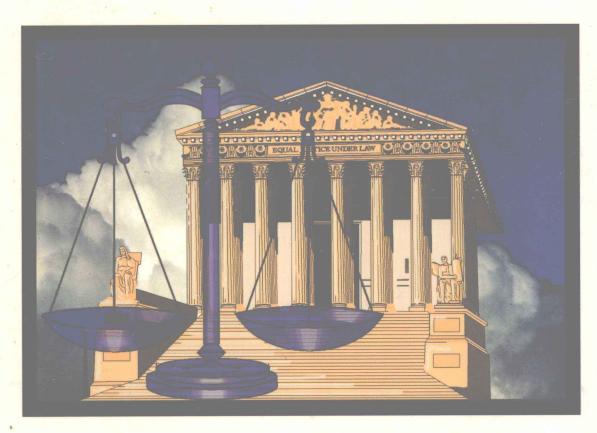
## **BUSINESS LAW** AND REGULATORY ENVIRONMENTS





GEORGE D. CAMERON, III PHILLIP J. SCALETTA, JR.

# Business Law and Regulatory Environments Fifth Edition

### **GEORGE D. CAMERON III**

Graduate School of Business Administration The University of Michigan

### PHILLIP J. SCALETTA, JR.

Krannert Graduate School of Management Purdue University

1996



Artist: Anita Hester

Cindy Romero

Cover Design: Carol Pickens
Desktop Publishing: Jan Tiefel

### © DAME PUBLICATIONS, INC.-1996 Houston, TX

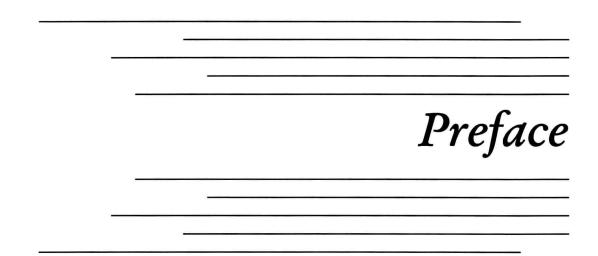
All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without the prior written permission of the publisher.

ISBN 0-87393-304-4

Library of Congress Catalog Card No. 95-69662

Printed in the United States of America.

# To Julie and Helen



### CONTINUITY AND CHANGE

This edition—our fifth—represents the most comprehensive revision yet. Changes in our field and in the world of business are occurring at an ever-increasing pace. We have tried to be responsive to the need for change, while at the same time maintaining the features of the text which we think having enduring value.

We remain committed to the core values of completeness, accuracy, and readability. We are unchanged in our belief that students need to read real cases, not just authors' summaries. We still think that "the business of Business is business," that firms are organized to sell goods and services—and that means making contracts. Corporations, at least, cannot function without the actions of human beings, and that means making more contracts-hiring those human beings as employees, agents, franchisees, et al. Business also involves the flow of money—from investors and customers, to creditors (and back to investors, if there are profits). The legalities of those financial relationships also need to be understood by business managers.

We think that the above principles remain valid. We have thus retained most of the "traditional" topic coverage that has characterized this text.

So much for "Continuity." What about "Change?" "What's new" in the Fifth Edition?

First, there are many new cases—over 100 of them, most being 1990s decisions. While most of the in-chapter example cases are new, however, we have tried to retain many of the "old favorites" as end-of-chapter problems, so that many of the problems are "new" as well.

Second, users of prior editions will immediately notice the substantially shorter length of this edition. There are two reasons for this greater brevity. Many schools are devoting less class time to coverage of "traditional" topics. Students (and parents) everywhere are complaining about rising costs. We have tried to respond to both of these concerns, by tightening up our coverage of topics wherever possible. We have eliminated eight chapters, primarily by combining them with other chapters. This permits text coverage of the topics involved, but eliminates about four case examples for each "combination," plus the introductory and closing material in each separate

chapter. The "net saving" is approximately 200 pages. Corporations are engaged in downsizing to their core operations; we are too.

