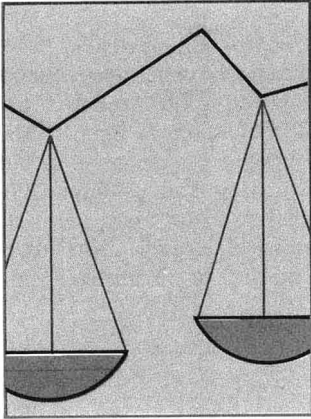


WEST'S BUSINESS LAW

Text
Cases
Legal Environment

FOURTH EDITION

Kenneth W. Clarkson
Roger LeRoy Miller
Gaylord A. Jentz
Frank B. Cross



WEST'S BUSINESS LAW

Text
Cases
Legal Environment

FOURTH EDITION

KENNETH W. CLARKSON

Director, Law and Economics Center
University of Miami

ROGER LeROY MILLER

Center for Policy Studies
Clemson University
and
School of Law
University of Miami

GAYLORD A. JENTZ

Herbert D. Kelleher
Professor in Business Law
MSIS Department
University of Texas at Austin

FRANK B. CROSS

MSIS Department
and
Associate Director, Center for Legal and Regulatory Studies
University of Texas at Austin

WEST PUBLISHING COMPANY
St. Paul New York Los Angeles San Francisco

A study guide has been developed to assist you in mastering the concepts presented in the text. The study guide includes a "Things to Keep in Mind" section, a list of key terms, an outline of each chapter, a set of fill-in questions (a type of programmed learning device), a set of multiple-choice questions, the answers to the fill-in and multiple choice questions, and a new section entitled Uniform CPA Business Law Examination Information. This workbook is available from your local bookstore under the title *Study Guide to Accompany West's Business Law: Text, Cases, Legal Environment, Fourth Edition*, prepared by Barbara Behr of Bloomsburg University of Pennsylvania.

The Uniform Commercial Code is reproduced with permission of the American Law Institute and the National Conference of Commissioners on Uniform State Laws. Copyright © 1987.

Composition: Parkwood Composition
Copy Editing: Beverly Peavler, Naples Editing Services
Artwork: Rolin Graphics

COPYRIGHT ©1980, 1983, 1986 By WEST PUBLISHING COMPANY
COPYRIGHT ©1989 By WEST PUBLISHING COMPANY
50 W. Kellogg Boulevard
P.O. Box 64526
St. Paul, MN 55164-1003

All rights reserved
Printed in the United States of America
96 95 94 93 92 91 90 8 7 6 5 4 3

Library of Congress Cataloging-in-Publication Data

West's business law: text and cases/Kenneth W. Clarkson . . . [et al.].—4th ed.
p. cm.
Rev. ed. of: West's business law/Kenneth W. Clarkson. 3rd ed. 1986.
Includes index.
ISBN 0-314-47214-2
1. Commercial law—United States—Cases.
2. Business law—United States.
I. Clarkson, Kenneth W.
II. Clarkson, Kenneth W. West's business law.
KF888.C55 1989
346.73'07—dc19
[347.3067]

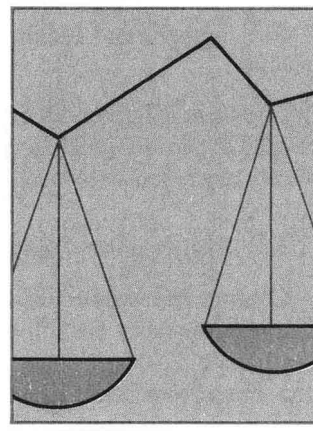


PREFACE

The first course in business law is often an exciting adventure for the student preparing for a career in business, accounting, government, law, and most other careers in today's world. Now, more than ever before, a basic knowledge of business law is an important part of a student's general education, for the law touches on just about every individual at one time or another. All you need to do to confirm this statement is glance through some of the case excerpts contained within the following pages. You will see how the litigation represented by these cases involves many different types of individuals and situations and how the law and the legal process affects people from all walks of life. It is no exaggeration to say that the law provides an all-encompassing framework in our society.

It is with this universal applicability of the law in mind that we have fashioned this text. The result is, we believe, a useful "tool for living" and a text that should satisfy the demands of students preparing for future careers. (The text also includes all areas covered by the CPA exam.)

In this preface we would like to point out not only the changes that have been made in the Fourth Edition, but also the numerous pedagogical devices that aid the student-reader in systematically learning business law.



MAJOR CHANGES IN THE FOURTH EDITION

We have made substantial changes to the Fourth Edition in order to maintain the absolute accuracy, currency, and teachability of our presentation of business law. To accomplish these changes, we have both added some new chapters and completely rewritten others.

