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14th Edition



*The Legal
Environment*
OF BUSINESS

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The Legal Environment **OF BUSINESS**

14th Edition

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The Legal Environment of Business,
Fourteenth Edition

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Dedicated to Callie, Billy, Joe, and Molly.
The ones who matter most.

Roger Meiners



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Preface

This textbook presents the legal environment as relevant to professionals who are not lawyers. Only a few students who take this course will become lawyers, although some students will take additional classes that cover specific legal areas. This course provides the opportunity for people with various interests to learn key points of the law from the standpoint of a working professional.

Over the years, we have received excellent feedback from faculty who have used the 13 previous editions of this book and have pointed out shortcomings and strong points and given good advice for improvements. We have taken these comments into account in preparing this edition to make the book even more helpful and practical as we study the complex legal environment that business professionals face.

Our reviewers agree that this text focuses on practical aspects of the law. As we update the text, we try to keep to a minimum the legal minutia, such as uncommon exceptions or rules peculiar to only a few states. We focus on primary rules and issues that arise most often. We use business situations and examples to highlight legal principles in practice. In selecting cases that appear in the text, the focus is on practical situations in business that students can best relate to and are realistic in a business career. The holdings are straightforward applications of the law to the facts. However, some major cases are included so students can get a sense of how courts announce major rules and the evolution of law can be discussed.

Essential Organization

In the legal environment of business course, there is the problem of many possible topics to cover but not enough time. There is agreement that the key elements of the legal system must be covered. This is done in Chapters 1–5. Chapters 6–13 focus on the major areas of the common law that apply to business and some statutory law oriented at business functions. Chapters 14–16 address a part of the business environment that applies to everyone, the ever-growing area of employment law, ranging from traditional agency to discrimination and social media issues. Chapters 17–22 cover the major regulatory laws that managers of a variety of firms may face and finishes with key points of international business law.

New to This Edition

The new edition is about five percent shorter than the previous edition. This encourages more students to finish assigned reading by focusing on the most important matters and striking material not as critical to understanding the legal environment. As more students read the text online, we take into consideration the differences in how information is absorbed online compared to traditional print reading.

More dated text material has been deleted and more information on issues that arise more commonly now, such as mass torts, money laundering, and cryptocurrencies, has been added.

Many new cases freshen the 14th edition. As before, many cases arise from normal business operations that students can relate to. For example:

- Chapter 6 (Torts), *Schuemann v. Menard* concerns a customer who injures his back at a store trying to load a heavy box into his pickup.
- Chapter 6 (Torts), *Schwarz v. St. Jude Medical* concerns a dismissed employee who claims defamation when negative information about her job performance is shared within the employing organization.
- Chapter 10 (Contracts), *Jones v. Four Corners Rod & Gun* concerns an employee paid less than minimum wage because he was provided free housing.
- Chapter 12 (Business Organization), *Norris v. Besel* concerns a spouse being sued as a partner in her spouse's business because she provided assistance on posting company matters on the Internet.
- Chapter 15 (Employment), *Marshall v. Montplast of North America* concerns an employee dismissed for revealing to other employees true information about a supervisor being a convicted sex offender.
- Chapter 19 (Consumer Protection), *KS Trade v. International Gemological Institute* concerns a small diamond trading company suing the IGI for deceptive business practices by falsely rating diamonds higher than is justified so as to promote higher retail prices.

Some cases are at a “higher” level of business operations but present new guidance to managers. For example:

- Chapter 8 (Property), *Four B Properties v. Nature Conservancy* shows how courts apply traditional rules enforcing easements in cases of conservation easements.
- Chapter 11 (UCC), *Erie Insurance v. Amazon* concerns a defective product bought from Amazon that caused a house fire. The court explains why Amazon's arrangement with sellers under the UCC shields the company from liability.
- Chapter 16 (Employment Discrimination), *Bostock v. Clayton County*, where the Supreme Court simplified the definition of sex discrimination to include discrimination arising from homosexuality or transgender status.
- Chapter 19 (Consumer Protection), *FTC v. Consumer Defense*, where the court explains why scam operators can be enjoined relatively quickly, under a lower standard of evidence and simpler proceedings than would be required otherwise.
- Chapter 22 (International Business), *U.S. v. Chi Ping Patrick Ho* illustrates how the Foreign Corrupt Practices Act can be applied to citizens of other countries who pay bribes to foreign officials.