In sum, we have tried to respond to changes in our "environment," by providing a product which we hope will be more useful to our customers. We encourage our colleagues and readers to contact us with any suggestions for future changes. We remain committed to serving your needs.

1996

George D. Cameron III Phillip J. Scaletta, Jr.

# **Brief Contents**

### Part One

### **Legal Environment**

1	Ethics, Legal Systems, and Legal Sources	อ		
2	Courts and Civil Procedure	27		
3	Constitutional Law and Administrative Procedure			
4	International Law	79		
5	Criminal Law and Procedure	97		
6	Tort Law	117		
7	Liability of Accountants and Other Professionals	143		
	Part Two			
	Contract Law			
8	Contracts and Agreements	165		
9	Consideration and Unconscionability	191		
10	Statute of Frauds and Parol Evidence Rule	209		
11	Reality of Consent	231		

12

13

255

271

١	/1	1	ı	

14	Nonperformance, Excuses, and Remedies	28
	Part Three	
	Sales of Goods	
15	Sales: Title, Risk of Loss, and Other Interests	31
16	Warranties and Products Liability	33
17	Special Performance and Breach Rules	35
	Part Four	
	Creditors and Debtors	
18	Bankruptcy and Consumer Protection	37
19	Suretyship and Secured Transactions	40
20	Perfection, Priorities, and Remedies	42
	Part Five	
	Commercial Paper	
21	Types of Instruments, Requirements of Negotiability	44
22	Liabilities of Parties	47
23	Negotiation, Holders in Due Course, and Defenses	49
24	Bank Deposits and Collections	51
	Part Six	
	Property	
25	Forms of Co-Ownership; Personal Property	53
26	Bailments and Carriers	58
27	Real Property—Acquisition and Transfer of Ownership;	_
	Financing of Real Property Transactions	57

	Brief Content	its ix
28 29	Real Property—Landlord and Tenant	603
	Regulation, and Eminent Domain	619
	Part Seven	
	Business Associates	
30	Agency—Creation, Principal's	
•••	Liabilities, and Termination	639
31	Partnerships—Nature, Creation, and Termination	665
32	Limited Partnerships and	
	Other Organizational Forms	695
33	Corporations—Nature, Formation, and Powers	717
34	Corporations—Stocks and Stockholders	<b>743</b>
35	Corporations—Management Duties	771
<b>36</b>	Ethics in Business and	700
	Corporate Social Responsibility	789
	Part Eight	
	Government Regulation	
<b>37</b>	Securities Law	809
38	Antitrust	831
<b>39</b>	Unfair Trade Practices and	
40	the Federal Trade Commission	849
40	Labor Relations Law	865
41	Employment Discrimination Laws	887
	Appendix A: The Constitution of the United States	907
	Appendix B:	
	Uniform Commercial Code (1994 Text)	917
	Glossary	1023

Index of Cases	 1039
Index	 1043

# Table of Contents

### Part One

### Legal Environment

DEFINITION OF LAW 5. ETHICS AND THE LAW 6. EQUITY 7. Systemic
Need for Equity 7. Equity in England 7. Transplantation of Equity 8. Equity
Today 8. DOCTRINE OF PRECEDENT 9. Trial by Jury 15. Judicial Review 15.
CLASSIFICATIONS OF LAW 19. Public versus Private Law 19. Substantive and
Procedural Law 19. Criminal Law 19. Civil Law 20. SOURCES OF U.S. LAW
20. Constitution of the United States 20. Treaties 21. Statutes 23. Administra-
tive Agencies 23. State Legal Systems 23. UNIFORM LAWS AND RESTATE-
MENTS 23. SIGNIFICANCE OF THIS CHAPTER 24. PROBLEMS FOR DISCUS-
SION 24.