New Chapters in the Fourth Edition

The first three editions of this text included a number of unique chapters that were necessary to keep pace with contemporary legal trends. We have retained these chapters on special partnerships, private franchises, business torts, and other topics, with appropriate revisions to reflect current legislation and recent court rulings. In addition, three completely new chapters have been added to the Fourth Edition. They are:

- Electronic Fund Transfers (Chapter 28)
- Landlord-Tenant Relationships (Chapter 53)
- Computers and the Law (Chapter 55)

Important Chapter Revisions

The entire first unit of the text on the Legal Environment of Business has been thoroughly revised. Additionally, all of the following chapters in Unit Seven on Government Regulation have been completely rewritten:

- Introduction and Administrative Law (Chapter 45)
- Consumer Protection (Chapter 46)
- Environmental Protection (Chapter 47)
- Antitrust (Chapter 48)
- Employment and Labor Relations Law (Chapter 49)

In addition, Chapter 58 (The Effect of International Law in a Global Economy) has been completely rewritten with new cases.

Other Significant Changes

- Chapter 1 (Introduction to Law and Legal Reasoning) now has a section on Legal Reasoning.
- Chapter 2 (Courts and Civil Dispute Resolution) has an expanded discussion of arbitration and mediation as an alternative to court settlement of disputes.
- Chapter 12 (Writing and Form) includes a new section on the interpretation of contracts.
- Chapter 16 (Introduction to Sales Contracts and Their Formation) includes a section on leases under new Article 2A of the Uniform Commercial Code.
- Chapter 30 (Rights of Debtors and Creditors) has a major section on suretyship.
- Chapter 31 (Bankruptcy and Reorganization) has been simplified, and a new section on Chapter 12 of the Bankruptcy Code has been added.
- Chapter 42 (Corporations/Merger, Consolidation, and Termination) has sections on corporate takeovers, golden parachutes, and poison pills.
- Chapter 43 (Corporations/Financial Regulation and Investor Protection) contains an expanded discussion of exemptions from securities regulations.
- Chapter 54 (Insurance) has been rewritten to conform more closely to the requirements for the CPA exam.

- Chapter 56 (Wills, Trusts, and Estates) now includes a discussion of principal and income allocation, plus sections on estate planning.

CONCEPT SUMMARIES

Whenever key areas of the law need explicit repetition, we provide a *Concept Summary*. These summaries have proved to be such popular pedagogical tools that we increased their number in this edition. In the third edition, there were twenty-one *Concept Summaries*; in the Fourth Edition, there are almost thirty. Some examples are:

- Valid Business Contracts under the Statute of Frauds (Chapter 12)
- Discharge of Contracts (Chapter 14)
- Seller's Remedies for Buyer's Breach (Chapter 19)
- Rules and Requirements for Status of a Holder in Due Course (Chapter 25)

CASES, CASE CITATIONS, AND CASE EXCERPTS

Learning how to read case citations and case excerpts is a major part of understanding business law. We have made a significant advance in the Fourth Edition toward our goal of helping the student in these areas.

Expanded Section on How to Find Case Law

In Chapter 1 we use a unique format to explain case citations. In addition to our explanatory text, we offer an exhibit in four-color graphics to lead the student to a full understanding of how to read and understand case citations in this text and in other legal references.

Case Presentation

Our cases are fully integrated into the surrounding text. That is to say, they directly follow and illustrate the points of law that are being discussed within the text. Each case also has a unique format. First, the full case citation is presented in the margin. Then, we summarize the *Background and Facts* of the case in our own words. Following the summary, an excerpt from the actual court opin-

ion is presented in different type size to differentiate it from the surrounding textual material. The case presentation concludes with a *Decision and Remedy* section and, in many instances, a *Comments* section.

We have examined virtually every word of every case excerpt in this edition to make sure that the terminology used by the court will be comprehensible to the student-reader. Whenever a difficult term does appear in the case opinion, it is briefly explained in brackets.

New Cases

Approximately one-third of the cases in the Fourth Edition are new. Of those one-third, the majority are from the 1980s with special emphasis on cases from 1987 and 1988.

FOCUS ON ETHICS

The teaching of ethics as an integral part of an introductory course in business law is becoming a common practice throughout the United States. Additionally, accreditation committees usually require the inclusion of a minimum of ethical considerations in an introductory business law course. To satisfy this requirement and the increased interest in ethical questions, we have expanded these sections and have updated them to include current ethical problems and controversies. These specially prepared sections are found at the end of each of the nine units in the text, and each *Focus on Ethics* addresses aspects of the law discussed in the preceding unit. These sections are not intended as a course in ethics; rather, they are designed to elicit comments and discussion from the student-readers. For this reason, each *Focus* ends with a set of discussion questions. Brief suggested answers to these questions can be found in the *Instructor's Manual*.

