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1 – INTRODUCTION TO LAW AND THE LEGAL SYSTEM

Entrepreneurs and aspiring managers deal with laws of the land every day and thus must be aware of its nuances and complexities in order for them to successfully and interdependently work with others in the community, industry, and country. Entrepreneurs and managers cannot be successful in the long-term if they are not aware of the laws impacting them as well as their employees, suppliers, vendors, and customers. As such, entrepreneurs and managers should become aware of the fundamental aspects of the legal system, so they can avoid legal problems and seek the help of experts when dealing with complex issues. This book is designed to provide the foundational aspects of the “American” legal system, as practiced in the United States, for current and aspiring entrepreneurs and managers. By reading and understanding the various chapters of this book, not only will business professionals become aware of the complexities of the legal system, but entrepreneurs and managers will also be better prepared to seek help from the right experts when they need assistance.

The “law” is complex, and it has many definitions. Fundamentally, the law is the entire body of principles that govern conduct and which can be enforced by the courts or other government tribunals. If there were no society-made law, many people would still act in a “proper” manner based on societal norms, moral beliefs, conscience, or religion. However, not all people would act in such a “good” manner. Therefore, a basic purpose of the law is to provide a degree of order and control to human activities. The law thus serves as an instrumentality of control by means of substantive legal rules, legal procedures, and mechanisms of legal promulgation, adjudication, implementation, and enforcement.

Summary

This chapter focused on the definition and nature of law, the delineation of the legal system in the U.S., and impact of the United States Constitutional Law on businesses. It focused on specific areas that can affect businesses, such as the regulation of commerce and taxation. Additionally, the first ten amendments to the constitution, known as the Bill of Rights, has a strong influence on business practices in that it serves as a limitation against government power, especially when government attempts to restrict speech, including commercial speech. These laws are imperative to business entrepreneurs, managers, and leaders, as neglecting them can lead to serious penalties and consequences. Some of the rights which were covered in-depth are Equal Protection, Freedom of Speech, Press and Association, Freedom of
Speech-Political Speech v. Commercial Speech, and the Fifth Amendment and Eminent Domain. This chapter also examined arbitration and mediation as alternatives to the traditional judicial system in resolving disputes.

**Discussion Questions**

1. In common law systems such as the United States, why are the legal concepts of “precedent” and “stare decisis” critical? Provide business examples with brief explanations thereof.
2. What are the differences between case law and statutory law in the United States? What takes precedence and why? Provide examples and brief explanations thereof.
3. What are the steps that an attorney would use to analyze a legal situation? Why are they important analytical tools to the manager or entrepreneur? Apply the steps to a business controversy.
4. Common law legal systems have very general statutes and very great reliance on case law and the concept of precedent, whereas civil law legal systems have very detailed statutes and do not rigidly adhere to the concept of precedent. Which system is superior? Which system would you as a global business manager or entrepreneur prefer to do business in? Why?
5. What is the concept of federalism, such as in the United States, and why does federalism have such significant legal and practical ramifications for the manager and entrepreneur? Provide business examples with brief explanations thereof.
6. What is the difference between an action “at law” and one “at equity”? Provide an example of a legal and equitable remedy together with a brief explanation of each.
7. What is the concept of “jurisdiction” and why is it so very important in the U.S. or for that matter any legal system? Provide examples with brief explanations thereof.
8. How does jurisdiction differ from venue? Provide an example of each with a brief explanation thereof.
9. What is the distinction between jurisdiction in personam and in rem? Why is this differentiation critical in the law? Provide an example of each with a brief explanation thereof.
10. What are state Long Arm statutes and why are they very important in the obtaining of jurisdiction? Provide an example along with a brief explanation thereof.
11. What is meant by the term “conflicts of laws”? Why is this legal doctrine of potential extreme importance to the success or failure of a lawsuit? Provide a business example with a brief explanation thereof.
12. Explain and illustrate how the U.S. Constitution separates and divided power so as to protect the people of the U.S. from abuse by government and government tyranny.
13. Why is the constitutional concept of “interstate commerce” so critical in the U.S. government and regulatory system? Provide business examples with brief explanations thereof.

14. When and under what circumstances can a state in the U.S. regulate interstate commerce? Provide an example with a brief explanation thereof.

15. What are some of the fundamental provisions in the Bill of Rights that affect business? Provide examples with brief explanations thereof.

16. How does the “equal protection” clause affect the debate about affirmative action preference plans in education and in employment? Provide examples along with brief explanations thereof.

17. What are the “rational basis” and “compelling interest” standards in equal protection law? Illustrate how they operate. Why are they absolutely critical to legal analysis of government programs that classify people?

18. What is the distinction between “political speech” and “commercial speech” in the United States? Why does that distinction have very important ramifications for U.S. businesses? Provide examples with brief explanations thereof.

19. What is the power of eminent domain pursuant to U.S. law? How has that power been materially expanded by the U.S. Supreme Court? Provide business examples with brief explanations thereof.

20. What are the definitions of and distinctions between arbitration and mediation? Provide an example of how each could be sued in a business context along with a brief explanation thereof.
2 – TORTS AND BUSINESS

In United States law, a tort is a wrongful act against a person or property for which a legal cause of action may be brought for the harm sustained. The term “tort” is a very old one, harkening back to the early common law in England, and even before that to the Norman-French conquest of England. A tort is a private wrong, the violation of private duty created by the law, and the violation of which results in a private injury. To compare, a crime is a public wrong, the violation of a publicly created duty, and the violation of which results in harm to the “state.” Yet it is important to note initially that the same act may constitute both a tort and a crime, for example, an assault and battery, which the state can prosecute as a crime and the victim can also sue for intentional tort damages. A breach of contract is a private wrong too, resulting in a private injury, but the breach arises from the violation of a duty created consensually by the parties. Torts can be personal torts, arising from an injury to a person’s body, feelings, or reputation, for example; and torts can be property torts, arising from harm to land, real estate, or personal property, for example. The purposes of tort law are to provide protection to certain legally recognizable interests, to afford a remedy if these interests are wrongfully harmed, and to allocate the risk and cost of injury on a just basis. Speaking very generally, people are free to act as they please in the United States so long as their actions do not infringe on or invade the interests of others.

Summary

This chapter described the tort law of the United States, including several subcategories associated with it. The law itself was originally created to protect victims faced with physical harm, as well as to prevent future unjust cases. Its purpose continues to serve today; and it is also expanding into several areas, including the manufacturing business. Countries around the world have followed in the “footsteps” of the United States by developing product liability laws, tort laws, etc. in order to protect consumers. In addition, the laws are also created to protect businesses and manufacturers from consumers that are willing to take advantage of products and the laws. It is for this reason that managers and entrepreneurs are often forced to develop strategies to avoid legal problems with tort law. Firms should provide thorough training programs for their staff, including management with the proper training and examination of all laws, specifically those pertaining to their type of business. This should be done to not only protect the image of the firm, but also the consumers. In essence, entrepreneurs and managers are obligated to acknowledge, understand, and abide by the various tort laws that exist in countries around the world in order to achieve their goals.
Discussion Questions

1. What is an intentional tort? Explain and illustrate how an intentional tort to the person could be committed in a business context. Explain and illustrate how an intentional tort to property could be committed in a business context.

2. What is the intentional tort of defamation? How can the intentional tort of defamation arise in a business context? Provide an example and a brief explanation thereof.

3. What is the tort of negligence? Explain and illustrate how the tort of negligence could be committed in a business context.


5. Describe and illustrate the types of damages that are available in intentional tort and negligence cases.

6. What is the doctrine of res ipsa loquitur in U.S. negligence law? Why is it a potentially very valuable legal doctrine to a consumer injured by a product? Provide an example with a brief explanation thereof.

7. What is the doctrine of proximate cause? Why has it been called the careless person’s (or business’) “best friend”? Provide an example with a brief explanation thereof.

8. What is the distinction between misfeasance and nonfeasance in U.S. law? Why is that distinction very important in the U.S. legal system? Provide examples with brief explanations thereof. Can one have a moral duty to rescue and come to another’s aid even if one does not have a legal obligation to do so? Why or why not? Provide an example, preferably a business-related one, with a brief explanation thereof.