### 2 Courts and Civil Procedure . . . . . . .

1

STATE COURT SYSTEMS 27. NATIONAL COURT SYSTEM 30. JURISDICTION OF STATE AND NATIONAL COURTS 32. VENUE 38. LAW APPLICABLE IN NATIONAL COURTS 38. CONFLICT OF LAW IN STATE COURTS 38. TRIAL OF A CIVIL LAWSUIT 39. Pleading Stage 39. Discovery and Pretrial Stage 45. Trial Stage 46. Selection of a Jury 46. Preliminary Instructions by the Court 46. Opening Statements by the Attorneys 46. Plaintiff's Evidence 47. Motion for

27

5

Directed Verdict or Directed Judgment 47. Defendant's Evidence 47. Plaintiff's Rebuttal Evidence 47. Final Arguments 47. Final Instructions by the Judge 47. Jury Deliberations 47. Verdict 48. Judgement Notwithstanding the Verdict 48. CIVIL APPELLATE PROCEDURE 50. ENFORCEMENT OF JUDGMENTS 50. FULL FAITH AND CREDIT 51. CLASS ACTIONS 51. ARBITRATION AND MEDIATION AS METHODS OF DISPUTE RESOLUTION 52. SIGNIFICANCE OF THIS CHAPTER 53. PROBLEMS FOR DISCUSSION 54.

### 3 Constitutional Law and Administrative Procedure ..... 57

U.S. CONSTITUTIONAL LIMITATIONS **57.** Limits on National Government Regulations **57.** Violations of Specific Bill of Rights Sections **58.** Outer Limits of the Commerce Clause **60.** Limits on State Government Regulation **61.** Privileges and Immunities **61.** Equal Protection **61.** Due Process **62.** Commerce Clause **65.** ADMINISTRATIVE AGENCIES **68.** Origins and Functions **68.** Problems **68.** Reform and Deregulation **69.** ADMINISTRATIVE PROCEDURE **69.** Requirement of a Hearing **69.** Requirement of Notice **70.** Requirement of Confrontation **70.** Right to Counsel **70.** Right to an Impartial Hearing Officer **70.** Right to Review **71.** QUASI-JUDICIAL PROCEDURES IN ADMINISTRATIVE AGENCIES **74.** NLRB PROCEDURE IN UNFAIR LABOR PRACTICES CASES **74.** Charge **74.** Formal Complaint **74.** Answer **74.** Hearing **75.** Findings of Fact and Conclusions of Law **75.** Board Review **75.** Review by the U.S. Court of Appeals **75.** Review by the Supreme Court of the United States **75.** SIGNIFICANCE OF THIS CHAPTER **77.** PROBLEMS FOR DISCUSSION **77.** 

### 

HISTORY OF INTERNATIONAL LAW 79. SOURCES OF INTERNATIONAL LAW 80. INTERNATIONAL COURT OF JUSTICE 80. OTHER LEGAL SYSTEMS 81. Civil-Law Systems 81. Roman-Dutch Systems 82. Soviet Legal Systems 82. Religious and Customary Systems 83. Mixed Systems 85. INTERNATIONAL LAW IN U.S. COURTS 85. INTERNATIONAL ARBITRATION 88. INTERNATIONAL TAXATION 88. INTERNATIONAL LITIGATION 88. LETTERS OF CREDIT 91. U.S. ANTITRUST LAW AND INTERNATIONAL TRADE 91. FOREIGN CORRUPT PRACTICES ACT 92. THE ACT OF STATE DOCTRINE AND THE SOVEREIGN IMMUNITY DOCTRINE 94. SIGNIFICANCE OF THIS CHAPTER 95. PROBLEMS FOR DISCUSSION 95.

5	Criminal Law	and Procedure	 97

DEFINITION OF CRIME 97. CLASSIFICATIONS OF CRIME 98. BUSINESS CRIMES 100. Larceny 100. Robbery 100. Embezzlement 100. Arson 102. Defrauding Consumers by Use of the Mails 103. Defrauding Consumers by Using False Labels, Measures, and Weights 103. Forgery 103. Credit Card Fraud 103. Computer Crime 103. Criminal Liability of Accountants 104. Commercial Bribery 104. Criminal Liability of Corporate Executives 105. YOUR RIGHTS UNDER CRIMINAL LAW 105. Right to a Speedy, Public Trial by Jury 105. Presumption of Innocence 106. Privilege Against Self-Incrimination 106. Right to Counsel 106. Right to a Miranda-Type Warning 106. No Unreasonable Searches 109. Prohibition Against Double Jeopardy 112. Requirement of Mens Rea 112. CRIMINAL PROCEDURE 112. SIGNIFICANCE OF THIS CHAPTER 115. PROBLEMS FOR DISCUSSION 115.