APPENDICES

Since most students keep their business law text as a future reference source, we have included a full set of appendices. They are as follows:

- A The United States Constitution
- B The Uniform Commercial Code, fully updated, including Articles 2A, 4A, and 6.

- C The Uniform Partnership Act
- D The Uniform Limited Partnership Act
- E The Revised Uniform Limited Partnership Act (including the 1985 Amendments)
- F The Model Business Corporation Act
- G Selected Provisions of the Revised Model Business Corporation Act
- H Spanish Equivalents for Important Legal Terms in English

IMPROVED VOCABULARY EXPLANATIONS

One of the major stumbling blocks in the study of business law is legal vocabulary. This edition has been completely reedited to ensure that every important legal term is fully defined when it is first introduced. The number of boldfaced terms for which definitions are included in the glossary at the end of the text has been increased by over twenty-five percent.

EXPANDED QUESTIONS AND CASE PROBLEMS

Every edition of *West's Business Law* has had numerous end-of-chapter hypothetical questions and actual case problems. Complete answers are found in a booklet entitled *Answers to Questions and Case Problems*. In this edition, through the use of extensive student and user reviews, these problems have become even better suited to today's user. Specifically, ambiguous problems have been replaced by those that are classroom-tested. We have also increased the number of problems by twenty percent. And, finally, we have included numerous additional problems based on cases that can be found in their entirety in the LEGAL CLERK Research Software System (see below). The *Answers to Questions and Case Problems* is free to adopters and can be placed on reserve in the library if desired.

GREATLY EXPANDED SUPPLEMENTS PACKAGE

Most business law instructors face a difficult task in finding the time to teach all of the materials

they wish to cover during each term. We have therefore developed, in conjunction with a number of our colleagues, supplementary teaching materials that, we believe, are the best available today. For this edition we have greatly expanded the supplements package.

LEGAL CLERK—A Software Package for Research and Learning

New to this edition is the highly acclaimed West Publishing LEGAL CLERK Research Software System. LEGAL CLERK is a user-friendly, interactive software package that simultaneously introduces students to the rudiments of computer-aided legal research and reinforces the underlying concepts of business law. LEGAL CLERK provides a valuable learning tool to help your school meet AACSB recommendations for using microcomputers in business law courses.

LEGAL CLERK enables students with access to IBM-PC and compatible personal computers to retrieve specific cases found in *West's Business Law: Text, Cases, Legal Environment, Fourth Edition* for extensive study.

THREE VERSIONS AVAILABLE To provide instructors with maximum flexibility LEGAL CLERK covers three major subject areas of business law and legal environment—UCC Article 2 Sales; Government Regulation and the Legal Environment of Business; and Contracts. Instructors may select one version or all three versions for their classes. Cases appearing in LEGAL CLERK are clearly identified in the text with a computer logo. The logos are color coded to help users easily identify which version of LEGAL CLERK contains specific cases.



Uniform Commercial Code Article 2 Sales—Version 1.0



Government Regulation and The Legal Environment of Business—Version 1.0



Contracts—Version 1.0

SEVERAL CASES ARE INCLUDED ON MORE THAN ONE VERSION OF LEGAL CLERK The following cases are on both the *Uniform Commercial Code Article 2 Sales* and *Government Regulation and The Legal Environment of Business* versions of LEGAL CLERK:

- Continental T.V., Inc. v. GTE Sylvania, Inc.
- Cote v. Wadel
- Thompson Medical Co. Inc. v. Federal Trade Commission
- United States v. Faulkner

The following cases appear on both the *Uniform Commercial Code Article 2 Sales* and *Contracts* versions of LEGAL CLERK:

- Application of Gaynor-Stafford Industries, Inc. by Mafco Textured Fibers
- Butkovich & Sons, Inc. v. State Bank of St. Charles
- Dunn v. General Equities of Iowa, Ltd.
- Fischer v. Division West Chinchilla Ranch
- Haydocy Pontiac, Inc. v. Lee
- Hunter v. Hayes
- Illinois Bell Telephone Co. v. Reuben H. Donnelly Corp.
- Lefkowitz v. Great Minneapolis Surplus Store, Inc.
- Lewis v. Mobil Oil Corporation
- Marchiondo v. Scheck
- McLouth Steel Corp. v. Jewell Coal and Coke Co.

A site license for all three versions of LEGAL CLERK is free to qualified adopters. Each version is accompanied by an *Instructor's Resource Guide* and, for student purchase, a *Student User's Guide*.

West's Book of Forms

A *Book of Forms* containing approximately forty sample business forms is available.

Expanded Transparency Masters

The supplements package now contains additional transparency masters for overhead projection in the classroom. Included in this package are key actual business forms.