Supplementary and Support Materials

Cengage Infuse

Cengage Infuse for The Legal Environment of Business is the first-of-its-kind digital learning solution that uses your Learning Management System (LMS) functionality so you can enjoy simple course set-up and intuitive management tools. Offering just the right amount of auto-graded content, you'll be ready to go online at the drop of a hat.

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Additional instructor resources for this product are available online. Instructor assets include an Instructor's Manual, Educator's Guide, PowerPoint® slides, and a test bank powered by Cognero®. Sign up or sign in at www.cengage.com to search for and access this product and its online resources. For the MindTap lives here so the instructor can see what assets each chapter contains.

Case Collection

Now, within MindTap, instructors can search **Case Collection**—a library of cases from previous editions of different Cengage textbooks—by relevant criteria and then incorporate those cases in the Learning Path for students.

This exciting repository allows instructors to personalize their course and truly engage students, helping them to reach higher levels of critical thinking.

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- Search by court or state to bring a local flavor or interest to the classroom.
- Enjoy over 1,200 cases at your fingertips. All new edition omitted cases will be added every year, allowing the archive to continually grow.

Mix and match cases from all textbooks, whether you are currently using it in class or not. This allows you to provide longer cases with more information from other resources, which is especially helpful if your text didn't show the court's decision.

Key Features

Edited Cases

A primary way to learn law is to read real cases that the courts had to resolve. Each major case presented in the text has the background facts and legal proceedings summarized by the authors under the heading **Case Background**. Then the court's holding, legal reasoning, and explanation of the law as it applies to the facts at hand are presented from the published opinion in the words of the judge in the **Case Decision**. Since most decisions are long, we present only the key portions of the holding. When there is a long deletion of material from a holding, you see asterisks (**). When there is a deletion of a smaller part of a decision there are ellipses (...). Finally, a **Question for Analysis** is offered for the reader to consider or for class discussion. (Answers are provided in the *Instructor's Manual*.)

Issue Spotter

More than 50 Issue Spotter features are scattered throughout the text. Each briefly presents a business situation that requires application of legal elements just covered in the text. These challenges are a way for students to self-test their retention and ability to reason as they apply newly learned principles to practice. They also remind readers that the material learned in this course is practical to everyday issues in business. (Discussion points to these features are provided in the *Instructor's Manual*.)

Lighter Side of the Law

These highlights add a light touch to the topic at hand by discussing an unusual legal situation. While law and business are serious, odd things happen that remind us that trouble can come from unexpected places, that the results of the legal process can be surprising, that scoundrels are among us, and that truth can be stranger than fiction.

Summary

The text of each chapter is summarized in bullet format that provides a quick review of the major points of law and rules covered and serves as a self-test of points that will be covered in examinations.

Terms to Know

After the Summary, there is a list of key terms from the chapter. The reader should know what the terms mean because they are an important part of the vocabulary and substance of the concepts covered in the chapter. Besides being explained in the chapter, each term is also defined in the Glossary in the back of the book.

Discussion Question

Every chapter has a question for general discussion that picks up on major ideas from the chapter. The purpose is to make sure the student understands the concepts of the chapter well enough to be able to discuss a topic that was covered and should be expanded upon.

Case Questions

Most problems are solved out of court, but some end up in court where judges decide the resolution based on legal principles. Real case problems are summarized in each case question. Using the knowledge from the chapter, and perhaps some instinct about how a court is likely to resolve a dispute, try to decide which party to a dispute is likely to prevail and why.

