



The LEGAL ENVIRONMENT of BUSINESS

TEXT AND CASES

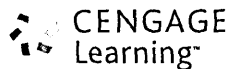
Tenth Edition

Frank B. Cross

*Herbert D. Kelleher
Centennial Professor in Business Law
University of Texas at Austin*

Roger LeRoy Miller

*Institute for University Studies
Arlington, Texas*



Australia • Brazil • Mexico • Singapore • United Kingdom • United States

Contents

Unit One

THE FOUNDATIONS 1

Chapter 1

Law and Legal Reasoning 2

- Business Activities and the Legal Environment 2
- Sources of American Law 3
- The Common Law Tradition 6
- Schools of Legal Thought 12
- Classifications of Law 13
- How to Find Primary Sources of Law 14
- How to Read and Understand Case Law 19

Chapter 2

Courts and

Alternative Dispute Resolution 26

- The Judiciary's Role in American Government 26
- Basic Judicial Requirements 27
- Case Analysis 2.1** *Mala v. Crown Bay Marina, Inc.* (2013) 29
- Spotlight on Gucci**
 - Case 2.2** *Gucci America, Inc. v. Wang Huoqing* (2011) 32
- The State and Federal Court Systems 35
- Case 2.3** *Johnson v. Oxy USA, Inc.* (2016) 36
- Alternative Dispute Resolution 40
- International Dispute Resolution 44

Chapter 3

Court Procedures 48

- Procedural Rules 48
- Pretrial Procedures 50
- Case Analysis 3.1** *Espresso Disposition Corp. 1 v. Santana Sales & Marketing Group, Inc.* (2013) 54
- Case 3.2** *Lewis v. Twenty-First Century Bean Processing* (2016) 56
- Case 3.3** *Brothers v. Winstead* (2014) 58
- The Trial 61
- Posttrial Motions 64
- The Appeal 65
- Enforcing the Judgment 66

Chapter 4

Business and the Constitution 70

- The Constitutional Powers of Government 70
- Classic Case 4.1** *Heart of Atlanta Motel v. United States* (1964) 73
- Business and the Bill of Rights 75
- Spotlight on Beer Labels**
 - Case 4.2** *Bad Frog Brewery, Inc. v. New York State Liquor Authority* (1998) 78
- Case Analysis 4.3** *Thompson v. Holm* (2016) 81
- Due Process and Equal Protection 83
- Privacy Rights 84

Chapter 5

Business Ethics 89

- Business Ethics 89
- Case 5.1** *Scott v. Carpanzano* (2014) 91
- Business Ethics and Social Media 93
- Ethical Principles and Philosophies 94
- Making Ethical Business Decisions 97
- Case 5.2** *Al-Dabagh v. Case Western Reserve University* (2015) 99
- Case Analysis 5.3** *Moseley v. Pepco Energy Services, Inc.* (2011) 100
- Global Business Ethics 102
- Unit One Application and Ethics:**
 - "Arbitration, No Class Actions" 107

Unit Two

THE PUBLIC AND INTERNATIONAL ENVIRONMENT 111

Chapter 6

Tort Law 112

- The Basis of Tort Law 112
- Intentional Torts against Persons 113
- Case Analysis 6.1** *Blake v. Giustibelli* (2016) 115
- Case 6.2** *Revell v. Guido* (2015) 120
- Intentional Torts against Property 123
- Unintentional Torts—Negligence 125
- Defenses to Negligence 129
- Spotlight on the Seattle Mariners**
 - Case 6.3** *Taylor v. Baseball Club of Seattle, LP* (2006) 129