9. How might an employer commit tort violations in discharging an employee that the employer has the legal right to terminate? Provide examples along with brief explanations thereof.
3 – PRODUCTS LIABILITY

Product safety emerges as a very important legal challenge for the manager of a manufacturing, distribution, and sales company. What is the extent of a company’s legal obligation to consumer safety? What is a firm’s legal responsibility for the products it produces, distributes, and/or sells? Should a company legally guarantee the safety of those who buy and use its products? This chapter examines various views regarding the legal duties of business to consumers; and seeks to ascertain the legal responsibilities of various entities on the product manufacturing and marketing chain toward the consumer. The corpus of law dealing with products safety typically is designated as “products liability” law. There are a variety of product liability legal theories in U.S. law. Where does a company’s duty to protect consumers begin, and where does it end – legally and in a global marketing and legal environment? This chapter seeks to answer these important questions.

Summary

The use of any product involves some degree of risk; and accordingly a key legal question under U.S. common law, statutory law, as well as regulatory principles, is to ascertain the acceptable level of known risk. No one reasonably expects a manufacturer to make a product completely safe or to reduce the risk of harm to zero. Generally speaking, a product will be legally safe if it complies with the applicable legal standards for product safety; and if there are still risks attendant to the use of the product it nevertheless will be deemed legally safe if the risks are known and judged acceptable and reasonable to a rational person in view of the benefits to be derived from the use of such a “risky” product.

Products are made for the purposes of engaging and fulfilling consumers’ needs, as well as creating profits for businesses. However, the liability that comes with the development of new products can be very high, depending upon the product itself. Therefore, businesses are forced to seek ways of developing harmless products, as they are likely to face major lawsuits should their products cause harm to the consumers. In the previous chapter, torts and businesses were discussed, where the term tort was defined as a wrongful act against a person which may cause a legal action. The term itself is applicable to the production of products, as they too can be harmful, even if used in the correct manner. Therefore, tort laws were initially established in the products field to help consumers attain justice due to the caused harm. They were also developed in order to create pressure on manufacturers to develop safe products. In essence, the tort laws, products liability laws, lawsuits, and other legal mechanism have allowed manufacturing firms to create efficient and
effective products that are beneficial to all, while protecting consumers from products that cause harm.

**Discussion Questions**

1. How can the legal doctrines of negligence, fraud, and warranty be used by an injured consumer in a products liability lawsuit? Provide examples of each with a brief explanation thereof.

2. What is the doctrine of strict tort liability in the United States? What makes a product defective pursuant to this doctrine? Provide examples with brief explanations thereof.

3. What is the warning component to the “defect” test to strict liability? Why do you think that manufacturers now “err on the side of caution” and warn of risks that a reasonable person would be aware of? Provide examples with brief explanations thereof.

4. What are some of the emerging areas in strict liability design defect law? Why? Provide examples with brief explanations thereof.

5. Is it morally fair to hold a retailer liable under strict liability for selling a defectively designed product when the product came to the retailer from the manufacturer in a sealed package which the retailer was not allowed to open? Provide an example with a brief explanation thereof.

6. Is it morally fair to hold a manufacturer legally liable for harms caused by a product that has complied with all federal and state regulatory safety, operational, warning, and design standards? Why or why not? Provide an example with a brief discussion thereof.
4 – CONTRACT LAW

A contract is an agreement between two or more persons that is enforceable at law. Business transactions are based on such agreements, wherein each party to the agreement obtains certain rights and assumes certain obligations. When an agreement between the parties meets all the requirements of a contract, the law makes the agreement binding on the parties thereto. As a result, if one party fails or refuses to perform (that is, breaches the contract), the other aggrieved party now has a legal action for damages or enforcement of performance. Contracts, accordingly, are the foundation of all business, because business – locally, nationally, and globally – consists of making and performing contracts. Business people thus can rely on agreements and the promises therein being fulfilled, because they are legally binding obligations.

Summary

This chapter provides an in-depth analysis of contract law and its associated elements, including legal definitions, classifications, remedies for breach of contract, the requirements of a valid contract, and rights and obligations of all parties. The popular use of contracts is mostly seen in the international business arena, specifically by “westernized” nations, such as the United States. However, as industrialized nations continue to work with developing countries in terms of exporting and importing, and manufacturing of goods, contracts are highly recommended. The vitality of contract law has become a significant factor for all global industries. Thus, managers, entrepreneurs, and employees are now encouraged and expected to understand the variations in laws that exist among different countries when entering into an agreement. As the world continues to turn global, managers, entrepreneurs, employees, as well as organizations and countries are depending on contracts in order to ensure successful business negotiations.

Discussion Questions

1. What are the requirements that convert a mere promise into a legally binding one, that is, a contract? Provide a business example with a brief explanation thereof.

2. What are the distinctions among valid, void, and voidable contracts under the common law of contracts? Why are those differentiations very important to contract law analysis? Provide examples along with brief explanations thereof.
3. What are the types of damages that an aggrieved party may be able to obtain for a breach of contract? Provide business examples with a brief explanation thereof.

4. What is the “mitigation” rule? Explain and illustrate how it would operate in a breach of contract for the sale of goods and a breach of an employment contract.

5. What is the “offer” and how are offers terminated? Provide business examples along with brief explanations thereof.

6. What is an “acceptance” and how may it be legally effectuated? Provide business examples along with brief explanations thereof.

7. What is the old common law contract “mirror image” rule? Why is it still a very important legal doctrine today? Provide a business example with a brief explanation thereof.

8. What is the old common law concept of “consideration” and why is it still a very important contract law rule? Provide a business example with a brief explanation thereof.

9. What is the “legal detriment to the promisee” test in consideration law? Why is it so important? Provide an example with a brief explanation of such legal “detriment.”


11. What are some of the major exceptions to consideration? Provide examples with brief explanations thereof.

12. Why is the type of licensing statute involved in a transaction a critical factor in determining the legality of a contract by an unlicensed business or person? Provide examples with a brief explanation thereof.

13. What are some of the types of contracts that must be evidenced by a writing to be enforceable? Provide examples with a brief explanation thereof.

14. Why is it critical to distinguish between the two types of mistake in contract law? Provide business examples of each with a brief explanation thereof.

15. Define, explain, and illustrate the major exception to the unilateral mistake doctrine.

16. What are the elements of a lawsuit for fraud (in the form of deceit or intentional misrepresentation)? Provide a business example with a brief explanation. Why is it so difficult to establish a legal cause of action for fraud/deceit?

17. What is the difference between assignment and delegation? Provide business examples of each with a brief explanation thereof. Why do two these two legal doctrines typically go “hand-in-hand” in the “real world” of business?

18. What contract duties cannot be assigned? Conversely, what contract duties cannot be delegated? Provide examples with brief explanations for both categories.

19. What is the doctrine of “substantial performance”? Provide a business example with a brief explanation thereof. Why is this doctrine informally known as the contractor’s “best friend”?
20. Compare and contrast “conditions subsequent” and “conditions precedent.” Provide a business example of each with a brief explanation. How can they be used contractually by the shrewd business person to protect himself or herself from potentially harmful contingences. Provide examples.

21. Compare and contrast the three main types of “impossibility” doctrines; and provide a business example of each with a brief explanation thereof.
5 – SALES LAW AND THE UNIFORM COMMERCIAL CODE

In addition to being aware of the common law of contracts, a business manager or entrepreneur doing business in the United States must be aware of a new and relatively recent body of law governing contracts – the Uniform Commercial Code (UCC) which governs contracts for the sale of goods and which makes some major changes in the old common law of contracts. The UCC is designed to change the common law to reflect modern commercial practices, particularly the mass distribution of goods to consumers. The UCC was first introduced in 1951 as a proposed uniform sales law by a group of legal and commercial experts; offered to the state legislatures; and now has been adopted by virtually every state in the United States. However, although the Code is supposed to be consistent and uniform among the states, which the UCC usually is, there may be differences, and material ones, that have been made to the Code upon its adoption by a particular state. Thus, the prudent business person is well-advised to carefully check his or her state’s version of the UCC, which is found in the state’s commercial statutes, and not definitely rely on the generic version of the UCC or for that matter this book or any book treating the UCC.

