cases in this sixth edition are new. Almost every chapter in this edition has at least one new principal case in the chapter or in the problems presented at the end of the chapter. However, classic cases such as *Erie Railroad v. Tomkins* remain. Please note that cases have not been changed solely for the sake of change but because certain areas of the law are rapidly changing. Significant changes will be noted in the text and/or in cases.

- *Chapter 1:* This chapter features discussion surrounding a client who uses a swimming pool contractor's failure to have the appropriate license as justification for nonpayment for satisfactory construction of a swimming pool. This pits positive law against natural law. Also, the problem of allowing wrongdoers to profit from their own wrong arises in the classic case of *Riggs v. Palmer*.

A discussion is presented of utilitarianism, showing the importance, as well as the negatives, of this powerful idea that serves as the genesis of the law and economics movement.

The matter of making a "whole" out of the conflicting ethical values is discussed so that students can see how to put ethics into action.

- *Chapter 2:* Material is presented on accessing law over the Internet. An Internet address to federal judicial materials is presented. There is mention of Westlaw and Nexus as computerized legal research codes. Also, a new 1996 Supreme Court case, *U.S. v. User*, dealing with the overlap of civil and criminal sanctions for the same offense, discusses the propriety of punitive damage awards under civil, as distinct from criminal, lawsuits.
- *Chapter 3:* A new "classic" case, *McBoyle v. U.S.*, presents a problem of statutory construction in an inimitable Justice Holmes's decision.
- *Chapter 4:* A new case, *Florida Bar v. Went For It, Inc.*, presents recent U.S. Supreme Court thinking on attorney advertising verging on ambulance chasing.
- *Chapter 5:* This and the former chapter 6 have been combined into a single chapter. Coverage remains essentially the same. However, new cases, *U.S. v. Lopez*, *44 Liquormart v. Rhode Island*, and *BMW of North America v. Gore* update the important area of the scope and limits of government to regulate.
- *Chapter 6:* The "old" chapter 6 is folded into an expanded chapter 5. The "new" chapter 6 begins coverage of regulation.

A new whistleblower case, *Mintzmyer v. Department of the Interior*, is presented. Another new case, *State Ex Rel. Beacon Journal Pub. v. Akron*, presents the problem of keeping employees' Social Security numbers private under the Federal Privacy Act.

- *Chapter 7:* A new case, *Omnipoint Corp. v. F.C.C.*, deals with a practical problem of excusing an agency from having to provide a *Federal Register* notice as required by the Administrative Procedure Act (APA).
- *Chapter 8:* This chapter contains a new case dealing with a *pro se* Social Security disability applicant's rights before an administrative law judge (ALJ) hearing. Also included is a new end-of-chapter discussion case.
- *Chapter 9:* This is the first of two chapters on international law. New text coverage is given to some of the significant Helms-Burton Act provisions. Previous coverage of World Trade Organization (WTO), NAFTA, Tuna/Dolphin is continued. New charts present comparative international labor costs.
- *Chapter 10:* This second international law chapter covers private business dealings in an international context. Included is a new introductory story of an international

businesswoman who wishes to find out if there are terrorist warnings available for certain nations she proposes to visit. This positive law ethical problem links up the Internet exercise at the end of the chapter. Continued from previous editions are discussions of such staples as bills of lading/letters of credit, venues for resolving disputes, and bribery to obtain international business.

- *Chapter 11:* The torts chapter contains a new case on the sensitive matter of slander in the context of discussing within the company an employee thought to be stealing company property. Also, the chapter continues a matter that involves potentially 50 percent of the population: that half that will at some point obtain a divorce. Specifically examined is the matter of one spouse's misrepresenting his net worth to reduce the size of a divorce settlement.

Other cases include a 1990 Supreme Court of Florida case dealing with the scope of accountants' negligence of duty and the emerging doctrine of "compelled self-disclosure" in a defamation case brought by an African-American dismissed by Wal-Mart for allegedly stealing company property. The classic *Palsgraf* case on proximate cause is continued.

