

11th Edition

*The Legal
&
Regulatory
Environment
of
Business*

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Peter J. Shedd • Jere W. Morehead*

IN

THE LEGAL AND REGULATORY ENVIRONMENT OF BUSINESS

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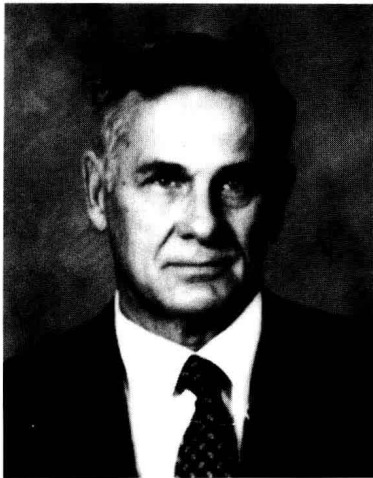
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ELEVENTH EDITION

THE LEGAL AND REGULATORY ENVIRONMENT OF BUSINESS



ABOUT THE AUTHORS



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PREFACE

It is traditional for college textbooks to begin with a preface. Since the contents of the preface are unlikely topics for testing, most students probably skip the preface and begin their study at Chapter One. Hopefully, most of those teaching the subject matter of the text not only read the Preface but find it useful in many ways. Therefore, this Preface is primarily directed at those teaching the legal and regulatory environment of business courses.

As background about the authors, I note that the four authors include three presidents of The Academy of Legal Studies in Business (formerly the American Business Law Association) and two editors-in-chief of the *American Business Law Journal*. Collectively, they have almost a century of experience in teaching and have won numerous teaching and research awards. The text originated at the University of Illinois at Urbana-Champaign and since 1975 it has been a product of the University of Georgia, in Athens.

Two foundation studies of business schools in the 1950s provided the motivation to develop this text. Those studies suggested that business law courses as taught in the post-World War II era were no longer relevant. As a young assistant professor in the late 1950s, I concluded that the findings of these studies were probably correct and that if I desired a lifetime teaching career, these recommendations ought to be heeded.

Now more than 40 years later, this is my eleventh and possibly last preface. During these eleven editions, my original co-author, Professor Robert L. Black of the University of Illinois, retired from active participation, and three colleagues from the University of Georgia joined the author team. Professor O. Lee Reed joined in 1976, Professor Peter Shedd in 1984, and Professor Jere Morehead in 1990. Each has made valuable contributions, and collectively they are responsible for most of the material in this edition.

The history of prior editions is helpful in understanding the contents of this edition. In 1963, McGraw-Hill published the first edition, then entitled *The Legal Environment of Business*. At that time, law courses in business schools covered such private law topics as contracts, negotiable instruments, business organizations, and property. The emphasis was on business

transactions between parties, and the students were taught the “black letter” rules of law that governed these transactions. Such courses have been known as “traditional” business law.

As previously noted, the first edition arose out of findings that the traditional business law course did not adequately educate business students. Issues relating to government regulation of business were considered to be more relevant than these private law subjects because new legal theories had brought expanded rights to employees, consumers, investors, and others. These new rights, which imposed corollary duties on businesses, were usually enforced by governmental agencies. Thus, our new approach emphasized public rather than private law and legal relationships rather than business transactions. *The Legal Environment of Business* title became considered to be a new approach to law in the business curriculum.

As new editions were prepared, additional subjects were added and much of the original coverage was expanded. From the beginning the legal environment approach reflected a belief in the importance of trends in the law and the importance of ethics to legal studies. Subsequent revisions continued to stress trends and ethics. Each revision also attempted to cover areas of current importance to the legal environment and to eliminate topics no longer relevant.

Over the life of this text most accredited schools of business have come to require or offer a Legal Environment of Business course. During this period, the law has become more and more pervasive in every aspect of business. Decisions of the Supreme Court have become as important to the business community as legislation by Congress. Appointments to the Supreme Court receive significant media attention. Thus, the trend toward more and more legal environment courses in business schools closely paralleled the trend in society to use law and litigation as primary tools for social engineering.

In 1992, the American Assembly of Collegiate Schools of Business revised its accreditation standards to include courses covering the legal and regulatory environment of business, emphasizing even more the public law approach. This eleventh edition, like its predecessors, strives to prepare its users for those legal issues they are likely to face as well as the regulatory matters that they will encounter as active business persons.

Changes in the Eleventh Edition

In the preparation of this edition, we continue the trend of shortening the text. This edition is shorter, both in terms of the number of pages and chapters. There are now 15 chapters as compared to 18 chapters in the tenth edition and 20 in the ninth. This reduction was achieved by reorganizing materials and by recognizing that some areas of the law such as antitrust are not as relevant today as before.