West's Business Law on Tape

Completely new to the Fourth Edition is a packet of four sixty-minute audiocassettes containing chapter summaries. The high points of every single chapter in the text are reviewed orally on the tapes in language that the student-user will easily understand. This packet is available free to adopters.

Case Booklet

Most of the cases in the main body of the text have been reprinted in their entirety and published in a separate booklet, the *West's Business Law Case Printout*, which is available free to adopters. This booklet provides adopters with readily accessible and complete information on any cases selected for detailed discussion in the classroom.

Instructor's Manual

In this edition there is a fully revised *Instructor's Manual* prepared by Lorne H. Seidman of the University of Nevada, Las Vegas, and Lawrence Bradley of the University of Notre Dame. The *Instructor's Manual* contains the following materials:

- Chapter outlines
- Major chapter concepts with notes for classroom lectures
- Practical teaching suggestions
- Questions for the student that are designed to stimulate classroom discussion
- Full notes on all cases excerpted within each chapter, including potential classroom discussion questions
- A new section on ethics to assist instructors in discussing the *Focus on Ethics* sections that end each unit within the text

Improved Test Bank

Within the *Instructor's Manual* is an improved *Test Bank* that has been student tested and extensively reviewed by adopters to make sure that there are no ambiguous questions. There are approximately 2,500 multiple-choice questions with answers and approximately 1,600 true/false questions with answers.

The *Test Bank* is available on WESTEST, which offers computerized testing for IBM-PC and compatible microcomputers or the Apple II family of microcomputers (requires 128K). WESTEST allows instructors to create new tests, modify existing tests, change the questions from West's original *Test Bank*, and print tests in a variety of formats. Instructors can add questions of their own to the *Test Bank*. Instructors should contact their West sales representative to inquire about acquiring WESTEST.

Study Guide to Accompany WEST'S BUSINESS LAW, Fourth Edition

Professor Barbara E. Behr of Bloomsburg University of Pennsylvania has put together the most comprehensive, informative, and useful Study Guide ever produced for business law students. She allows the student to comprehend not only "black letter" law, but also some of the subtleties behind the legal process. The *Study Guide* contains:

1. A "Things to Keep in Mind" section.
2. A list of key terms.
3. An outline of the chapter.
4. A set of fill-in questions (a type of programmed learning device).
5. A set of multiple-choice questions.
6. The answers to the fill-in and multiple choice questions.
7. A section entitled "Uniform C.P.A. Business Law Examination Information."

ACKNOWLEDGMENTS FOR THE FIRST EDITION

Barbara E. Behr, Bloomsburg University of Pennsylvania; Robert Staaf, Daniel E. Murray, Richard A. Hausler, Irwin Stotsky, Patrick O. Gudridge, all of the University of Miami School of Law; William Auslen, San Francisco City College; Donald Cantwell, University of Texas at Arlington; Frank S. Forbes, University of Nebraska; Bob Garrett, American River College-California; Thomas Gossman, Western Michigan University; Charles Hartman, Wright State University-Ohio; Telford Hollman, University of Northern Iowa; Robert Jespersen, University of Houston; Susan Liebler, Loyola University; Robert D. McNutt, California State University-Northridge; Roger E. Meiners, Texas A&M University; Gerald S. Meisel, Bergen Community College-New Jersey; James E. Moon, Meyer, Johnson & Moon-Minneapolis; Bob Morgan, Eastern Michigan University; Arthur Southwick, University of Michigan; Raymond Mason Taylor, North Carolina State; Edwin Tucker, University of Connecticut; Gary Victor, Eastern Michigan University; Gary Watson, California State University, Los Angeles.

ACKNOWLEDGMENTS FOR THE SECOND EDITION

Robert Staaf, Kenneth Burns, Judith Kenney, Thomas Crane, all of the University of Miami; Sylvia A. Spade, David A. Escamilla, Peyton J. Paxson, and JoAnn W. Hammer, all of the University of Texas at Austin.

Frank S. Forbes of the University of Nebraska-Omaha, Jeffrey E. Allen, University of Miami; Raymond August, Washington State University; David L. Baumer, North Carolina State; Barbara E. Behr, Bloomsburg University of Pennsylvania; William J. Burke, University of Lowell-Massachusetts; Robert Chatov, State University of New York-Buffalo; Larry R. Curtis, Iowa State University; Gerard Halpern, University of Arkansas; June A. Horrigan, California State University-Sacramento; John P. Huggard, North Carolina State University; John W. McGee, Southwest Texas State University; Robert D. McNutt, California State University-Northridge; Thomas E. Maher, California State University-Fullerton; David Minars, Brooklyn College-New York; Joan Ann Mrava, Los Angeles Southwest College; Thomas L. Palmer, Northern Arizona University; Charles M. Patten, University of Wisconsin-Oshkosh; Arthur D. Wolfe, Michigan State University.