Chapter 7	
Strict Liability and Product Liability	134
Strict Liability	134
Product Liability	135
Case Analysis 7.1 <i>Schwarck v. Arctic Cat, Inc.</i> (2016)	136
Strict Product Liability	137
Spotlight on Injuries from Vaccines	
Case 7.2 <i>Bruesewitz v. Wyeth, LLC</i> (2011)	138
Defenses to Product Liability	144
Case 7.3 <i>VeRost v. Mitsubishi Caterpillar Forklift America, Inc.</i> (2015)	144
 Chapter 8	
Intellectual Property Rights	150
Trademarks and Related Property	150
Classic Case 8.1 <i>The Coca-Cola Co. v. The Koke Co. of America</i> (1920)	150
Case 8.2 <i>LFP IP, LLC v. Hustler Cincinnati, Inc.</i> (2016)	153
Patents	157
Copyrights	160
Case Analysis 8.3 <i>Winstead v. Jackson</i> (2013)	161
Trade Secrets	164
International Protection for Intellectual Property	166
 Chapter 9	
Internet Law, Social Media, and Privacy	170
Internet Law	170
Spotlight on Internet Porn	
Case 9.1 <i>Hasbro, Inc. v. Internet Entertainment Group, Ltd.</i> (1996)	173
Copyrights in Digital Information	174
Social Media	176
Online Defamation	178
Other Actions Involving Online Posts	180
Case Analysis 9.2 <i>David v. Textor</i> (2016)	181
Privacy	182
Case 9.3 <i>Nucci v. Target Corp.</i> (2015)	182
 Chapter 10	
Criminal Law and Cyber Crime	187
Civil Law and Criminal Law	187
Criminal Liability	189
Types of Crimes	192
Case 10.1 <i>State of Minnesota v. Smith</i> (2015)	193
Spotlight on White-Collar Crime	
Case 10.2 <i>People v. Sisuphan</i> (2010)	195
Defenses to Criminal Liability	198
Criminal Procedures	201
Cyber Crime	204
Case Analysis 10.3 <i>United States v. Warner</i> (2016)	205

Chapter 11	
International and Space Law	211
International Law	211
Case Analysis 11.1 <i>Bennett v. Islamic Republic of Iran</i> (2016)	215
Doing Business Internationally	216
Regulation of Specific Business Activities	219
International Dispute Resolution	221
Case 11.2 <i>Carlyle Investment Management, LLC v. Moonmouth Co. SA</i> (2015)	222
U.S. Laws in a Global Context	223
Spotlight on International Torts	
Case 11.3 <i>Daimler AG v. Bauman</i> (2014)	223
Space Law	225
Unit Two Application and Ethics:	
<i>The Biggest Data Breach of All Time</i>	230

Unit Three THE COMMERCIAL ENVIRONMENT 233

Chapter 12	
Formation of Traditional and E-Contracts	234
An Overview of Contract Law	234
Agreement	238
Classic Case 12.1 <i>Lucy v. Zehmer</i> (1954)	238
Case Analysis 12.2 <i>Hinkal v. Pardoe</i> (2016)	243
E-Contracts	245
Consideration	248
Spotlight on Nike	
Case 12.3 <i>Already, LLC v. Nike, Inc.</i> (2013)	251
Contractual Capacity	253
Legality	254
Form	256
Third Party Rights	256

Chapter 13	
Contract Performance, Breach, and Remedies	262
Voluntary Consent	262
Case 13.1 <i>Schneiderman v. Trump Entrepreneur Initiative, LLC</i> (2016)	264
Performance and Discharge	267
Case Analysis 13.2 <i>Kohel v. Bergen Auto Enterprises, L.L.C.</i> (2013)	270
Damages	274

Spotlight on Liquidated Damages

- Case 13.3** *Kent State University v. Ford* (2015) 277
 Equitable Remedies 278
 Waiver of Breach 280
 Contract Provisions Limiting Remedies 281

Chapter 14

Sales and Lease Contracts 284

- The Scope of Articles 2 (Sales) and 2A (Leases) 284
 The Formation of Sales and Lease Contracts 286
Classic Case 14.1 *Jones v. Star Credit Corp.* (1969) 291
 Title, Risk, and Insurable Interest 292
Case Analysis 14.2 *BMW Group, LLC v. Castle Oil Corp.*
 (2016) 293
 Performance and Breach of Sales and Lease Contracts 298
 Remedies for Breach of Sales and Lease Contracts 302
Spotlight on Baseball Cards
Case 14.3 *Fitl v. Strek* (2005) 306
 Warranties 307
 Contracts for the International Sale of Goods 309