The text was reduced in part to enable users to cover the entire text or at least almost all of it in one semester or one quarter. Fifteen chapters in fifteen weeks is a realistic schedule. Chapters of approximately 35 pages constitute a rigorous but realistic weekly workload for students.

The chapter reductions were achieved as follows:

1. Antitrust was reduced from two chapters to one. Much of the space saving was the result of the lack of any realistic enforcement of the laws relating to mergers and acquisitions. Mega-mergers are the order of the day in many fields, including accounting and finance.
2. The torts and product liability chapters were combined. Much of the material that was of primary interest to trial lawyers but of little significance to managers has been eliminated. The approach of this new chapter is on matters of law that are relevant to managers.
3. Securities regulation was combined with the chapter on business organizations. While securities law is of continuing importance, recent trends toward deregulation have made many of the technical aspects less relevant.

In addition to reducing the length of the text, there are the following new features:

1. The authors have used the tobacco industry as a model for discussing legal issues. This industry faces every conceivable legal problem and the causes of these problems are not only understood but are of significant personal importance to students. Not only is tort and product liability of the tobacco industry in the news on a daily basis, so also are attempts by governmental agencies and Congress to regulate that industry. Constitutional issues such as freedom of speech arise, as do antitrust issues such as fixing the price of tobacco leaves. Almost every chapter contains material relating to the tobacco industry.
2. The review questions at the end of each chapter contain one question for each section in the order of the chapter presentation. These are designed to emphasize the most important point in each section as an aid to the students as they prepare for examinations.

Pedagogy

Each chapter contains the following pedagogical elements:

Business Decisions—This element, introduced first in the ninth edition, is continued here. At the beginning of each chapter is a statement of facts that highlights one or more of the substantive aspects of the chapter.

Cases—We have included portions of actual court decisions that illustrate the parties' arguments and the court's resolution of the issues raised. From these cases, we have deleted most of the procedural aspects, citations, and footnotes. While the resulting edited cases are much shorter than in their original form, the heart of the opinions remain. There are 31 new cases in this edition.

Case Questions—Following each case is a series of questions that are designed to help the student understand the key points raised in the case. These questions are a continuation in this eleventh edition.

Concept Summaries—When it is most helpful, a summary of the preceding textual discussion is provided. In this way, complex or lengthy presentations are easily reviewable by the reader.

Key Terms—At the conclusion of the text of each chapter is a list of the words or phrases that are introduced in the chapter. The glossary, at the end of the book, contains definitions for these key terms.

Supplements

***Instructor's Resource Manual* ISBN: 0-07-365430-2**

This manual consists of the teaching outline section, transparency masters, a case brief supplement, and video guide.

The teaching outline section makes up the bulk of this Instructor's Manual, which is organized by text chapter. This section corresponds with the headings in the text, and typically includes suggestions on points of emphasis, answers to the case questions that appear within each chapter of the text, cases for discussion, and additional matters for discussion. Each chapter of this manual also includes a list of references that might be useful secondary sources of information; a suggested answer to the Business Decision that begins each chapter of the text; and suggested answers to all of the end-of-chapter review questions, including the Tobacco Industry Box questions. The Case Brief section of the IM contains a brief of each edited case found in the text. For ease of use, the briefs are numbered by chapter in the order that they appear in the text, and on the bottom right-hand corner of each page, there is a reference to the page in the text where the edited case appears. The tear-out format of this supplement allows instructors to remove any material and incorporate it into their lecture notes.

***Test Bank* ISBN 0-07-365436-1**

By Ernest King of Univ. of Southern Mississippi, instructors can test students' mastery of concepts as the instructors create exams with the use of this Test Bank. Organized by chapter, the Test Bank contains at least 40 multiple-choice questions, 20 true/false questions, and 10 essay questions per chapter, including 1–2 from each Tobacco Industry Box scenario. Many of the questions have been modified to correspond with the text's revision. Answers immediately follow each question.

***PowerPoint Presentation Slides* ISBN 0-07-366044-2**

A brand new supplement to this edition is the PowerPoint Presentation slides. These slides are a replication of those used by Peter Shedd, and contain an outline for classroom lecture.

***Computerized Test Bank (Windows Version)* ISBN 0-07-365432-9**

The computerized Test Bank contains all the multiple-choice, true/false, and essay questions included in the above-described print Test Bank. This powerful system allows tests to be prepared quickly and easily. Instructors can view questions as they are selected for a test; scramble questions; add,

delete, and edit questions; select questions by type, objective, and difficulty level; and view and save tests. For Mac copies, please contact your Irwin/McGraw-Hill sales rep.