ACKNOWLEDGMENTS FOR THE THIRD EDITION

Kristi K. Brown, Kenneth S. Culotta, Michele A. Dunkerley, Karen Kay Maston, Melinda Ann Mora, Dana Blair Smith, Marshall Wilkerson, Elizabeth Anene Wolfe, all from the University of Texas at Austin; Tamra Kempf, University of Miami; Janine S. Hiller, Virginia Polytechnic Institute and State College; Margaret Jones, Southwest Missouri State College; Carol D. Rasnic, Virginia Commonwealth University; Lorne H. Seidman, Larry Strate, and Cotton Meagher of the University of Nevada, Las Vegas; Thomas M. Apke, California State University, Fullerton; John J. Balek, Morton College, Illinois; Joseph E. Cantrell, DeAnza College, California; Frank S. Forbes, University of Nebraska, Omaha; Chris L. Hamilton, Golden West College, California; Woodrow

J. Maxwell, Hudson Valley Community College, New York; David Minars, City University of New York, Brooklyn; Rick F. Orsinger, College of DuPage, Illinois; Ralph L. Quinones, University of Wisconsin, Oshkosh; Jesse C. Trentadue, University of North Dakota; Robert J. Walter, University of Texas, El Paso.

ACKNOWLEDGMENTS FOR THE FOURTH EDITION

We greatly benefited from the useful criticisms, comments, and suggestions received from the following professors: Lawrence J. Bradley, University of Notre Dame; Robert J. Enders, California State Polytechnic University, Pomona; Frank Forbes, University of Nebraska at Omaha; James M. Haine, University of Wisconsin, Stevens Point, Wisconsin; Christopher L. Hamilton, Golden West College; Harry E. Hicks, Butler University, Indianapolis; Janine S. Hiller, Virginia Polytechnic Institute and State University; June A. Horrigan, California State University, Sacramento; Terry Hutchins, Pembroke State University, North Carolina; Carey Kirk, University of Northern Iowa; Nancy P. Klintworth, University of Central Florida; Kathleen M. Knutson, College of St. Catherine, St. Paul, Minnesota; Gene A. Marsh, University of Alabama; Richard Mills, Cypress College; Alan Moggio, Illinois Central College; Violet E. Molnar, Riverside City College; Dwight D. Murphy, Wichita State University; Paula C. Murray, University of Texas; John M. Norwood, University of Arkansas; Michael J. O'Hara, University of Nebraska at Omaha; Peyton Paxson, Mesa College; S. Alan Schlact, Kennesaw College, Georgia; Lorne H. Seidman, University of Nevada at Las Vegas; Bennett D. Shulman, Lancing Community College; David Vyncke, Scott Community College.

We wish to thank Lavina Leed Miller for her extensive editorial services on this project. Additional legal research was masterfully accomplished by Eric Hollowell. We also wish to thank our copyeditor, Beverly Peavler, for smoothing out the rough spots in the original manuscript; Eric Hollowell, for providing proofreading services on both galleys and page proofs; and Rosemary Porter, whose weekend endeavors kept ma-

terials flowing through Austin. As always, our editor, Clyde Perlee, Jr., has served as an inspiration and faithful arbitrator during the several years of preparation that went into this edition. Our production manager and designer at West, John Orr, has given us everything we needed and more—and ahead of schedule!

As always, any remaining errors in the text are solely our own responsibility. We have always welcomed and continue to welcome comments from all users of this text. It is by incorporating those comments that we continue to write a business law text that is right for students and instructors alike.

CONTENTS IN BRIEF

Preface xv

Unit One

THE LEGAL ENVIRONMENT OF BUSINESS 1

- 1 Introduction to Law and Legal Reasoning 3
- 2 Courts and Civil Dispute Resolution 23
- 3 Constitutional Authority to Regulate Business 49
- 4 Torts 66
- 5 Torts Related to Business 91
- 6 Criminal Law 109

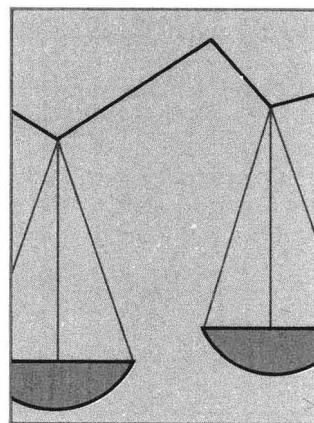
FOCUS ON ETHICS—The Central Problem:
Defining Business Ethics 127

Unit Two

CONTRACTS 131

- 7 Nature and Terminology 133
- 8 Agreement 145
- 9 Consideration 169
- 10 Capacity and Genuineness of Assent 187
- 11 Legality 218
- 12 Writing and Form 237
- 13 Third Party Rights 254
- 14 Performance and Discharge 266
- 15 Breach of Contract and Remedies 283