Ethics and Social Question

Each chapter ends with an ethics question that poses a problem related to the legal area covered in the chapter. Remember that ethical issues are different than legal issues, so we go beyond legal reasoning in considering the problem.

Pulling It Together

At intervals throughout the text, case questions are posed that bring together more than one legal issue covered in more than one chapter. Many situations involve more than one legal issue, so the cases here serve as a refresher to go back to earlier chapters and pull in the concepts and legal principles covered in these chapters.

Glossary

At the back of the book is a list of about a thousand key terms covered in the text. While they are covered in the text when they first appeared in substantive use, the terms are defined here too to help give a clear understanding of a legal concept that has a specific application in law.

Appendices

Appendix A, *Online Legal Research*, gives readers a guide to legal research sources. It reviews premier sites that provide many resources including cases. Increasingly, students have access to Lexis or West-Law, which greatly simplifies search assignments. Appendix B covers *Case Analysis and Legal Sources*. It explains the structure of court opinions and how they are often briefed by law students and lawyers to give a short summary of a complex matter. The case reporter system and other major legal resources are also reviewed. Appendix C is the full text of the United States Constitution. Appendices that follow give key portions of major statutes, including the National Labor Relations Act, Title VII of the Civil Right Act of 1964, the Americans with Disabilities Act, the Antitrust Statutes, and Securities Statutes.

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We welcome and encourage comments from the users of this textbook—both students and instructors. By incorporating your comments and suggestions, we can make this text an even better one in the future.

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Chapter 1

Today's Business Environment: Law and Ethics

Job recruiters may puff up the qualities of a position. A job billed as “character-building” may be one of unending stress. One claiming to have a “teamwork environment” may just mean people jammed in cubicles. One person reported that, when being recruited, she was shown a nice office and met a supervisor she liked. When she started work two weeks later, she was stuck in a tiny back room, the supervisor was replaced by someone less agreeable, and worst of all, the assignments she was given were not of the quality discussed.

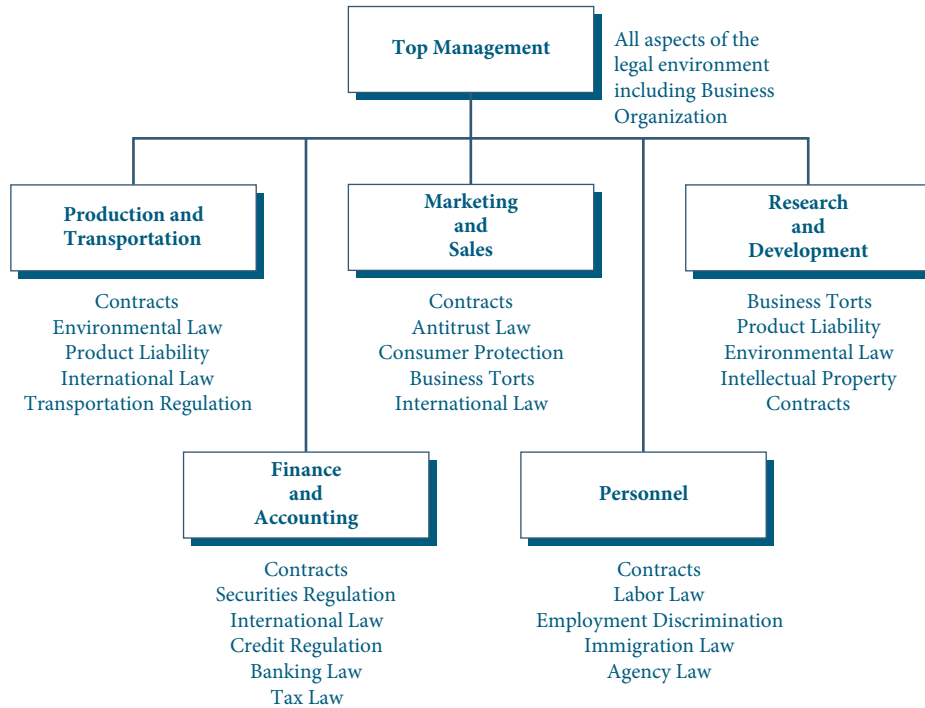
Suppose that happens to you. Can you sue the recruiter who brought you to the employer? Can you sue the company that hired you? Do you have the right to demand a better office? What is your legal status? We will explore some of these legal issues.