Irwin/McGraw-Hill Business Law Case Videos ISBN 0-07-228386-6

The adopters of the eleventh edition can obtain Irwin/McGraw-Hill's 20 case videos for classroom use. These contemporary dramatizations of business law issues sometimes focus on issues within a particular chapter, or may span different chapters. A Video Case Guide can be found at the end of the Instructor's Manual, which outlines the facts, questions, issues, and decision for each video segment.

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Finally, on behalf of the author team, I would like to thank a number of people. First, without the typing skills of Mary Evans, the manuscript would not have been so professionally presented. The team is once again grateful for her work with manuscript drafts.

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Finally, but certainly not last, I want to thank all of the professors who have used or are using this text. Your feedback has been and continues to be important. Please feel free to share your thoughts with us. You may contact any of my co-authors directly at the Terry College of Business, University of Georgia, Athens, Georgia, 30602 or through the Irwin/McGraw-Hill Publishing Company.

Robert N. Corley

TO THE STUDENT

How to Study The Legal and Regulatory Environment of Business

To gain the most from this textbook, you should learn how to study written material effectively. You can achieve effective study through use of the SQ3R method, a method widely taught by study-skills psychologists for learning textual material.

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 memory and comprehension of information far better than passive reading. Unfortunately, many students have not recognized the difference between active study and mere passive reading.

Students often 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. This way of reading may be suitable for a novel, but 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. If you plan to spend two hours studying a thirty-page chapter, take three to five minutes in the beginning and survey the chapter. First, read the bold-type section headings (each chapter of this book is divided into numbered sections). Second, 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 in order to comprehend all of the concepts you are surveying. Comprehension is not the goal of surveying.

Following the survey of all the sections, go back to the beginning of the chapter: Ask yourself a **question** before reading each section. Ask it aloud, if possible, but 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**, 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 keep your question in mind. By so doing you will be reading for a purpose: To discover the answer to your question.

Upon finishing each section, stop and **recite** the answer to your question. As an example, at the end of the section on stare decisis 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 the jurisdiction.” According to psychologists, to recite this way greatly aids memory. Recitation also lets you know whether or not you have understood the material just read.

The last step of the SQ3R method is **review**. When devoting two hours to the study of a chapter, take the final fifteen minutes of the time to review the material. Review the questions taken from the headings of each chapter section and recite the answers to them, rereading material if necessary to answer accurately.

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 of the first case in the book, which is found on page 43. Before looking at the brief you should now read that case. To understand the case you need to know that a “summary judgment” occurs when a court determines that no genuine factual dispute exists and that either the plaintiff or the defendant is entitled to judgment as a matter of law. No evidence is presented before a jury. The court (judge) rules in favor of the plaintiff or the defendant on the basis of what the law is rather than on what facts (who did what to whom, etc.) are believed.

Case Brief

WORLD-WIDE VOLKSWAGEN CORP. v. WOODSON, 100 S.Ct. 559 (1980)
 [The notation following the name of the case indicates that the case may be

found in volume 100 of the *Supreme Court Reporter*, starting on page 559. The Supreme Court decided the case in 1980.]

Plaintiff and Defendant

The plaintiff (who brings the lawsuit against the defendant by filing a complaint) is Woodson. The defendants are the German manufacturer of the Audi automobile, Volkswagen of America (the importer), World-Wide Volkswagen (the wholesale distributor), and Seaway (the retail dealership).

Facts

The plaintiff Woodson, a resident of New York, purchased an Audi from a retail dealership in New York. Woodson drove the car to Oklahoma. While in Oklahoma, Woodson was injured in an accident caused by a defect in the car. He sued the dealership and the other defendants in an Oklahoma state court. The dealership and the importer objected to the Oklahoma court's personal jurisdiction (legal power to decide the case concerning the plaintiff and defendants).

Lower Courts

The Oklahoma trial court and appellate courts rejected the arguments that they lacked the jurisdiction to decide the case. The U.S. Supreme Court agreed to hear an appeal on the basis of constitutional due process.

Issue Appealed

Do the courts of Oklahoma have jurisdiction over a nonresident automobile dealer and its wholesale distributor in a products liability case, when the defendants' only connection with Oklahoma is the fact that an automobile sold in New York to a New York resident became involved in an accident in Oklahoma?

Who Wins

The dealer and the wholesale distributor win.

Reasoning

1. A state court may assert personal jurisdiction over a nonresident defendant only as long as there are "minimum contacts" between the defendant and that state. The due process clause requires this standard.

2. This standard protects the defendant from having to defend himself in a distant or inconvenient place. It also ensures that states will not reach out beyond their boundaries and disturb the balance imposed by the federal system of our government.

3. The dealer and wholesaler carried on no activity whatsoever in Oklahoma; thus they may not be sued in that state.

O. Lee Reed

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