FOCUS ON ETHICS—Contract Law and the
Application of Ethics 298



*Unit Three***COMMERCIAL TRANSACTIONS
AND THE UNIFORM COMMERCIAL
CODE 303**

- 16 Introduction to Sales Contracts and Their Formation 305
- 17 Sales/Title, Risk, and Insurable Interest 328
- 18 Sales/Performance and Obligation 347
- 19 Sales/Remedies of Buyer and Seller for Breach 363
- 20 Sales/Introduction to Sales Warranties 381
- 21 Sales/Product Liability 399
- 22 Basic Concepts of Commercial Paper 417
- 23 Commercial Paper/The Negotiable Instrument 426
- 24 Commercial Paper/Transferability and Negotiation 440
- 25 Commercial Paper/Holder in Due Course 453
- 26 Commercial Paper/Defenses, Liability, and Discharge 467
- 27 Commercial Paper/Checks and the Banking System 486
- 28 Electronic Fund Transfers 506

FOCUS ON ETHICS—Commercial Transactions and the Uniform Commercial Code 519

*Unit Four***CREDITORS' RIGHTS AND
BANKRUPTCY 525**

- 29 Secured Transactions 527
- 30 Rights of Debtors and Creditors 553
- 31 Bankruptcy and Reorganization 567

FOCUS ON ETHICS—Creditors' Rights and Bankruptcy 586

*Unit Five***AGENCY AND EMPLOYMENT 591**

- 32 Agency Relationships 593
- 33 Liability to Third Parties and Employer-Employee Relationships 609

FOCUS ON ETHICS—Agency and Employment 629

*Unit Six***BUSINESS ORGANIZATIONS 633**

- 34 Forms of Business Organization 635
- 35 Partnerships/Creation and Termination 642
- 36 Partnerships/Operation and Duties 661
- 37 Partnerships/Limited Partnerships 670
- 38 Corporations/Nature and Classifications 681
- 39 Corporations/Formation and Corporate Financing 694
- 40 Corporations/Corporate Powers and Management 712
- 41 Corporations/Rights and Duties of Directors, Managers, and Shareholders 725
- 42 Corporations/Merger, Consolidation, and Termination 738
- 43 Corporations/Financial Regulation and Investor Protection 751
- 44 Private Franchises 770

FOCUS ON ETHICS—Business Organizations 782

*Unit Seven***GOVERNMENT REGULATION 787**

- 45 Introduction and Administrative Law 789
- 46 Consumer Protection 807
- 47 Environmental Protection 822
- 48 Antitrust 832
- 49 Employment and Labor Relations Law 852

FOCUS ON ETHICS—Government Regulation 871

*Unit Eight***PROPERTY AND ITS
PROTECTION 875**

- 50 Personal Property 877
- 51 Bailments 888
- 52 Nature and Ownership of Real Property 906
- 53 Landlord-Tenant Relationships 927
- 54 Insurance 945

FOCUS ON ETHICS—Property and Its Protection 965

Unit Nine

SPECIAL TOPICS 969

55	Computers and the Law	971
56	Wills, Trusts, and Estates	986
57	Liability of Accountants	1007
58	The Effect of International Law in a Global Economy	1019
FOCUS ON ETHICS—Special Topics and the Application of Ethics 1033		

D.	The Uniform Limited Partnership Act	A-169
E.	The Revised Uniform Limited Partnership Act	A-175
F.	The Model Business Corporation Act	A-187
G.	Selected Provisions of the Revised Model Business Corporation Act	A-233
H.	Spanish Equivalents for Important Legal Terms in English	A-243

Glossary	G-1
Table of Cases	TC-1
Index	I-1

APPENDICES

A.	The Constitution of the United States	A-1
B.	The Uniform Commercial Code	A-11
C.	The Uniform Partnership Act	A-139

CONTENTS

Preface xv

Unit One

THE LEGAL ENVIRONMENT OF BUSINESS 1

1 Introduction to Law and Legal Reasoning 3

What is Law 3

Schools of Legal, or Jurisprudential, Thought 3

History and Sources of American Law 4

More Recent Sources of Law 7

Sources of Commercial (or Business) Law 8

Classification of Law 9

Remedies at Law versus Remedies in Equity 10

How to Find Case Law 12

How to Analyze Case Law 16

Review of Case 21

2 Courts and Civil Dispute Resolution 23

Jurisdiction 23

Venue 25

A Typical State Court System 25

The Federal Court System 27

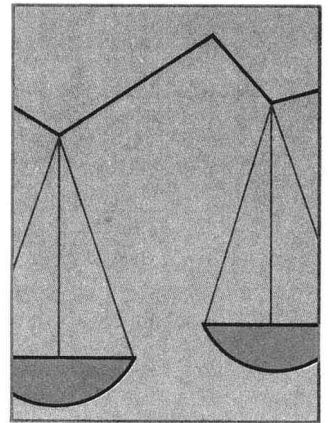
Judicial Review 28

Jurisdiction of Federal Courts 30

Which Cases Reach the Supreme Court? 32

Judicial Procedures: Following a Case through the Courts 32

Alternative Dispute Resolution 41



3 Constitutional Authority to Regulate Business 49

- Basic Constitutional Concepts 49
- The Bill of Rights in a Business Context 57
- Other Constitutional Guarantees 63