### 

DEFINITION OF A TORT 117, CLASSIFICATION OF TORTS 118, INTENTION-AL TORTS 118. Torts Against the Physical Person 118. Assault 118. Battery 118. Technical Battery 119. Intentional Infliction of Mental Distress 119. False Imprisonment 119. False Arrest 120. Torts Against the Reputation of the Person 120. Libel and Slander 120. Invasion of Privacy 121. Torts Against the Person's Property 122. Trespass to Real Property 122. Trespass to Personal Property 122. Conversion 122. Deceit-Fraud 122. Abuse of Civil Process 123. Malicious Prosecution 123. Interference with Economic Relations 123. Premises Liability 123. NEGLIGENT TORTS 126. Definition of Negligence 126. Proximate Cause 126. Foreseeability 127. OTHER THEORIES OF LIABILITY FOR TORT 129. Res Ipsa Loquitur 129. Respondeat Superior 130. Last Clear Chance Doctrine 132. DEFENSES TO NEGLIGENT TORTS 132. IMMUNITY FROM TORT ACTION 133. STRICT LIABILITY 134. NO-FAULT SYSTEM OF WORKERS' COMPENSATION 138. NO-FAULT SYSTEM OF AUTOMOBILE TORT COMPEN-SATION 138. SIGNIFICANCE OF THIS CHAPTER 139. PROBLEMS FOR DIS-CUSSION 133.

### 7 Liability of Accountants and Other Professionals . . . . . . 143

LIABILITY OF ACCOUNTANTS AND OTHER PROFESSIONALS TO CLIENTS UNDER CONTRACT LAW 144. LIABILITY OF ACCOUNTANTS OR OTHER PROFESSIONALS TO THE CLIENT FOR NEGLIGENCE 144. LIABILITY OF AN ACCOUNTANT OR OTHER PROFESSIONAL TO THIRD PARTIES 145. The Ultramares Doctrine 145. Restatement (Second) of Torts 146. Foreseeable Users Doctrine 147. Ultramares Reaffirmed 147. LIABILITY OF AN ACCOUNTANT FOR FRAUD 149. ACCOUNTANT'S LIABILITY UNDER THE NATIONAL SECURITIES

8

9

LAWS 150. Securities Act of 1933 150. Securities Act of 1934 154. ACCOUNTANT'S CIVIL LIABILITY UNDER RICO 157. PROCEDURAL ISSUES IN CIVIL LIABILITY CASES 159. ACCOUNTANT'S CRIMINAL LIABILITY 160. Criminal Liability under the Securities Act of 1933 and the Securities Act of 1934 160. The Mail Fraud Statute 160. The Foreign Corrupt Practices Act 160. The Internal Revenue Code 161. SIGNIFICANCE OF THIS CHAPTER 161. PROBLEMS FOR DISCUSSION 161.

### **Part Two**

### **Contract Law**

167

191

DEFINITION OF THE CONSIDERATION REQUIREMENT 191. Basic Definitions 191. Source and Recipient of Consideration 191. COMPLIANCE WITH THE CONSIDERATION REQUIREMENT 192. Bargained-for Exchange of Values 192. Change of Position in Reliance 195. The Seal 197. Statutory Exceptions to the Consideration Requirement 197. COURTS' DEFINITIONS OF LEGALLY SUFFI-

CIENT CONSIDERATION 198. Legal Sufficiency versus Adequacy 198. Nominal Consideration 199. Good Consideration 199. Past Consideration 199. Moral Consideration 199. Preexisting Duty 200. Part Payment 201. UCC Rules 204. UNCONSCIONABLE CONTRACTS 204. SIGNIFICANCE OF THIS CHAPTER 205. PROBLEMS FOR DISCUSSION 205.