The Uniform Commercial Code has several major sections, called Articles, which seek to extensively regulate commercial transactions. For example, Article 3 deals with commercial paper transactions; and Article 4 deals with banking transactions. An examination of the entire UCC is beyond the scope of this book; rather, the authors will concentrate on Article 2, which deals with the sales of good, and especially those sections of Article 2 which make material changes in the common law of contracts. It also should be mentioned initially that the UCC’s Article 2A applies to the commercial lease of goods, which in fact will be very important when examining UCC warranty law later in this chapter.

The UCC’s Article 2 “just” applies to the sale of goods. Accordingly, the old common law still governs service contracts, including employment agreements, as well as real estate sales contracts. Accordingly, first and foremost, it is critical to define the UCC’s indispensable term - “good.” A “good” is moveable, tangible, personal property, that is, a thing. Land, structures and buildings attached to the land, as well as fixtures, that is, things which are so attached to the real estate that their removal would cause material harm to the real estate, are not goods, as they are not “personal” but “real” property. “Tangible” means a physical existence is required in order to be a “good”; thus patents, copyrights, trademarks, investment securities, and contract rights are not “goods.”

As mentioned, the UCC applies to sales of goods, and not services. Yet a major problem arises when there is a mixed transaction, that is, the same transaction involves the sale of goods and also the provision of some services. By legislative or judicial decree, some of these “mixed” cases have been settled. For example, anything
specially manufactured for a buyer is a good, as is computer software. Similarly, a meal in a restaurant is deemed to be the sale of a good, and not a service; but a blood transfusion usually is regarded as a service and not a sale of the blood. The test the courts will apply to determine the nature of the subject matter of the contract is called the “predominant feature” test, in which the major aspect of the contract will determine its nature as a sale of goods or service contract. For example, in a construction contract, the predominant feature is the building and not the purchase of the building supplies, and as such the common law will govern the contract. This distinction between sales and service is crucial to the law of contracts since the UCC makes some very significant changes to the old common law of contracts, and, in addition, the UCC’s body of warrant law applies only to the sale of goods (and the commercial lease of goods).

It is also necessary to define another key term in the UCC – “merchant.” However, it must be underscored right away that the UCC’s Article 2 applies to the sale of goods by anyone; but there are some special provisions of the UCC, and with some unique harsh effects, that apply only to merchants. So, who is a “merchant”? A merchant is a person or business that regularly deals in goods of a particular kind, that is, as a retailer, wholesaler, distributor, or manufacturer. A merchant also can be a person who holds himself or herself out as having knowledge and/or skill peculiar to the goods and commercial practices involved in the transaction. There obviously can be an overlap between the first and second categories. Finally, one can be deemed a merchant by employing a merchant for a particular transaction, for example, as an agent or broker.

Lastly, it is of great consequence that the UCC states that implied in every UCC contract is a covenant of good faith and fair dealing, in which the parties are deemed to promise not to do anything to hinder, impair, frustrate, or destroy the reasonable expectations and legitimate rights of the other contract party to enjoy the “fruits” of the contract.

Summary

This chapter emphasized that business managers and entrepreneurs doing business in the United States must be aware of a new and relatively recent body of law governing contracts – the Uniform Commercial Code (UCC) which governs contracts for the sale of goods and which makes some major changes in the old common law of contracts. The UCC is designed to change the common law to reflect modern commercial practices, particularly the mass distribution of goods to consumers. The Uniform Commercial Code has several major sections, called Articles, which seek to extensively regulate commercial transactions. For example, UCC’s Article 2 “just” applies to the sale of goods. Accordingly, the old common law still governs service contracts, including employment agreements, as well as real estate sales contracts.

Contract laws, as discussed in this and previous chapter, illustrate the major elements associated with agreements and contracts. As discussed in this chapter, sales contracts and its vital components, including title and risk of loss, warranties, as well as performance and remedies are all to be conducted in accordance to the guidelines provided by the UCC. The UCC is an important tool for managers to understand,
specifically when designing contracts with their business associates and customers. Therefore, it becomes important for all managers, firms and employees to fully understand the laws, regulations, and concepts associated with contracts.

Discussion Questions

1. Why is the concept of a “good” critical to UCC law? Provide an example with a brief explanation thereof. What body of law governs “mixed” contracts? Provide an example of the latter along with a brief explanation thereof.

2. What are some of the major changes the UCC makes in the common law of contracts regarding the offer? Provide examples with brief explanations thereof.

3. What are some of the major changes the UCC makes in the common law of contract regarding the acceptance? Provide examples with brief explanations thereof.

4. What is the UCC’s statute of frauds rule and what are some of the major exceptions thereto? Provide examples with brief explanations thereof.

5. What are the three major types of implied warranties pursuant to the UCC? Provide an example of each with a brief explanation thereof. Why is the legal concept of a “disclaimer” critical in warranty law? Provide an example of a disclaimer with a brief explanation thereof.

6. What is the UCC’s “perfect tender” rule and how does it drastically change the old common law of contracts regarding performance? Provide an example with a brief explanation thereof. What is the “cure” exception? Again, provide an example with a brief explanation of the latter.

7. Describe, explain, and illustrate some of the major UCC “risk of loss” rules.

8. What are some of the major terms of sale in contracts that affect the risk of loss for damage or loss of goods in transit? Provide examples with brief explanations thereof.

9. Define, explain, and illustrate the UCC’s “commercial impracticality” doctrine.

10. What are some of the fundamental rights and duties of the buyer and seller regarding the delivery and acceptance of goods? Provide examples together with brief explanations thereof.
6 – AGENCY AND EMPLOYMENT LAW

Agency and employment laws are very important commercial law subject matters since a great deal of the world’s work is performed by agents. For example, the essence of agency law is to accomplish legally binding results by utilizing the services of others. The term “agency,” however, is a very broad one, which concerns the rights and liabilities created in one person by the acts of another. Agency law encompasses three fundamental and distinct legal fields: 1) contract rights and liabilities of third persons created by parties who use agents and employees; 2) tort liability of persons for the wrongful acts of their agents and employees; and 3) contract and tort duties which the parties to an agency relationship owe to one another.

Agency is one of the most common, basic, and pervasive legal relationships in global business. Nearly everyone will come into contact with the agency relationship, usually in the form of a sales agent or employee. The usefulness to business everywhere is obvious, since no single person can perform all of the actions required to conduct a business. Moreover, the business owner can conduct multiple business operations simultaneously and on a worldwide basis by means of agency. The corporate entity, furthermore, as an artificial, though legal, “person,” only can act through agents and employees and consequently only can enter into contracts by means of agents and employees. This section accordingly will examine agency and employment laws in the United States.

Summary

Commerciality has become a well known concept in the business industry, and it is for this purpose that governments, specifically the U.S. government, have established commercial and agency laws. Agency law, its development, duties of agents and principles, termination of an agent’s authority, liability of parties, torts, global legal perspectives and management strategies are all elements that pertain to agency law, which have been thoroughly discussed in this chapter. As firms continue to conduct business practices with their partners, they are obliged to abide by the local and federal laws. Therefore, the agent and principal relationship is a vital tool for firms as well as managers and entrepreneurs who are focused on successful results.

The goal of employment law in the United States has been to achieve a proper balance between the employer’s right to hire, manage, and fire employees, and the employee’s right to be treated fairly and to maintain his or her job. Considering the “lawless” nature of the employment at-will doctrine, this objective has been a difficult one to attain, necessitating government intervention by means of major federal Civil Rights and labor law statutes. Moreover, not only the legislative branch of government, but also the judicial branch has questioned the conventional adherence
to the employment at-will doctrine, a legal precept that can legally legitimize an immoral (but legal!) discharge. Courts, accordingly, have increasingly recognized further common law exceptions to the employment at-will doctrine and thereby have provided more “wrongful discharge” remedies for the unfairly terminated employee. Nevertheless, the employment at will doctrine is still today in the U.S. the key legal doctrine governing the employment relationship, especially in a non-unionized setting.

**Discussion Questions**

1. Why is it critical to differentiate between employees and independent contractors under agency law? Provide examples of each with a brief explanation thereof.