4 Torts 66

- Tort Law versus Criminal Law 66
- Kinds of Torts 67
- Intentional Torts: Wrongs against the Person 67
- Intentional Torts: Wrongs against Property 75
- Unintentional Torts: Negligence 79
- Strict Liability 86

5 Torts Related to Business 91

- Wrongful Interference with a Contractual Relationship 91
- Wrongful Interference with a Business Relationship 94
- Wrongfully Entering into Business 96
- Infringement of Trademarks, Trade Names, Patents, and Copyrights 98
- Disparagement of Property or Reputation 105
- RICO 105

6 Criminal Law 109

- The Nature of Crime 109
- The Essentials of Criminal Liability 111
- Defenses to Criminal Liability 111
- Criminal Procedure 115
- Crimes Affecting Business 116
- White-Collar Crime 121

FOCUS ON ETHICS—The Central Problem:
Defining Business Ethics 127

9 Consideration 169

- Legal Sufficiency of Consideration 170
- Adequacy of Consideration 171
- Preexisting Duty Rule 173
- Moral Obligations 174
- Past Consideration 175
- Problem Areas in Business Concerning Consideration 177

10 Capacity and Genuineness of Assent 187

- Capacity 187
- Genuineness of Assent 200

11 Legality 218

- Contracts Contrary to Statute 218
- Contracts Contrary to Public Policy 223
- Effect of Illegality 232

12 Writing and Form 237

- Contracts That Must Be in Writing 237
- Contracts Involving Interests in Land 238
- The One-Year Rule 239
- Collateral Promises 240
- Promises Made in Consideration of Marriage 243
- Contracts for the Sale of Goods 243
- Partial Performance 244
- Sufficiency of the Writing 244
- The Parol Evidence Rule 247
- Interpretation of Contracts 250

13 Third Party Rights 254

- Third Party Beneficiary Contracts 254
- Assignment of Rights and Delegation of Duties 258

14 Performance and Discharge 266

- Conditions 266
- Discharge by Performance 269
- Discharge by Agreement 274
- Discharge by Operation of Law 276

15 Breach of Contract and Remedies 283

- Damages 283
- Rescission and Restitution 291
- Specific Performance 291
- Reformation 292
- Recovery Based on Quasi-Contract 292
- Election of Remedies 293
- Waiver of Breach 294
- Contract Provisions Limiting Remedies 294

FOCUS ON ETHICS—Contract Law and the
Application of Ethics 298

Unit Two

CONTRACTS 131

7 Nature and Terminology 133

- The Function of Contracts 134
- Freedom of Contract and Freedom from Contract 134
- The Basic Requirements of a Contract 135
- Types of Contracts Explained 135

8 Agreement 145

- Mutual Assent 145
- Requirements of the Offer 146
- Termination of the Offer 156
- Acceptance 162

*Unit Three***COMMERCIAL TRANSACTIONS
AND THE UNIFORM COMMERCIAL
CODE 303****16 Introduction to Sales Contracts and
Their Formation 305**

Historical Perspective 305
 The Scope of Article 2: The Sale of Goods 306
 Formation of a Sales Contract 309
 Leases 325

**17 Sales/Title, Risk, and Insurable
Interest 328**

Identification 328
 Risk of Loss 330
 Insurable Interest 339
 Bulk Transfers 340
 Sales by Nonowners 341

18 Sales/Performance and Obligation 347

Duty of Good Faith and Commercial
 Reasonableness 347
 Performance of a Sales Contract 349
 Concurrent Conditions of Performance 349
 Seller's Obligation—Tender of Delivery 349
 Exceptions to the Perfect Tender Rule 351
 Buyer's Obligations 356

**19 Sales/Remedies of Buyer and Seller for
Breach 363**

Remedies of the Seller 363
 Remedies of the Buyer 369
 Statute of Limitations for Actions Brought
 under the Uniform Commercial Code 374
 Contractual Provisions Affecting Remedies 376
 Lemon Laws 379