In the situation just posed, the new employee probably has little choice but to take the job as is or leave. The employer is unlikely to have violated any legal obligation. What about the ethical obligation to be honest with potential employees? Overstating the quality of a position may be unethical but not a violation of the law.

Business is complex. Ethical, legal, social, political, and international issues can impact company operations. As Exhibit 1.1 indicates, whether your field is human resources, sales, banking, advertising, or software development, you must be familiar with a wide range of subjects to have the skills needed to be aware of possible problems and opportunities that someone with a limited view may miss. The topics covered in this book help to fit one large piece into the complicated puzzle called the business world.

The study of the legal environment of business begins with an overview of the nature of law and the legal system. Composed of law that comes from different sources, the legal environment is influenced by the needs and demands of the business community, consumers, and government. This chapter helps us understand the functions of law in society, the sources of U.S. law, and the classifications of law. It then considers some major ethical issues that play a role in the business environment.

Exhibit 1.1 Overview of a Business's Legal Environment



1-1 Law and the Key Functions of the Legal System

There is no best definition of **law**. It refers to the rules, standards, and principles that define the behavioral boundaries for people and business activities. Law can be thought of in abstract terms. According to *Justinian's Institutes*, a summary of Roman law published in 533 in Constantinople, "The commandments of the law are these: live honorably; harm nobody; give everyone his due."

A bit more specific, a century ago Oliver Wendell Holmes, a Supreme Court justice, offered the following definition:

Law is a statement of the circumstances, in which the public force is brought to bear . . . through the courts.

In his 1934 book, *Growth of Law*, the famed jurist Benjamin N. Cardozo defined law this way:

A principle or rule of conduct so established as to justify a prediction with reasonable certainty that it will be enforced by the courts if its authority is challenged.

Also consider these two modern definitions from Black's Law Dictionary, the authoritative legal dictionary:

1. *Law, in its generic sense, is a body of rules of action or conduct prescribed by [the] controlling authority and having binding legal force.*
2. *That which must be obeyed and followed by [members of a society] subject to sanctions or legal consequences is a law.*

In sum, law may be viewed as a collection of rules or principles intended to limit and direct human behavior. Enforcement of the rules provides greater predictability and uniformity to the boundaries of acceptable conduct in a society. Nations have both formal rules, that are

commonly called laws, and informal rules that come from history, customs, commercial practices, and ethics.

Law and the legal system serve several key roles in society. The most important functions include: (1) influencing the behavior of the members of a society, (2) resolving disputes within society, (3) maintaining important social values, and (4) providing a method for assisting social change.

1-1a Improving Social Stability by Influencing Behavior

The legal system helps to define acceptable social behavior. The law limits activities that damage the public interest. It restricts business practices held to be outside the ethical and social norms of a society. The law also requires business practices that further social or political goals.

The laws in different jurisdictions reflect social norms. The business of raising and selling marijuana in Amsterdam (Holland) has long been legal because the government decided that legalizing marijuana would reduce crime in the drug trade and make it less likely that people would use more harmful drugs. In the United States, growing and selling marijuana is illegal under federal law and can be punished by long prison terms. Several states have legalized marijuana production and use, in conflict with federal law.

Similarly, the production and sale of alcoholic beverages to adults is legal in most of the country although it was illegal nationwide from 1919 to 1933. In Saudi Arabia, people have been executed for being involved in the alcohol business, as alcohol violates Sharia law. Some countries have few restrictions on its sale, even to minors. This illustrates how the law reflects different social norms.