2. What are the exceptional circumstances under which an employer may be liable for the legal wrongs of its independent contractor? Provide examples with brief explanations thereof.

3. Explain and illustrate how and why the principal-agent relationship is an indispensable one for business today.

4. How is the principal-agent relationship created? Provide examples with brief explanations thereof.

5. Explain and illustrate the doctrines of “apparent agency” and “ostensible employment.” How can they be a “trap for the unwary”? Provide examples along with brief explanations thereof.

6. What are the duties that a principal and agent owe to one another? Provide examples along with brief explanations thereof.

7. What are the doctrines of *respondeat superior* and vicarious liability? Provide examples of each with a brief explanation thereof. Are these doctrines morally fair to an employer? Why or why not?

8. Why is the concept of “course or scope of employment” a crucial factor in vicarious liability law? Provide an example with a brief explanation thereof.

9. What is the employment at-will doctrine? Why is it possible to have a legal but immoral discharge pursuant to this doctrine? Provide an example of the latter along with a brief discussion thereof.

10. What is the public policy exception to the employment at-will doctrine? Why is it such a potentially expansive legal doctrine? Provide an example of a discharge that violates public policy along with a brief explanation thereof.
7 – BUSINESS ORGANIZATIONS

The establishment of a business can be complex and requires understanding national and local laws. Entrepreneurs that want to establish a business must become aware of the laws that apply to each type of business prior to deciding whether to have a sole proprietorship, a partnership, a corporation, a limited liability company, a franchise or a joint venture with another national or international organization. This chapter outlines some of the information that business owners, academic scholars, and entrepreneurs need to know about the various types of business organizations in the United States. The chapter outlines some of the risks and benefits associated with each type of organization so the entrepreneur can decide which format best fits his/her purposes for the business.

Summary

As mentioned in the introduction, establishing a business can be complex and cumbersome. Opening a business requires understanding the national and local laws. As discussed in this chapter, entrepreneurs that want to establish a business must become aware of the laws that apply to each type of business prior to deciding whether to have a sole proprietorship, a partnership, a corporation, a limited liability company, a franchise or a joint venture with another national or international organization. This chapter outlined some of the information that business owners, academic scholars, and entrepreneurs need to know about the various types of business organizations in the United States. The chapter outlined some of the risks and benefits associated with each type of organization so the entrepreneur can decide which format best fits his/her purpose for the business. For example, any person who does business individually without utilizing any of the other forms of business organization is doing business as a sole proprietorship. The sole proprietorship is the most basic form of business organization, as the owner of the business is in essence the business. The advantages and disadvantages of this way of doing business as well as the other forms of doing business were examined in this chapter.

Discussion Questions

1. What are the advantages and disadvantages of doing business as a partnership compared to a corporation? Provide examples with brief explanations thereof.
2. Why is a partnership regarded as a very “fragile” legal form of doing business? Provide an example and a brief explanation thereof.
3. What is the authority of partners to bind the partnership and other partners contractually? Provide example with brief explanations thereof.
4. Compare and contrast a partnership to a limited partnership. Provide examples along with brief explanations thereof.

5. Compare and contrast a partnership to a limited liability partnership. Provide examples along with brief explanations thereof.

6. Compare and contrast the articles of incorporation with the bylaws of a corporation. Provide examples of provisions that should be in each document together with a brief explanation thereof.

7. Compare, contrast, and illustrate a *de jure*, *de facto*, and corporation by estoppel.

8. What is the legal doctrine of “piercing the corporate veil,” and why should the owner of a one person or small family corporation be very concerned with this doctrine? Provide examples with brief explanations thereof.

9. What are some of the shareholders fundamental rights and obligations? Provide examples with brief explanations thereof.

10. How can shareholders of the corporation seek to control the business of the corporate entity? Provide examples and brief explanations thereof.

11. What are some of the directors’ fundamental rights and obligations? Provide examples with brief explanations thereof.

12. Why is the “business judgment” rule the “best friend” of the corporate director? Provide examples with brief explanations thereof.

13. What does the law regard as “fundamental corporate change”? What are some of the legal requirements for effectuating such changes? Provide examples along with brief explanations thereof.

14. What are the advantages and disadvantages of doing business as a corporation compared to a limited liability company? Provide examples with brief explanations thereof.

15. Why is it even more important in an LLC than even a corporation to maintain LLC formalities? Provide examples with brief explanations thereof.

16. What are the advantages and disadvantages of doing business as a sole proprietorship compared to doing business as a franchisee? Provide examples along with brief explanations thereof.

17. Why does the old common law covenant of good faith and fair dealing emerge as a very important legal doctrine for the franchisee? Provide an example with a brief explanation thereof.
8 – COMMERCIAL PAPER AND BANKING TRANSACTIONS

The law of commercial paper, as well as banking transactions is found predominantly in the Uniform Commercial Code (UCC) specifically in Articles 3 and 4 (as revised in 1990 and 2002). The term “commercial paper” refers to written obligations, promises, and orders to pay sums of money which arise from the use of negotiable instruments, such as promissory notes, drafts, checks, and trade acceptances. There are two basic purposes of commercial paper. The first is the credit function; that is, some forms of commercial paper are used primarily to obtain credit now, to be repaid out of future income. For example, a buyer purchases goods from a seller and pays with a 90 day promissory note. The seller then waits until the maturity date to collect; and thus the seller has extended credit to the buyer. The second purpose is the payment function; that is, some types of commercial paper are used primarily as a paying obligations as a substitute for money. For example, a buyer buys goods from a seller using a check; the check is a substitute for money. This chapter will examine in detail commercial paper law pursuant to the UCC, and then will examine banking transactions laws pursuant to the UCC and certain U.S. Federal statues.

Summary

Laws regarding commercial paper and banking transactions are primarily found in the Uniform Commercial Code (UCC); and a foundational knowledge and understanding of this body of law is critical for all managers and entrepreneurs. The chapter defined “commercial paper” as the written obligations, promises, and orders to pay sums of money which arise from the use of negotiable instruments, such as promissory notes, drafts, checks, and trade acceptances. The chapter further mentioned and explored the two basic purposes of commercial paper: the credit function, and the payment function. In the initial section, the chapter explored types of commercial paper, ambiguities in instruments, the negotiability and negotiation requirements, holders in due course, claims and defenses to negotiable instruments, liability of the parties, contract liability, warranty liability, and conversion of instruments, and the statutory erosion of the holder in due course doctrine. In the last section of the chapter, the authors explored the relationship between banks and their customers, bank collection procedures, forgery, and alternation.
Discussion Questions

1. What are the basic types of negotiable instruments and who are the parties to negotiable paper? Provide an example of each with a brief explanation thereof.

2. What are the requirements for a “negotiable” instrument pursuant to the UCC? Why is that initial determination critical in commercial paper law? Provide an example of a negotiable instrument with a brief explanation thereof.

3. How does the UCC treat extension and acceleration clauses regarding negotiability of an instrument? Provide examples of permissible and impermissible extensions clauses along with brief explanations thereof.

4. Compare and contrast “order” paper and “bearer” paper under the UCC. Provide an example of each with a brief illustration thereof.

5. What is a UCC “negotiation” and how does it differ from a common law assignment? Provide examples of the negotiation of order and bearer paper with a brief explanation thereof.

6. What are the fundamental ways of indorsing negotiable instruments? Provide an example of each with a brief explanation thereof.

7. Who is a “holder” of a negotiable instrument? Why is holder status important? Provide an example with a brief explanation thereof.

8. What are the requirements for being a “holder in due course” (HDC) of a negotiable instrument? Provide an example of an HDC with a brief explanation thereof.

9. How does the “good faith” HDC requirement differ from the “without notice” requirement? Provide an example of each with a brief explanation thereof.

10. How does being an HDC under the UCC differ from being an assignee under the common law of contracts? Provide an example of each category with a brief explanation thereof.

11. What are the “real” or “universal” defenses that will be operative against even an HDC? Provide examples with brief explanations thereof.

12. What is the difference between a forgery “inside” as opposed to “outside” of the chain of title on a negotiable instrument? Why is that distinction a critical one under the UCC? Provide an example of each with a brief explanation thereof.