Chapter 15

Creditor-Debtor Relations and Bankruptcy 318

- Laws Assisting Creditors 318
Case Analysis 15.1 *Picerne Construction Corp. v. Villas*
 (2016) 319
 Mortgages 324
 Protection for Debtors 325
 Bankruptcy Law 326
 Liquidation Proceedings 326
Case 15.2 *In re Anderson* (2016) 332
Case 15.3 *In re Cummings* (2015) 336
 Reorganizations 338
 Bankruptcy Relief under Chapter 12 and Chapter 13 339
Unit Three Application and Ethics:
Fantasy Sports—Legal Gambling? 346

Unit Four

THE BUSINESS AND EMPLOYMENT ENVIRONMENT 349

Chapter 16

Small Businesses and Franchises 350

- General Considerations for Small Businesses 350
 Sole Proprietorships 351

- Case Analysis 16.1** *A. Gadley Enterprises, Inc. v. Department of
 Labor and Industry Office of Unemployment Compensation
 Tax Services* (2016) 352

Partnerships 355

- Classic Case 16.2** *Meinhard v. Salmon* (1928) 358

Franchises 362

Spotlight on Holiday Inns

- Case 16.3** *Holiday Inn Franchising, Inc. v. Hotel Associates,
 Inc.* (2011) 367

Chapter 17

Limited Liability Business Forms 371

- The Limited Liability Company 371
Case 17.1 *Hodge v. Strong Built International, LLC* (2015) 373
 LLC Management and Operation 375
 Dissociation and Dissolution of an LLC 377
Case Analysis 17.2 *Reese v. Newman* (2016) 378
 Limited Liability Partnerships 379
 Limited Partnerships 381
Case 17.3 *DeWine v. Valley View Enterprises, Inc.* (2015) 381

Chapter 18

Corporations 388

- Nature and Classification 388
Case 18.1 *Drake Manufacturing Co. v. Polyflow, Inc.*
 (2015) 390
Case Analysis 18.2 *Pantano v. Newark Museum* (2016) 391
 Formation and Powers 394
 Piercing the Corporate Veil 399
 Directors and Officers 400
Classic Case 18.3 *Guth v. Loft, Inc.* (1939) 404
 Shareholders 405
 Major Business Forms Compared 411

Chapter 19

Agency Relationships 416

- Agency Law 416
 Formation of the Agency Relationship 419
 Duties of Agents and Principals 420
Spotlight on Taser International
Case 19.1 *Taser International, Inc. v. Ward* (2010) 422
Case Analysis 19.2 *NRT New England, LLC v. Jones* (2016) 425
 Agent's Authority 426
 Liability in Agency Relationships 428
Case 19.3 *Asphalt & Concrete Services, Inc. v. Perry* (2015) 431
 Termination of an Agency 433

Chapter 20

Employment Law 438

Employment at Will 438

Case Analysis 20.1 *Caterpillar, Inc. v. Sudlow* (2016) 439
Wages, Hours, and Layoffs 441

Case 20.2 *Bailey v. TitleMax of Georgia, Inc.* (2015) 443
Family and Medical Leave 444

Case 20.3 *Ballard v. Chicago Park District* (2014) 445
Health, Safety, and Income Security 446
Employee Privacy Rights 449

Chapter 21

Employment Discrimination 453

Title VII of the Civil Rights Act 453

Case Analysis 21.1 *Bauer v. Lynch* (2016) 458

Case 21.2 *Young v. United Parcel Service, Inc.* (2015) 459

Case 21.3 *Roberts v. Mike's Trucking, Ltd.* (2014) 462

Discrimination Based on Age 464

Discrimination Based on Disability 466

Discrimination Based on Military Status 469

Defenses to Employment Discrimination 469

Affirmative Action 470

Chapter 22

Immigration and Labor Law 474

Immigration Law 474

Federal Labor Laws 477

Case 22.1 *Services Employees International Union v. National Union of Healthcare Workers* (2013) 478