- *Chapter 12:* This chapter adds the classic *Hamer v. Sidway* case, dealing with consideration as a detriment to the promisee. Also featured is expanded text on the topic of consideration. Continued in this chapter is a case on the effect of revocation of an offer prior to acceptance in the context of a buyer desperately trying to buy a house in the fast-moving California real estate market.
- *Chapter 13:* A new case deals with landlord liability for a tenant's dog that bites a person on the leased premises. Continued in this chapter is a case that shook the museum world involving the ability or inability of a buyer of international art mosaics to obtain title from a thief. Material also covers the Uniform Residential Landlord Tenant Act (URLTA) and bailments.
- *Chapter 14:* Technology is moving to the forefront in the world. This new chapter presents some legal devices to protect intellectual property, ranging from quasi-contracts (new cases: *Kaplan v. Michtom* and *Wolfe v. American Airlines, Inc.*, which deals with employee rights to items put into an employer's suggestion box) to trade secrets (new case: *Geritrex Corp. v. DermaRite Industries, LLC*, dealing with a departing employee who allegedly steals company lists and other proprietary information), to copyright, trademarks, and patents (new case: *Kearns v. Chrysler Corp.*, dealing with an engineering professor's lawsuit against auto manufacturers for infringement on his patent on the intermittent windshield wiper).
- *Chapter 15:* A new case, *Wlasiuk v. Whirlpool*, highlights the important topic of wrongful dismissal. Specifically, it deals with an employer handbook espousing how important it is for employers to be ethical in their dealings with employees only to ignore such statements in a particular situation. Continued are a number of favorite cases such as, *Toyota Motor Sales v. Superior Court*, which illustrates the lengths to which a pizza parlor owner will go in an attempt to make its pizza home delivery personnel independent contractors.
- *Chapter 16:* A new case on workers' compensation examines the most prevalent workers' comp claim: back injuries. This case shows how difficult it is to distinguish valid claimants from malingerers.
- *Chapter 17:* Three new cases—*Griffith v. Keystone Steel and Wire*, *O'Connor v. Consolidated Coin Caterers Corporation*, and *Sarsycki v. United Parcel Service*—deal with employment discrimination.
- *Chapter 18:* Two new cases are featured in this chapter. *Holly Farms Corp. v. NLRB* deals with the delicate issue of deciding whether an employer is covered by the National Labor Relations Act (NLRA) or is exempt under the farm worker exemption.

Hardball employer tactics, such as disavowal of a one-day-old collective bargaining agreement, are discussed in *Auciello Iron Works, Inc. v. NLRB*. Cases continued include *Radisson Plaza Minneapolis v. NLRB*, which deals with the duty to bargain in good faith versus “surface bargaining.” *NLRB v. Vemco, Inc.* illustrates the difference between employer “threats” and “predictions” in union organizational situations. A segment on unions for government employees is included. Also, a new introductory ethical problem deals with an employer’s right to disavow a just completed contract.

- *Chapter 19:* A new case, *Brady v. Fulghum*, examines the legal effect of a sole proprietor’s failure to have an occupational license on his ability to enforce his trade contracts. Data are updated on the number of sole proprietorships, partnerships, and corporations in the United States. Another new case, *Pittman v. Beebe*, explores the right of dissenting minority shareholders to sue corporate directors for failing to maximize shareholder value in a sale of corporate assets. Continued cases include *Joslyn Mfg. Co. v. T.L. James & Co., Inc.*, which looks at the issue of “piercing the corporate veil” with respect to a parent corporation’s liability for a subsidiary’s toxic waste cleanup. Also, new text presents the liability of professionals who are shareholders in professional corporations.

There is also new text on limited liability companies (LLCs), limited liability partnerships (LLPs), and recent developments regarding tax treatment of LLCs.