13. What is contact liability on a negotiable instrument? How does it arise? Provide examples with brief explanations thereof.

14. How should an agent sign a negotiable instrument to ensure that the agent is not liable thereon but his or her principal is liable? Provide examples with brief explanations thereof.

15. Who are the parties primarily liable on negotiable instruments and who are the parties who are secondarily liable? Why is that distinction critical pursuant to the UCC? Provide examples along with brief explanations.

16. What are the “conditions precedent” (or secondary conditions) that secondary parties are entitled to? What happens if these conditions are not complied with? Provide examples along with brief explanations thereof.
17. What is the “merger” doctrine and how does it affect liability on negotiable instruments? Provide a merger example with a brief explanation thereof.

18. What is warranty liability on a negotiable instrument and how does it arise? How does it differ from contract liability? Provide examples of warranty liability along with brief explanations thereof.

19. What is presentment warranty liability on negotiable instruments? Why is it narrower than warranty liability? Provide examples with brief explanations thereof.

20. What are some of the special UCC rules that will validate fraud, forgery, or an alteration of a negotiable instrument? Provide examples with brief explanations thereof.

21. What is the special FTC rule that impacts HDC status in consumer goods transactions? What is the rationale for the rule? Provide an example of the FTC rule with a brief explanation thereof.

22. What are some of the fundamental UCC principles that govern the relationship between a bank and its customers? Provide examples along with brief explanations thereof.

23. What is the concept of the “float” when it comes to banks’ processing checks? How is this concept been drastically reduced by federal statute? Provide examples along with brief explanations thereof.

24. What are some of the benefits of electronic banking, and what are some of the risks? Explain how the latter have been mitigated to a degree by statute? Provide examples along with brief explanations thereof.
9 – CREDITORS AND DEBTORS – RIGHTS AND RESPONSIBILITIES

This chapter will examine creditor and debtor relationships and will analyze the rights and responsibilities of creditors and debtors. The primary creditor rights to be examined will be the legal doctrines of suretyship and secured transactions, and the primary debtor right to be examined will be bankruptcy.

Summary
The intricate and symbiotic relationships between creditors and debtors are often balanced through supply and demand forces. This chapter has thoroughly and comprehensively examined the relationship between creditors and debtors. It further analyzed and discussed many of the rights and responsibilities associated with creditors and debtors in the United States. The primary creditor rights examined were the legal doctrines of suretyship and secured transactions, and the primary debtor right examined was that of bankruptcy in the United States.

Discussion Questions
1. Compare and contrast suretyship and guaranty? Provide an example of each with a brief explanation thereof.
2. What is the concept of a security interest under the UCC and how does it aid creditors? Provide an example with a brief explanation thereof.
3. What is the concept of “perfection” under secured interest law? How is it achieved? Why is it so important? Provide an example of perfection along with a brief explanation thereof.
4. Describe and illustrate some of the other methods that the law provides to protect creditors.
5. Compare and contrast the three main types of bankruptcy proceedings. Provide an example of each with a brief explanation thereof.
6. What are the concepts of a “voidable preference” and a “voidable transfer” under bankruptcy law? What are their rationales? Provide an example of each with a brief explanation thereof.
7. What is considered to be “exempt” property under federal and state bankruptcy law? Provide examples along with brief explanations thereof.
8. How did the Bankruptcy Reform Act of 2005 materially change the rights of debtors to use Chapter 7 proceedings? Provide examples along with brief explanations thereof.
9. Describe and illustrate some of the other methods the law provides to protect debtors.


10 – INTERNET LAW

Internet regulation is an extremely vital topic, as inappropriate use of the Internet can result in criminal and civil liability. This chapter examines the governing bodies that control e-contracts, the extent to which e-contracts are valid and enforceable, as well as the privacy issues that businesses have to bear in mind when conducting business via the Internet. Consequently, businesses have to bear in mind that the Internet is a global and not merely a nationwide system, so managers have to comprehend other nations’ Internet policies and rules before they carry out business proposals such as e-contracts. Also, businesses in the United States need to ensure that their Internet practices are in accordance with the respective statutes governing computer transactions.

Summary

E-communication has become the order of the day in most organizations; and as a result management has to keep employees informed about the Internet’s global and national legislation that they may encounter in their business transactions. E-contracts have become a significant aspect of business partnerships and ventures and they have aided to simplify business processes by saving time and money in addition to decreasing the chances of human error. However, management has to focus on certain strategies when dealing with e-contracts in order to ensure that the contract process is a smooth process and not a very nerve-wracking experience for the parties involved. A very important consideration is that managers should ensure that online contracts are properly formed and enforceable; for example, if this requirement is not imposed, disputes could occur between both parties and that would hinder the business process or result in serious legal risks if there are doubts about effective communication of terms and conditions. Secondly, management should keep abreast of innovative technological systems such as Contracts Online by IBM (which allows clients to review and sign a contract, track its status, and see who made alteration to the document online), as these systems will help to improve their level of business performance. Lastly, management should ensure that they keep employees informed of any current updates with online laws, statutes, or acts, as well as the elements required for a legally enforceable contract; for instance, if people are conducting an online contract in Jamaica, they should be advised that there is no law enforcing e-signatures in that country, so an e-contract which requires electronic signature would not be recommended in that case. Therefore, management should realize that Internet regulation is a very sensitive issue that needs to be closely monitored.

Internet regulation is a very pertinent issue in today’s global marketplace; and therefore this chapter has looked at the essential legal systems that govern computer transactions and the Internet. These statutes include the Uniform Electronic
Transaction Act (UETA), Uniform Computer Information Transaction Act (UCITA) and the Electronic Signature in Global and National Commerce Act. Internet privacy and Internet Domain is also discussed with regards to the Acts that they are regulated by, which are the Electronic Communications Privacy Act (ECPA) and the Anticybersquatting Consumer Protection Act. This chapter also examined the validity of e-contracts nationally as well as globally.

Discussion Questions
1. Describe, explain, and provide examples with explanations of the statutes in the U.S. that have allowed the law to “catch up” with technology in the area of contracting.
2. What rights and duties does an employer have regarding the electronic monitoring of its employees in the United States? Provide examples along with brief explanations thereof.
11 – INTELLECTUAL PROPERTY LAW

Conceiving, inventing, constructing, and developing useful and creative information and instrumentalities are the hallmarks of the entrepreneur. Such information and devices may have taken considerable effort and expense to create; and may be very valuable to the success of a business and business person. Such information and knowledge can provide a business with a distinct competitive advantage. Problems perforce arise when an employee possessing such vital information and knowledge moves from one firm to another in today’s very competitive, knowledge-based, global economy. Therefore, the key legal question emerges as to how one can protect such information or inventions from being misappropriated, and not only in the U.S., but also in the many other legal jurisdictions where the global business person does business. Knowing how to protect such information is not only important to a company, but also important to an individual entrepreneur, who naturally wants to keep such information confidential, yet who may have to share this potentially valuable information with venture capitalists and others. The purpose of this chapter, therefore, is to demonstrate the variety of ways that things and information can be legally protected pursuant to U.S. law.

Summary

The practically-minded manager, inventor, and entrepreneur must first be keenly aware that obtaining patent protection is not easy, not fast, and definitely not cheap. Moreover, it is still an ongoing legal debate as to whether certain creations, such as computer software, are even patentable. Regardless, the eminently practical constraint is that by the time one secures, if one can, a patent for one’s product, especially if it is computer hardware, or perhaps even software, or technologically-related, the “march” of technology moves so rapidly and is so ever-changing, that one may find oneself the owner of a very expensive, and quite useless, patent.