Union Organization 479

Case Analysis 22.2 *Contemporary Cars, Inc. v. National Labor Relations Board* (2016) 481

Collective Bargaining 482

Strikes and Lockouts 483

Unfair Labor Practices 485

Case 22.3 *Staffing Network Holdings, LLC v. National Labor Relations Board* (2016) 486

Unit Four Application and Ethics:

Health Insurance and Small Business 492

Unit Five

THE REGULATORY ENVIRONMENT 495

Chapter 23

Administrative Agencies 496

The Practical Significance of Administrative Law 496

Agency Creation and Powers 497

Case 23.1 *Loving v. Internal Revenue Service* (2014) 500

The Administrative Process 502

Case 23.2 *Craker v. Drug Enforcement Administration* (2013) 506

Judicial Deference to Agency Decisions 507

Case Analysis 23.3 *Olivares v. Transportation Security Administration* (2016) 508

Public Accountability 510

Chapter 24

Consumer Protection 515

Advertising, Marketing, and Sales 515

Case 24.1 *POM Wonderful, LLC v. Federal Trade Commission* (2015) 516

Case 24.2 *Lexmark International, Inc. v. Static Control Components, Inc.* (2014) 520

Labeling and Packaging Laws 522

Protection of Health and Safety 523

Credit Protection 524

Case Analysis 24.3 *Santangelo v. Comcast Corporation* (2016) 526

Chapter 25

Environmental Law 532

Common Law Actions 532

Federal, State, and Local Regulations 533

Case Analysis 25.1 *Friends of Animals v. Clay* (2016) 533

Air Pollution 536

Case 25.2 *United States v. O'Malley* (2014) 538

Water Pollution 539

Case 25.3 *Entergy Corp. v. Riverkeeper, Inc.* (2009) 540

Toxic Chemicals and Hazardous Waste 543

Chapter 26

Real Property and Land-Use Control 548

The Nature of Real Property 548

Ownership and Other Interests in Real Property 550

Case 26.1 *Main Omni Realty Corp. v. Matus* (2015) 551

Transfer of Ownership 555

Spotlight on Sales of Haunted Houses

Case 26.2 *Stamboy v. Ackley* (1991) 556

Case Analysis 26.3 *Montgomery County v. Bhatt* (2016) 559

Limitations on the Rights of Property Owners 561

Land-Use Control and Zoning 563

Chapter 27

Antitrust Law 568

The Sherman Antitrust Act 568

Section 1 of the Sherman Act 569

Section 2 of the Sherman Act 572

Case Analysis 27.1 *McWane, Inc. v. Federal Trade Commission*
(2015) 574

Spotlight on Weyerhaeuser

Case 27.2 *Weyerhaeuser Co. v. Ross-Simmons Hardwood
Lumber Co.* (2007) 576

The Clayton Act 577

Enforcement and Exemptions 580

Case 27.3 *TransWeb, LLC v. 3M Innovative Properties Co.*
(2016) 580

U.S. Antitrust Laws in the Global Context 583

Chapter 28

Investor Protection

and Corporate Governance 588

The Securities Act of 1933 588

Case 28.1 *Omnicare, Inc. v. Laborers District
Council Construction Industry Pension Fund* (2015) 594

The Securities Exchange Act of 1934 595

Classic Case 28.2 *SEC v. Texas Gulf Sulphur Co.* (1968) 596

Case Analysis 28.3 *Rand-Heart of New York, Inc. v. Dolan*
(2016) 600

State Securities Laws 603

Corporate Governance 603

Unit Five Application and Ethics:

Climate Change 610

Appendices

A How to Brief Cases and Analyze Case Problems A-1

B The Constitution of the United States A-5

C Articles 2 and 2A of the Uniform Commercial Code A-13

D Answers to the *Issue Spotters* A-51

E Sample Answers for *Business Case Problems with Sample
Answer* A-57

Glossary G-1

Table of Cases TC-1

Index I-1