### 10 Statute of Frauds and Parol Evidence Rule . . . . . . . . . . . 209

STATUE OF FRAUDS: ORIGINS, DEVELOPMENT, AND BASIC PURPOSE 209. CONTRACTS SUBJECT TO THE STATUTE OF FRAUDS 210. Pre-UCC Holdovers 210. Real Estate Transfers 210. Promises to Pay the Debt of Another 212. Contracts Impossible to Perform within One Year 212. UCC Statute of Frauds Provisions 212. Sales of Goods for \$500 or More 213. Sales of Investment Securities 213. Sales of Intangible Personal Property for \$5,000 or More 213. Security Agreements 213. Letters of Credit 213. Modifications 214. Consideration Substitutes 216. COMPLIANCE WITH THE STATUTE OF FRAUDS 216. General Common-Law Rule 216. Sale of Goods Compliance: Five Alternatives 216. Compliance Alternatives Under Other Code Sections 222. RESULTS IF THE STATUTE OF FRAUDS APPLIES AND IT HAS NOT BEEN SATISFIED 223. Unenforceable in Court 223. "Part Performance" Exceptions 223. PAROL EVIDENCE RULE 224. Nature and Operation of the Rule 224. Situations Not Covered by the Rule 226. Exceptions to the Operation of the Parol Evidence Rule 227. SIGNIFICANCE OF THIS CHAPTER 228. PROBLEMS FOR DISCUSSION 228.

### 

LACK OF CAPACITY 231. MINORS, OR "LEGAL INFANTS" 231. Scope of the Minor's Power to Disaffirm 232. Effect of Minor's Disaffirmance on the Contract 232. Liability in Quasi Contract for Necessaries 233. Minor's Duty to Make Restitution 233. Estoppel to Assert Minority 237. Tort Liability for Misrepresentation of Age 237. PERSONS WHO ARE INSANE, INTOXICATED, OR DRUGGED 238. ALIENS 240. AMERICAN INDIANS 241. CONVICTS 241. MARRIED WOMAN 242. CORPORATIONS 242. Private Corporations 242. Public (Municipal) Corporations 242. FRAUD AND MISTAKE 243. FRAUD 243. Misrepresentation of Material Fact 243. Knowledge of Falsity 244. Intent to Deceive 245. Reasonable Reliance 245. Damage to the Defrauded Party 245. INNOCENT MISREPRESENTATION 247. UNDUE INFLUENCE 249. DURESS 249. MISTAKE 250. Mutual Mistake in Basic Assumptions 250. Material Unilateral Mistake 250. Mistake in Integration 251. Mistake in Performance 251. SIGNIFICANCE OF THIS CHAPTER 251. PROBLEMS FOR DISCUSSION 252.