Trade secret protection, in comparison to patent and copyright protection, is very broad and relatively easy to attain. The “information” component to a trade secret can encompass not only the expression of an idea, as in copyright law, not only the application of the idea, as in patent law, but the very idea itself. Trade secret law requires no registration, no filing fees, no notice, no disclosure (as opposed to patents and copyrights), and no lengthy, expensive, and time-consuming procedures. Moreover, a covenant-not-to-compete and a confidentiality agreement are not required for trade secret protection, though both are certainly advisable. All one needs is “information,” which conceivably can be any concept or notion, some potential value to the information, and the adoption and maintenance of reasonable measures to safeguard the information. For example, an entrepreneur, before showing his or her business plan to potential investors in the business, can prominently indicate on his or
her business plan the words “confidential” and “secret” and further indicate that the plan is being disclosed for limited business review purposes and is not to be disclosed to or shared with others. Customer or client lists, as compilations, as noted, may be protected under trade secret law. However, even if an employee has personally compiled a customer or client list, but no considerable effort or expense was involved and the names are readily obtainable from public sources, the employee may be able to take the list with him or her to a new employer or use it entrepreneurially, absent other restrictive contractual provisions.

All these intellectual property legal protections must be of heightened concern to the global business person and entrepreneur. Creating and developing intellectual property is characteristically an expensive and time-consuming process. Moreover, the advent of the Internet and the relative ease of transmission and duplication of information on a truly global basis means that the gain the creator expects to accrue from his or her creative efforts may be imperiled unless actions are taken to legally safeguard the intellectual property.

Discussion Questions

1. What are the major ways that the federal government in the U.S. can provide protection to intellectual property? Provide examples with brief explanations thereof.

2. How can intellectual property be protected pursuant to state trade secret law? Provide an example of a legally protected trade secret along with a brief explanation thereof.

3. How can trade secret law protect both “hard” and “soft” information? Provide examples along with brief explanations thereof.

4. What steps would you consider to be “reasonable” on the part of an employer to maintain the secrecy of its purported trade secret? Provide examples with brief explanations thereof.

5. Why should an entrepreneur developing a business plan find trade secret law a very valuable legal doctrine? Explain, providing an example.

6. What are the key legal differences between a covenant not to compete in the sale of a business and in an employment contract? Provide an example of each together with a brief explanation thereof.

7. What would you consider to be a legitimate business interest of the employer that is a perquisite to a valid covenant not to compete in an employment contract in some jurisdictions? Provide an example and a brief explanation thereof.

8. What would you consider to be “specialized” or “extraordinary” training or learning to support the validity of a covenant not to compete in an employment contract? Provide an example and a brief explanation thereof.

9. How can the employer use confidentiality and non-disclosure agreements to protect information? How can they be used in conjunction with trade secret law? Provide examples along with brief explanations thereof.
12 – REAL PROPERTY LAW

Ownership of property and the rights to property are very important and strongly held beliefs in Western civilization law, history, and society, and especially in the Anglo-American tradition. Property can be defined generally as anything that can be owned, possessed, used, or disposed of. Property law in the U.S. is based on the old English common law; and property law today in the U.S. is still predominantly common law, though now there are many statutes that regulate the ownership, transfer, and use of property. The two basic types of property are real property, or real estate, which is not moveable, and personal property, which is moveable. There is also the concept of a “fixture,” which is a piece of personal property that has become so firmly attached to real property that it is considered part of the real property. This chapter examines the nature of property, paying particular attention to real property, and also discusses how ownership rights to property are transferred. The approach to real estate law taken in this chapter is transactional in nature. It begins with a discussion of the sources of real estate law. Next, it moves progressively through the stages that are typical of real estate transactions: acquisition, ownership, financing, permitting, and entitlements. Personality property is comprehensively covered in a separate chapter.

Summary

After reading this chapter, one should be able to understand the definition and nature of real property law, to distinguish between real and personal property, owning versus leasing real property, and the real estate contract and the deed. One as well should be able to understand the types of ownership interests in property, the legal complexities of transferring and financing real property, particularly real estate mortgages, and the regulation of the use of real property, especially land use permitting and entitlements in the United States.

Discussion Questions

1. What are the definitions and distinctions among real property, personal property, and fixtures? Why are the differences important, especially under contract law? Provide examples with brief explanations.

2. What are the definitions and distinctions between the real estate contract, the closing, and the deed in a real estate transaction? Provide examples with brief explanations.

3. What are the definitions and distinctions between a warranty deed and a quitclaim deed? Why are the differences important? Provide examples along with brief explanations.
4. What are the two major classifications of warranty deeds and why are the differences between the two important? Provide examples with brief explanations.

5. What are the definitions of and distinctions between the covenants and the description in a deed? Why are the distinctions important? Provide examples with brief explanations.

6. What are the definitions and distinctions between a fee simple and a life estate? Why are the differences important? Provide examples along with a brief explanation.

7. What are the definitions of and distinctions among a joint tenancy, tenancy in common, and a tenancy in the entirety? Why are the distinctions important? Provide examples along with brief explanations.

8. What are the definitions and distinctions between acquiring property by accession and accretion? Why are the distinctions important? Provide examples with brief explanations.

9. What is the concept of adverse possession? Provide an example with a brief discussion. Is this legal concept a realistic one today? Why or why not?

10. What are the definitions and distinctions between a condominium and a cooperative? Why are the differences important? Provide examples along with a brief explanation.

11. What is a mortgage and why is it such a critical part to real estate financing?

12. What is the difference between buying real property subject to a mortgage as opposed to assuming a mortgage? Why is the distinction between the two critical? Provide examples with brief explanations.

13. What are the definitions and distinctions between an easement and a license? Why are the differences important? Provide examples along with brief explanations.

14. What are the definitions and distinctions between an easement by prescription and an easement by implication? Why are the differences important? Provide examples along with brief explanations.

15. What are some of the major components of state and local land use regulation? Provide examples along with brief explanations.
13 – INTERNATIONAL BUSINESS LAW

With the evolving and expansive economic growth around the world, many entrepreneurs seek to expand their operations into new and exciting territories. Today, even a small or medium sized company may do business in numerous countries. Understanding and obeying domestic laws are a critical component of each manager and entrepreneur’s job doing business in these different countries. Since today’s managers and entrepreneurs often deal with customers, suppliers, and employees in different parts of the world, understanding international business laws in regards to each specific country becomes very important for success. This chapter briefly discusses international business law as it applies to domestic and global firms. It further provides recommendations and sources where managers and entrepreneurs can gain relevant insights as they work on successfully expanding their dealings across diverse countries, cultures, and borders.

Summary

This chapter has attempted to shed some light on understanding and obeying domestic and international laws as they are a critical component of each manager and entrepreneur’s success in today’s global workplace. Since today’s managers and entrepreneurs often deal with customers, suppliers, and employees in different parts of the world, having a functional understanding of international business laws in regards to the specific country becomes very important to success of the organization. This chapter discussed international business law as it applies to domestic and global firms, and provided sources where managers and entrepreneurs can gain relevant insights as they work on successfully expanding their dealings across diverse countries, cultures, and borders.

Discussion Questions

1. What is international business law and how does it apply to foreign firms?
2. How are local and international laws different?
3. Should a firm obey the headquarters’ laws or the local country’s laws, if they differ? Why or why not? Provide examples.
4. What are some laws and regulations that you became familiar with when you traveled to a different country? How would the awareness (or lack thereof) of these laws impact a person’s success?
5. How do Islamic laws impact managers and entrepreneurs who are coming from non-Islamic countries?
14 – LIABILITY OF ACCOUNTANTS AND
OTHER PROFESSIONALS

Accountants are members of a profession who provide a variety of professional services: for example, tax, consulting, bookkeeping (compilations), and various assurance services. Assurance services provide information enhancement and include audits and reviews of financial statements. An audit is the examination of financial statements performed by a certified public accountant in accordance with specific professional standards. The product of this work is the auditor’s opinion which, according to the Public Company Accounting Oversight Board’s (PCAOB) standard auditor’s report, gives the users of financial statements reasonable assurance that the entity’s statements are free from material misstatement and “…present fairly, in all material respects, the financial position, results of operations, and cash flows…in conformity with accounting principles accepted in the United States of America.” A certified public accountant, known as a CPA, is an accountant who has attained certain educational requirements, typically five years of college study, and who has passed the rigorous Uniform CPA Exam administered in 55 U.S. jurisdictions.