**20 Sales/Introduction to Sales
Warranties 381**

Warranty of Title 381
 Express Warranty 383
 Implied Warranties 386
 Overlapping Warranties 389
 Third Party Beneficiaries of Warranties 390
 Warranty Disclaimers 391
 Unconscionability and Warranty
 Disclaimers 392
 Magnuson-Moss Warranty Act 395

21 Sales/Product Liability 399

Warranty Theory 399
 Liability Based on Negligence 399
 Fraudulent and Nonfraudulent
 Misrepresentation 403
 The Doctrine of Strict Liability 403

**22 Basic Concepts of Commercial
Paper 417**

Functions and Purposes of Commercial
 Paper 417
 Types of Commercial Paper 418
 Letters of Credit 420
 Other Ways of Classifying Commercial
 Paper 420
 Parties to Commercial Paper 421

**23 Commercial Paper/The Negotiable
Instrument 426**

Contract Law versus Article 3 426
 The Requirements for a Negotiable
 Instrument 427
 Omissions That Do Not Affect
 Negotiability 436
 Other Factors That Do Not Affect
 Negotiability 437

**24 Commercial Paper/Transferability and
Negotiation 440**

Assignment and Negotiation 440
 Indorsements 441

**25 Commercial Paper/Holder in Due
Course 453**

Holder versus Holder in Due Course 453
 Requirements for Holder-in-Due-Course
 Status 454
 Holder through a Holder in Due Course 461

**26 Commercial Paper/Defenses, Liability,
and Discharge 467**

Defenses 467
 Federal Limitations on Holder-in-Due-Course
 Rights 473
 Liability 474
 Liability Based on Signatures 474
 Warranty Liability 480
 Discharge 483

**27 Commercial Paper/Checks and the
Banking System 486**

Checks 486
 The Bank-Customer Relationship 490
 Duties of the Bank 491
 Honoring Checks 491
 Accepting Deposits 500

28 Electronic Fund Transfers 506

Types of Electronic Transfers 506
 Consumer Transfers: The Electronic Fund
 Transfer Act 508
 Commercial Electronic Fund Transfers 516

Future Developments 516

FOCUS ON ETHICS—Commercial
Transactions and the Uniform Commercial
Code 519

Unit Four

CREDITORS' RIGHTS AND BANKRUPTCY 525

29 Secured Transactions 527

Article 9 of the UCC 528
Definitions 528
Attachment—Creating an Enforceable Security
Interest 528
Purchase-Money Security Interest 529
The Scope of a Security Interest 532
Perfecting a Security Interest 533
Priorities 541
Exceptions to Perfection Priority Rules 541
The Rights and Duties of Debtors and Creditors
under the UCC 545
Default 547
Termination 551

30 Rights of Debtors and Creditors 553

Laws Assisting Creditors 553
Suretyship and Guaranty 560
Protection of the Debtor—Exemptions 562
Special Protection for the Consumer-
Debtor 564

31 Bankruptcy and Reorganization 567

Federal Bankruptcy Law—Historical
Background 567
The Bankruptcy Reform Act of 1978 as
Amended 568
Chapter 7 Liquidations 568
Chapter 11 Reorganizations 578
Chapter 13 Plans 580
Chapter 12 Plans 583

FOCUS ON ETHICS—Creditors' Rights and
Bankruptcy 586

Unit Five

AGENCY AND EMPLOYMENT 591

32 Agency Relationships 593

The Nature of Agency 593
Kinds of Agency Relationships 593
Formation of the Agency Relationship 596
Duties of Agents and Principals 597

Remedies and Rights of Agents and
Principals 600
Termination of an Agency 603

33 Liability to Third Parties and Employer-Employee Relationships 609

Scope of Agent's Authority 609
Principal's and Agent's Liability for
Contracts 615
Liability for Agent's Torts 617
Liability for Independent Contractor's
Acts 619
Liability for Agent's Crimes 619
Liability for Subagent's Acts 620
Employer-Employee Relationships 620
Employer's Liability for Employee's Intentional
Torts 627

FOCUS ON ETHICS—Agency and
Employment 629

Unit Six

BUSINESS ORGANIZATIONS 633

34 Forms of Business Organization 635

Sole Proprietorship 635
Partnership 635
Business Corporations 636
Other Forms of Business Organization 636
The Advantages and Disadvantages of a Sole
Proprietorship 638
Comparing a Partnership with a
Corporation 638

35 Partnerships/Creation and Termination 642

Nature of Partnerships 642
Formation of a Partnership 644
Partnership Termination 650
Partnership Buy-and-Sell Agreements 659

36 Partnerships/Operation and Duties 661

Rights among Partners 661
Duties and Powers of Partners 665

37 Partnerships/Limited Partnerships 670

Definition of Limited Partnership 670
Formation 671
Rights and Liabilities of Limited Partners 673
The Use of a Limited Partnership 678
Dissolution 678