12	Illegality and Impossibility	255
	ILLEGAL BARGAINS <b>255.</b> Commission of Crime or Tort <b>255.</b> Gambling, Lotteries, and Games of Chance <b>256.</b> Licensing Statutes <b>256.</b> Sunday Laws <b>257.</b> Usury <b>258.</b> Common Law Restraint of Trade <b>261.</b> Improper Inference with Governmental Processes <b>264.</b> ILLEGALITY OR IMPOSSIBILITY AS EXCUSE FOR NONPERFORMANCE <b>265.</b> Subsequent Illegality <b>265.</b> Impossibility <b>265.</b> Commercial Impracticability and Frustration <b>265.</b> BARGAINS AGAINST PUBLIC POLICY AND UNCONSCIONABLE CONTRACTS <b>266.</b> SIGNIFICANCE OF THIS CHAPTER <b>269.</b> PROBLEMS FOR DISCUSSION <b>269.</b>	
13	Assignment and Third-Party Beneficiary Contracts	271
	THIRD-PARTY BENEFICIARY CONTRACTS 271. Basic Concepts and Definitions 271. UCC Rule on Third-Party Beneficiaries of Warranties 272. Incidental Beneficiaries 273. Mutual Rescission of the Contract 273. ASSIGNMENT OF CONTRACT RIGHTS 274. Basic Concepts and Definitions 274. Early Common-Law Rule 274. Delegation of Duties 274. Assignability of Rights 277. Due on Sale Clauses in Real Estate Mortgages 279. Warranties of Assignor to Assignee 280. Delegation of Duty to Assignee 280. Notice to Obligor 281. Availability of Defenses Against Assignee 283. SIGNIFICANCE OF THIS CHAPTER 286. PROBLEMS FOR DISCUSSION 286.	
14	Nonperformance, Excuses,	
	CONDITIONS 289. Basic Concepts and Definitions 289. Conditions of Approval or Satisfaction 291. Timely Performance as a Condition Precedent 292. Doctrine of Substantial Performance 292. BREACH BY OTHER PARTY 292. In General 292. Breach of Installment Contract 293. Anticipatory Repudiation 293. Adequate Assurance 293. DISCHARGE BY NEW AGREEMENT 294. Mutual Rescission 294. Novation 294. Accord and Satisfaction 294. Waiver or Estoppel 295. Release 295. Account Stated 297. DISCHARGE BY MERGER 297. In General 297. Judgment 298. DISCHARGE BY OPERATION OF LAW 298. Statute of Limitations 298. Bankruptcy; Composition with Creditors 298. Illegality and Impossibility 299. GENERAL PRINCIPLES FOR CONTRACT REMEDIES 299. Court Costs and Attorney Fees 299. Election of Remedies 299. DAMAGES 302. Underlying Factors 302. Compensatory Damages 303. Nominal Damages and Punitive Damages 303. Liquidated Damages 306. OTHER REMEDIES 307. Specific Performance 307. Injunction 307. Rescission and Restitution 307.	289

Quasi Contract 307. SIGNIFICANCE OF THIS CHAPTER 308. PROBLEMS FOR DISCUSSION 309.

### **Part Three**

### Sales of Goods

15	Sales: Title, Risk of Loss, and Other Interests	315
	BASIC CONCEPTS AND DEFINITIONS 315. UCC Coverage 315. Definitions 315. Significance of the "Goods" Definition 316. PASSING OF OWNERSHIP INTERESTS IN THE GOODS 319. Presumptions 319. Identification 320. Special Property 320. Insurable Interest 320. Title 321. Risk of Loss 322. Right to Possession of the Goods 325. Security Interest 325. Special Sale Arrangements 326. SHIPMENT AND STORAGE OF GOODS 327. Bill of Lading—A Document of Title 327. Warehouse Receipts—Another Document of Title 327. Common Shipping Terms 328. "ENTRUSTING" AND BULK SALES 331. SALE BY SELLER WITH VOID OR VOIDABLE TITLE 332. Defects in Seller's Title 332. Appearance of Authority to Sell 332. Entrusting to a Merchant 332. BULK SALES 334. The Problem Defined 334. Basic Requirements 334. Exceptions 335. Tax and Other Special Statutes 335. SIGNIFICANCE OF THIS CHAPTER 335. PROBLEMS FOR DISCUSSION 336.	
16	Warranties and	
	Products Liability	339
	PLAINTIFFS, DEFENDANTS, AND THEORIES OF LIABILITY <b>340.</b> FRAUD AND INNOCENT MISREPRESENTATION <b>343.</b> NEGLIGENCE <b>343.</b> BREACH OF WARRANTY <b>343.</b> Express Warranties <b>344.</b> Implied Warranty of Merchantability <b>344.</b> Merchantability of Leased Goods and of Real Estate <b>347.</b> Implied Warranty of Fitness <b>348.</b> EXCLUSION OR MODIFICATION OF WARRANTIES <b>348.</b> STRICT LIABILITY IN TORT <b>351.</b> DEFENSES AGAINST PRODUCT LIABILITY CLAIMS <b>353.</b> MAGNUSON-MOSS WARRANTY ACT <b>354.</b> NEW STATE LEGISLATION	
	<b>353.</b> MAGNUSON-MOSS WARRANTY ACT <b>354.</b> NEW STATE LEGISLATION <b>355.</b> A NATIONAL PRODUCTS LIABILITY STATUTE <b>355.</b> SIGNIFICANCE OF	

THIS CHAPTER 356. PROBLEMS FOR DISCUSSION 356.