1-1b Conflict Resolution

A critical function of the law is dispute resolution. Disagreements are inevitable. Karl Llewellyn, a famous legal theorist, stated the following:

What, then, is this law business about? It is about the fact that our society is honeycombed with disputes. Disputes actual and potential, disputes to be settled and disputes to be prevented; both appealing to law, both making up the business of law. . . . This doing of something about disputes, this doing of it reasonably, is the business of law.

Though most disputes are settled informally, a formal mechanism for dispute resolution is the court system that invokes rules of law. It is used for private disputes between members of society and for public disputes between individuals and the government. Our court system is intended to provide a fair mechanism for resolving these disputes. As we will see in Chapter 3, businesses are increasingly turning to formal private settlement techniques by alternate dispute resolution outside of the courts, often because the courts are expensive and slow.

1-1c Social Stability and Change

Every society is shaped by its values and customs. Law plays a role in maintaining the social environment. Integrity is reflected in the enforceability of contracts, respect for other people and their property is reflected in tort and property law, and some measures of acceptable behavior are reflected in criminal laws.

Over time, social attitudes change. Not many years ago, same-sex partners could be subject to criminal prosecution for a personal, voluntary relationship. Now, traditional marriage is available for same-sex partners, a change that seemed impossible a couple decades ago.

The legal system provides a way to bring about changes in “acceptable” behavior. For example, in the past, some states required businesses to discriminate against Black employees and customers. After a long struggle, those laws gradually disappeared. Grossly discriminatory behavior that was the social and legal norm is no longer acceptable. Next, we turn to the sources of law and how law is created.

1-2 Sources of Law in the United States

The U.S. Constitution and state constitutions created three branches of government—each of which has the ability to make law. Congress—the legislative branch of government—passes statutes. The executive branch—the president and administrative agencies—issues regulations under those statutes. The courts also create legal precedents through their decisions and by ruling on the constitutionality of actions of Congress or the executive branch.

1-2a Constitutions

A **constitution** is the fundamental law of a nation. It establishes and limits the powers of government. Other laws are created through a constitution. The U.S. Constitution (see Appendix C) allocates the powers of government between the states and the federal government. Powers not granted to the federal government are retained by states or are left to the people. A constitution need not be a written document—the United Kingdom's is not. In some countries, the constitution is just for show. A document that looks much like the U.S. Constitution may exist but means little in practice under a dictatorship.

The U.S. Constitution

The U.S. Constitution is the oldest written constitution in force in the world. Although it contains some clear rules, such as the president must be at least age 35, it also has many general principles. It sets forth the organizational framework, powers, and limits of the federal government. Specifically, the Constitution creates the legislative, executive, and judicial branches as the primary framework of the U.S. government.

This division of governmental power is referred to as the separation of powers. It arose out of the founders' fear that too much power concentrated in one governmental branch would produce tyranny. The separation of powers means each branch of government has functions to perform that can be checked by the other branches. The government structure that has developed is illustrated in Exhibit 1.2.

As the highest legal authority, the U.S. Constitution overrides any state or federal laws that go beyond what the Constitution permits, as in Article VI:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

State Constitutions

The powers and structures of state governments are also based on written constitutions. Like the federal government, state governments are divided into legislative, judicial, and executive branches. Their constitutions specify how state officials are chosen and removed, how laws are passed, how the court systems run, and, in general terms, how finances and revenues are paid and collected.

On matters of state law, each state's constitution is the highest form of law for that state although the federal Constitution can override the state constitutions. Some state constitutions, unlike the U.S. Constitution, are long and detailed because amending state constitutions is often easier than changing the U.S. Constitution.

1-2b Legislatures and Statutes

Congress and state legislatures are the sources of statutory law. Statutes created by legislation make up much of the law that affects business behavior. For example, Congress enacted the