In the performance of their professional services, accountants, like members of the legal and medical profession, are exposed to legal liability. Legal liability against accountants is based on both the common law and statutory law. In the former category, the accountant can be sued for breach of contract, negligence, and fraud. In the statutory category, the accountant faces legal liability based on a variety of federal and state statutes, especially federal securities laws. Moreover, accountants may confront legal liability not only from their clients but also third parties. This chapter will examine the legal liability of accountants under the common law and selected statutory law, particularly federal securities laws, as well as briefly address the accountant-client legal privilege and some practical steps an accountant can take to minimize his or her legal liability. Mention will also be made of the liability of other professionals, especially lawyers.

Summary

This chapter has examined the legal liability of the accountant as well as other professionals under a variety of laws – federal and state, statutory and common law, civil and criminal. Regarding the liability of the accountant for negligence to third parties, this chapter underscored that there are three competing legal theories, and thus the prudent reader is well advised to check his or her state’s law to determine which legal approach applies. This chapter also underscored the very important Sarbanes-Oxley Act of 2002, and discussed how it impacted corporate governance,
the securities laws, and the accounting profession. This chapter compared and contrasted the privilege of confidentiality and non-disclosure between lawyers and their clients and accountants and their clients. Finally, this chapter provided certain practical recommendations for the accountant to avoid legal liability.

**Discussion Questions:**

1. What are the three major common law legal theories that would impact the liability of the accountant? How could they be applied to accountants?
2. What are the three competing legal theories dealing with the liability of a negligent accountant to third parties? Which one is preferable? Why?
3. Why is the Securities Act of 1933 known as a disclosure type of law? Provide examples of stock offerings subject to the 1934 Act and the types of disclosure required.
4. How can the accountant be civilly and criminally liable under the 1933 Act? Provide examples along with a brief discussion thereof.
5. How can the accountant be civilly and criminally liable under the 1934 Act? Provide examples along with a brief discussion thereof.
6. What is the difference between insider trading and trading on inside information? Why is that distinction critical pursuant to U.S. securities laws? Provide an example of each along with a brief explanation thereof.
7. Who is an “insider” pursuant to U.S. securities law? Why is that definition critical when it comes to liability under the securities laws? Provide an example of an accountant as an insider along with a brief discussion thereof.
8. What is the difference between an “inadvertent tipee” and an “inadvertent tipee” under a fiduciary duty? Why is that distinction a critical one in U.S. securities laws? Provide an accounting example of both types along with a brief explanation thereof.
9. How can the “lucky” and the “smart” legally trade on inside information? Provide examples with a brief discussion thereof. Is it morally fair to legally allow ANY trading on inside information? Why or why not?
10. Discuss some of the ways that the Sarbanes-Oxley Act (SOX) has impacted the accounting profession. Provide examples along with brief explanations thereof.
11. Discuss some of the ways that the Sarbanes-Oxley Act (SOX) has impacted corporate governance. Provide examples along with brief explanations thereof.
12. How does SOX treat the issues of corporate whistleblowing and codes of ethics? How would the accountant be affected by this aspect of SOX? Provide examples with brief explanations thereof.
13. Compare and contrast the attorney-client privilege with the accountant-client privilege. Provide examples. Why is the distinction important?
14. What are some of the ways that accountants can avoid legal liability? Provide examples with brief explanations thereof.
15 – Wills and Trusts

This chapter reviews two important areas of the law, wills and trusts, which are important subject matters not only for their business, estate planning, and tax and accounting applications, but also for their personal family ramifications. The two legal areas, wills and trusts, are treated separately for academic purposes in two distinct sections to the chapter, but in the “real-world” they are often interrelated, especially because, as will be seen, one very common way of creating a trust is by means of a will. It is also very important to point out that these two important areas of the law are governed in detail by state laws, which may differ. Thus, this chapter will provide certain fundamental concepts and general rules applicable to these legal areas. Naturally, one must consult his or her own state’s law to determine the exact legal rules that apply to a will or trust situation.

Summary

This chapter has examined two very important areas of the law, not only for business but also for the family and estate planning reasons. The wills part to the chapter discussed what a will is, how wills are created, and how they can be revoked and amended. The wills part also examined briefly the legal doctrines that impact a person’s ability to draft a will and for the will to transfer property. The administration, or probate, of wills was also briefly mentioned. The trusts part to this chapter examined the concept of a trust, discussed how trusts can be created, and defined and differentiated the variety of trusts the law recognizes.

Discussion Questions

1. List and briefly explain the requirements for a valid will. Provide an example of a valid will with a brief discussion thereof.
2. What are the differences between revoking a will by means of a subsequent instrument and revoking a will by means of performing a physical act on the will? Why are the differences very significant? Provide an example of each with a brief discussion thereof.
3. What is a codicil and how can it operate to modify a will? Provide an example and a brief explanation thereof.
4. What is an elective share? Why is it very significant when it comes to inheritance? Provide an example along with a brief explanation thereof.
5. What is testamentary capacity? Why is it so critical to the validity of a will? Provide an example along with a brief explanation thereof.
6. What is the concept of undue influence? How can it invalidate a will? Provide an example along with a brief explanation thereof.
7. What is the difference between specific and general devises? Why is the difference important when it comes to the doctrines of ademption and abatement? Provide examples along with brief explanations thereof.

8. What are anti-lapse statutes and how do they operate when it comes to devises in a will? Provide an example along with a brief explanation thereof.

9. What are the requirements of a valid private express trust? Provide an example of such a trust with a brief explanation thereof.

10. What are the differences between an *inter vivos* trust and a testamentary trust? Why are the differences significant? Provide an example of each along with a brief discussion thereof.

11. What are the legal powers and duties of a trustee? Provide examples of each with brief explanations thereof.

12. What is a charitable trust and why is the *cy pres* doctrine such an important feature of charitable trust law? Provide an example of a charitable trust as well as the application of the aforementioned doctrine together with brief explanations thereof.

13. Compare and contrast the spendthrift, discretionary, and support trusts. Provide an example of each along with a brief explanation thereof.

14. Compare and contrast the resulting and constructive trusts. Provide an example of each with a brief explanation thereof.

15. How can will and trust law be integrated as a family estate planning tool? Provide examples with brief explanations thereof.
16 – PERSONAL PROPERTY, GIFTS, AND BAILMENT

Ownership of property is the highest status recognized by the law with respect to a particular piece of property. The distinction between real and personal property as well as the types of ownership of real property were discussed in the Real Estate chapter. This chapter focuses on the ownership of personal property. In particular, the chapter examines the acquisition of ownership of personal property through possession and by means of gifts. The chapter also discusses the important and interrelated personal property legal concept of a bailment.

Summary

This chapter reviewed three important areas of the law which are important subject matters not only for their business applications, but also for their individual and family financial ramifications. The three legal areas were personal property, gifts, and bailment, which were treated separately for academic purposes in three distinct sections to the chapter, but which in the “real-world” are often interrelated, especially because, as was seen, one very common subject matter of a gift is personal property.

Discussion Questions

1. Compare and contrast gifts inter vivos and gifts causa mortis. Why are the differences significant? Provide an example of each along with a brief explanation thereof.
2. What are the requirements for a valid bailment? Provide an example of a valid bailment along with a brief explanation thereof.
3. What are the duties of the bailee and how do these duties differ depending on the type of bailment involved? Provide examples together with brief explanations thereof.
4. Compare and contrast securing ownership to abandoned, lost, and mislaid property. Provide an example of each along with a brief explanation thereof.
5. Compare and contrast acquiring property by means of accession and confusion. Provide an example of each along with a brief explanation thereof.
17 – CONCLUSION AND CASE PROBLEMS

Initially, this chapter provides a brief summary of what was intended to be covered in this book, what was covered, and the objectives of the authors. Second, this chapter provides many real world cases, problems, and dilemmas that business entrepreneurs and managers are likely to face in their day-to-day operations in the “American” workplace. The cases and dilemmas can serve as a laboratory for students, managers, and entrepreneurs as they prepare to effectively deal with such legal challenges in their workplaces.