- *Chapter 20:* A new introductory Positive Law Ethical Problem introduces students to the issue of how large an error in a registration statement can be before it becomes “material.” Another introductory problem dealing with churning in this edition presents the broker’s as well as the investor’s side of the case. In so doing, students are able to obtain a better grasp of competing equities. New text explains key features of the Private Securities Litigation Reform Act of 1995, including the abandonment of “joint and several liability” and the introduction of “proportionate liability” in certain instances. This Act’s other curbs on abusive litigation against entrepreneurs are noted. The Foreign Corrupt Practices Act is also covered.
- *Chapter 21:* The sixth edition sees the merging of the Sherman and Clayton Acts to reflect antitrust law’s declining role in economic regulation and the ascendancy of international competition (to say nothing of economic deregulation in the economy generally) to keep anticompetitive practices in line. Cases in this chapter include *Business Electronics Corporation v. Sharp Electronics Corporation*, *Atlantic Richfield Co. v. USA Petroleum Co.*, *FTC v. Indiana Federation of Dentists*, *Eastman Kodak Co. v. Image Technical Services Inc.*, *United States v. Baker Hughes, Inc.*, and *Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*
- *Chapter 22:* A new title for this chapter is “The Federal Trade Commission Act and Civil Remedies for Unfair Competition.” Cases include *Federal Trade Commission v. Superior Court Trial Lawyers Association*, *Federal Trade Commission v. Patriot Alcohol Testers, Inc.*, *Orkin Exterminating Co. v. Federal Trade Commission*, and *Groden v. Random House, Inc.* The case *Federal Trade Commission v. Patriot Alcohol Testers, Inc.* examines alleged misrepresentation by marketers that their device can measure the blood alcohol content of persons depositing 50 cents into the machine and blowing into a tube which then analyzes the breath.
- *Chapter 23:* A new case, *Colding v. Williams*, deals with one of the most common consumer frauds: odometer tampering on used cars. Also the chapter contains a case on the matter of dischargeability of a debtor’s obligations arising from “loading up” prior to entering bankruptcy, *In Re Tondreau*. With more than a million bankruptcies filed annually, this matter looms large.

- *Chapter 24:* Three new cases dealing with product liability are presented.
- *Chapter 25:* Many new changes await the student and professor in the area of environmental law. A new case dealing with the National Environmental Policy Act (NEPA) and its role in logging is included. (Note: As of this writing there are only *proposals* to change the Superfund; some of the more prominent suggested changes are presented.) A new case dealing with federal–state relations under the Clean Air Act is included in the text. Also, charts depict the progress made by the imposition of environmental law.

OLD FAVORITE AREAS RETAINED

With respect to the environment, a study released April 12, 1996, by the Chemical Manufacturers' Association indicated that complying with the paperwork of eight federal laws—the Clean Water Act, the Clean Air Act, the Safe Drinking Water Act, the Toxic Substances Control Act, the Federal Insecticide, Fungicide, and Rodenticide Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Cleanup, and Liability Act (CERCLA), and Superfund Amendments and Reauthorization Act (SARA)—requires nearly 55 million hours annually. The same study indicated that the dollar cost of this paperwork was \$3 billion per year; this does not include the actual environmental cleanup, merely the paper reporting on it.

This edition continues to cover most of the acts mentioned in the Chemical Manufacturing Association report.

Thus, this text reflects the change in national leadership with the shift from the Reagan and Bush presidencies, with their deregulatory emphasis, to the installation of a new Democrat committed to strengthening certain areas of government regulations: environmental law, employment discrimination, health care, and education. Although this book concentrates only on the first two, they clearly have an impact on the latter two (public health and education). Environmental coverage has been expanded, not only in the environmental law chapters, but in several chapters (chapter 3, “Sources of Law: Political and Institutional,” where the “right of contribution issue” of the State Model Toxic Control Act is construed by the courts; chapter 10, “International Law: Private Business Dealings in a Global Context,” where the GATT panel decision on the Tuna/Dolphin case is presented; in the International Law Chapter (Chapter 9) by comparing General Agreement on Tariffs and Trade (GATT) (now the World Trade Organization, or WTO) and NAFTA environmental protections; in chapter 25), “Environmental Law: Particular Federal Statutes,” (by discussing marketable pollution rights and recent CERCLA developments; and chapter 19, “Business Organizations,” by the addition of a “piercing the corporate veil” case in a toxic waste cleanup under CERCLA). In the area of employment discrimination, new cases and developments under the 1991 Amendments to the Civil Rights Act are presented.