Book Conclusion

Today’s entrepreneurs, managers, and their employees are impacted by law each day; and almost all human activity is affected by the law. In the business world, when contemplating a business transaction or decision, an entrepreneur or manager not only must consider the physical, financial, personnel, and managerial aspects, but also the legal ramifications. Moreover, as the business and entrepreneurial “world” is now a truly diverse workplace, an entrepreneur or manager must be cognizant of laws impacting his/her employees, suppliers, and customers. The main purpose of this book, therefore, has been to introduce the reader to fundamental principles of the laws regulating business as well as their practical application in the United States. The first chapter began by discussing law and the basic legal principles impacting entrepreneurs and managers; the last chapter concluded with some basic business principles that current and aspiring entrepreneurs and managers in the United States must become aware of and understand. The other chapters in-between expanded on other important legal concepts and precepts that will be beneficial to entrepreneurs and managers. The authors wanted the discerning reader to be conscious of the scope and complexity of laws affecting business. The authors accordingly intended to help the reader recognize legal situations in business as well as everyday life; and the authors especially wanted to impart an awareness of potential legal problems, and how to avoid them.

This book was designed to help readers become familiar with important legal issues and concepts so they can make appropriate decisions about their company’s status. Entrepreneurs and managers deal with “laws of the land” every day, and consequently must be aware of its nuances and complexities in order to successfully and interdependently work with others in the community, industry, and country. Thus, entrepreneurs and managers should become aware of the fundamental aspects of the legal system so they can avoid legal problems and can seek the help of experts when dealing with complex issues. Business Law for the Entrepreneur and Manager has been designed to provide the foundational aspects of the “American” legal system, as practiced in the United States, for current and aspiring entrepreneurs and managers. By reading and becoming familiar with the various topics presented, it is hoped that the readers will be better prepared to more effectively deal with legal challenges.
Business Law for the Entrepreneur and Manager introduced the reader to fundamental principles of the laws regulating business as well as their practical application in the United States. The various chapters covered such topics as the law and the basic legal principles impacting entrepreneurs and managers; the foundational business laws that entrepreneurs and managers in the United States must become aware of and understand, as well as other important legal topics such as constitutional law, administrative law, torts, products liability, crimes, contract law, sales and agency laws, commercial paper, various forms of business organizations, and debtors and creditors laws. The study of this legal material will be very beneficial to all current and prospective entrepreneurs and managers.

Business Law for the Entrepreneur and Manager has been designed to be used academically for foundational business law courses, as well as practically, as a guide and an enlightening learning tool that the hard-working and on-the-go manager or entrepreneur can find useful. Overall, the authors hoped that all the stated and aforementioned objectives were attained in a stimulating, thought-provoking, perhaps at times provocative, and enjoyable manner; and as a result the knowledge of the reader is increased, the mental acuity of the reader is enhanced, and the mental discipline of the reader is strengthened.

The authors of this book selected a picture of Venice for the cover of this book – a picture showing the “hustle and bustle” of this beautiful and unique city, a World Heritage site – for a decided reason, and not “merely” because the city is a major world attraction and tourist destination. Yes, today, the city’s activity is predominantly tourist-oriented; but for many years through the Middle Ages and the Renaissance, Venice was known as the premier international business, banking, shipping, and trade center in the world – the trans-shipment point for the “spices” and other valuable items from the Middle East, Turkey, and India to Europe. The art and architecture the tourists flock to the city to enjoy, and in fact the physical city itself, all were products of the wealth the city generated from this international business finance and trade. International business was the key to Venice’s greatness. That is why this book, in addition to the explication of U.S. business law, included a chapter on international and comparative law. The cover of this book, therefore, underscores the primacy and indispensable nature of the law in the conducting of business, then as well as now, and on a global basis. Venice could not have survived, let alone prospered, and achieved fame and glory, as The Venice now known famously as the World Heritage site, if the city’s international business foundation was not built solidly on the “rock” of the law. International trade, finance, and business could not, and cannot, be beneficially engaged in unless there are rules of law – rules which are clearly stated, communicated effectively, consistently implemented, and fairly enforced. As a matter of fact, the commercial paper and negotiable instrument law that the reader has learned from this book was brought to the Western nations by the Venetians, who learned this very useful body of business law from the Arabs with whom the Venetians traded extensively. All people from all places did business in Venice; and all under the protection of Venetian law. Regardless of their city, nation, race, and religion, the laws of Venice were impartially applied to all people. Venice grew and prospered, as did its people, and so too the city’s global business, trading, and investment partners.
Case Problems and Dilemmas

This chapter has various case problems and dilemmas which you can individually or as a group read and “brainstorm” upon. Try to follow the suggested standardized format of Decision, Rule(s) of Law, and Application. First, you are offered some suggestions for answering the cases and dilemmas. Then, you are given a sample case with the answers in regard to Decision, Rules of Law, and Application. Finally, there are many case problems and dilemmas (under Part I, Part II, Part III, Part IV, Part V, and Part VI) that you can reflect upon and answer.

The following are some suggestions for answering the upcoming case problems and dilemmas:

1. Notice that the decision is usually one word.
2. The Rule of Law is always expressed in a complete sentence, which means a predicate must be used. Consequently, “Minor’s Contracts” or “Offers to Contract” are not rules of law.
3. The Rule of Law is a principle of law, which is found herein in the chapters of the book. It need not be stated word-for-word; the writer may phrase it differently; but it must “speak” about the law. For example, the sentence “Susan was a minor and therefore can disaffirm the contract” is not a Rule of Law, but rather a conclusion which properly belongs in the Application section. Another example, the sentence, “As there was not a valid offer, no contract was formed,” also belongs in the Application.
4. The Application is where you “tie” the matter together. Sometimes, when your Rule of Law is not too specific for the case, you will find it necessary to bring legal rules into the Application section. This is what the writer did in the following Manser v. Susan case, suggested answer No. 2b.
5. Be precise. For example, the Rule of Law stated in Junior v. Sam is a precise formulation. The Rule of Law, “A valid contract requires an offer and an acceptance,” although correct, is too general to fully resolve the problem.
6. Multiple Issues – Case problems may contain more than one issue or legal question to resolve. For example, the Susan v. Manser case requires a discussion of general rules of law and exceptions to rules.

Appendices

Author Biographies

Frank J. Cavico is a full professor of Business Law and Ethics at the H. Wayne Huizenga School of Business and Entrepreneurship of Nova Southeastern University. He was the principal creator of the required MBA law and ethics course: “The Values of Legality, Morality, and Social Responsibility in Business”; and he presently serves as Lead Professor for that course. In 2000, he was awarded the Excellence in Teaching Award by the Huizenga
School. In 2006, he was honored as Professor of the Year by the Huizenga School. His fine record is manifested by numerous research endeavors, principally law review articles in the broad sectors of business law and ethics as well as a business ethics textbook, *Business Ethics: Transcending Requirements through Moral Leadership*, co-authored with Dr. Bahaudin G. Mujtaba, which has been adopted for use by many national and international business schools. He also is coauthor, along with Dr. Mujtaba, of the book *Age Discrimination in Employment*. Professor Cavico holds a J.D. degree from St. Mary’s University School of Law and a B.A. from Gettysburg College. He also possesses a Master of Laws degree from the University of San Diego School of Law and a Master’s degree in Political Science from Drew University. Professor Cavico is licensed to practice law in the states of Florida and Texas. He has worked as a federal government regulatory attorney and as counsel for a labor union; and has practiced general civil law and immigration law in South Florida.

*Bahaudin G. Mujtaba* is an Associate Professor and Department Chair for Management with Nova Southeastern University (NSU). Bahaudin has worked as an internal consultant, trainer, and teacher in the corporate arena. Dr. Mujtaba also worked in retail management for 16 years. He was awarded the prestigious Faculty of the Year Award for the 2005 Academic Year at the School of Business and Entrepreneurship of NSU. He attended Habibia High School in Afghanistan, Fort Myers High School, Edison Community College, University of Central Florida, Nova University, and Nova Southeastern University in the United States. His doctorate degree is in Management, and he has two post-doctorate specialties: Human Resource Management and International Management. Bahaudin is author and co-author of more than fifteen books and nearly one hundred academic as well as professional articles and presentations. During the past twenty five years he has had the pleasure of working in the United States, Brazil, Bahamas, Pakistan, Afghanistan, St. Lucia, Thailand, and Jamaica. He was born in Khoshie of Logar province, and raised in Kabul, Afghanistan.

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