A second major shift has been the further increase in coverage of international business. To that end, the authors have added a second chapter on this important topic and have split coverage into public international law and private international law. Free trade is clearly the trend, thus increased coverage of GATT/WTO and other free trade treaties and potential treaties (the NAFTA) is included. The impact of these two treaties on domestic environmental law are covered with presentation of the GATT panel's “Tuna/Dolphin” decision.

Of course, we continue to place a prime emphasis on American Assembly of Collegiate Schools of Business (AACSB) suggestions on appropriate legal coverage for business students. The AACSB sets the accreditation standards for schools and colleges of business nationwide; the revised Standard C.1.1 reads, *both undergraduate and MBA*

curricula should provide an understanding of perspectives that form the context for business. Coverage should include: ethical and global issues; the influence of political, social, legal and regulatory, environmental, and technological issues; and the impact of demographic diversity on organizations.

Clearly there is no more important ethic than the **positive law**—the constitution, treaties, statutes, and regulations on the books—with which the business community must contend on a daily basis. Further, it is essential that business be aware of the social, political, and demographic contexts that have shaped the positive law, particularly positive law that regulates business. By being familiar with these forces, business—and, indeed, citizens generally—can understand why the law is as it is today, as well as prognosticate as to its future directions.

This edition also addresses several recent developments that promise to shape our national and international legal, regulatory, and ethical environment for years to come.

ENVIRONMENTAL CONCERNS

First is the continued awareness of the environment, that increasingly threatened, delicate cocoon in which humankind finds itself. When Bill Clinton ran for president, he selected Al Gore, a person with a recognized interest in environmental matters, as his vice president. Clearly there is as great a need for reasonable environmental protections and enforcement today as at any time in our nation's history. Future businesspersons must be aware of their environmental duties—and rights. As this edition points out, businesses and their managers are being criminally fined and, in some cases, imprisoned for violating the Clean Water Act, Clean Air Act, the Superfund Act, and other environmental laws. Businesspeople should not expect to use ignorance as a defense for neglecting their duties under these increasingly important—and enforced—statutes. This book aims to help fill an important need for environmental information.

One other signal of the increasing sensitivity of the financial community to environmental concerns involves the World Bank's growing recognition of environmental issues in its lending practices. In September 1993, the *New York Times* reported that the bank had increased lending for projects related to environmental matters to \$2 billion for the 1993 fiscal year, up from the \$1.2 billion in 1992. However, the bank estimates that \$700 billion is needed to provide safe drinking water and sanitation for third-world countries, so much remains to be done.

This edition addresses the environmental concern by including coverage of the Comprehensive Environmental Response, Cleanup, and Liability Act (CERCLA or the Superfund Act) and a practical way to “cap” liability under CERCLA. This edition mentions the recent interpretation of the National Environmental Policy Act (NEPA)—the *Public Citizen v. Office of Trade Representative* case—which held that the proposed NAFTA treaty is not subject to NEPA constraints. Although the NAFTA has been ratified by the United States, it is interesting to examine the reasoning of a leading court that led it to excuse NAFTA from NEPA requirements as an example of NEPA's evolution. Many persons find it difficult to relate to environmental matters as these involve huge governmental programs with complex legal provisions. To show the “nuts and bolts” side of environmental law, two cases are presented: One involves a mobile source of air pollution (an auto dealer's removing legally mandated air pollution control equipment), and the other involves a creditor's liability for waste cleanup when the borrower fails to comply with CERCLA. Further, charts depict trends in air and water pollution as well as the amount of toxins in human tissue and the sources of radiation confronting each of us. It is hoped that this factual information will make more apparent the accomplishments and shortcomings of environmental law.