

Contents

UNIT I THE LEGAL ENVIRONMENT, 1

Part I The Legal System, 9

Chapter 1

The Legal System, 10

- Critical Thinking Inquiries, 11
- Managerial Perspective, 11
- Purposes of Law, 12
- Sources of Law, 12
 - Primary Sources, 12*
 - Secondary Sources, 15*
- Classification of Law, 15
 - Procedural and Substantive Law, 15*
 - Federal and State Law, 15*
 - Civil and Criminal Law, 16*
 - Subject Matter Classification, 16*
 - The Common Law, 17*
- Law and Morality, 19
- Strategic Planning of Legal Services, 23
 - Where Lawyers Work, 23*
 - Roles of a Lawyer, 24*

Chapter 2

Ethical Analysis, 28

- Critical Thinking Inquiries, 29
- Managerial Perspective, 29
- Nature of Ethics, 30
 - Nature of an Ethical Dilemma, 30*
 - Business/Organizational Ethics, 30*
 - Moral Reasoning Process, 35*
 - Individuation, 36*
- Normative Philosophy, 36
 - Cultural Relativism, 36*
 - Egoism, 37*
 - Utilitarianism, 37*
 - Kant, 38*
 - Distributive Justice, 39*
- Ethics and the Law, 43
 - Theories of Jurisprudence, 43*

Chapter 3

Civil Process and Dispute Resolution, 50

- Critical Thinking Inquiries, 51
- Managerial Perspective, 51
- The Adversary System, 52
- Court Structure, 52
 - State, 52*
 - Federal, 53*
- Mechanics of a Lawsuit, 54
 - Jurisdiction, 54*
 - Venue, 57*
 - Strategy, 57*
- Stages of a Lawsuit, 58
 - Pleading Stage, 58*
 - Discovery Stage, 61*
 - Trial Stage, 63*
 - Appellate Stage, 67*
- Alternative Dispute Resolution, 67
 - Mediation, 68*
 - Mini-trial, 68*
 - Arbitration, 68*

Chapter 4

Constitutional Law and Individual Liberties, 72

- Critical Thinking Inquiries, 73
- Managerial Perspective, 73
- Defining Constitutional Law, 74
 - Supreme Law of the Land, 74*
 - A Brake Limiting Power, 74*
 - Judge-Made Law, 74*
- Requirement of State Action, 75
 - Government Participation in Private Action, 76*
 - The Public Function Doctrine, 78*
- Deprivation of Individual Liberties, 78
 - Equal Protection Clause, 78*
 - Due Process Clause, 82*
 - Takings Clause, 84*
 - First Amendment, 87*
 - Fourth Amendment, 89*

Chapter 5

Administrative Agencies, 92

Critical Thinking Inquiries, 93
 Managerial Perspective, 93
 Constitutional Background of the Administrative Agency, 94
 Checks and Balances, 94
 Preemption, 94
 Creation of an Administrative Agency, 95
 Administrative Procedures Act, 95
 Freedom of Information Act, 95
 Procedures under FOIA, 96
 Exemptions under FOIA, 96
 Government in Sunshine Act, 98
 Privacy Act, 98
 Function and Power of Administrative Agencies, 98
 Agency Action: Rulemaking, 98
 Agency Action: Adjudication, 100
 Agency Action: Enforcement, 102
 Judicial Review of Agency Action, 104
 Exhaustion, 104
 Standing, 105
 Scope of Review, 105

Chapter 6

Legal Reasoning, 110

Critical Thinking Inquiries, 111
 Managerial Perspective, 111
 Interpretation of Cases, 112
 Stare Decisis, 112
 Following Precedent, 115
 Overruling Precedent, 117
 Distinguishing Precedent, 119
 Absence of Precedent, 119
 Interpretation of Statutes, 121
 Statutes Contrasted with Case Law, 122
 Enacting Statutes, 122
 Deriving Legislative Intent, 122
 Interpretation of the Constitution, 126

Part II Private Law, 129

Chapter 7

Intentional Wrongs: Business Crimes and Torts, 130

Critical Thinking Inquiries, 131
 Managerial Perspective, 131
 Business Crimes, 132
 Embezzlement, 132
 Bribery, 133

Racketeering and Organized Crime, 134
Computer Crime, 135
 Torts, 135
 Intentional Torts, 136
 Torts against Persons, 136
 Torts against Property, 142
 Torts against Competition and Employment Relations, 143
 Defenses to Intentional Torts, 146
 Mistake, 146
 Consent, 146
 Self-Defense, 146
 Necessity, 148

Chapter 8

Negligence and Strict Liability, 152

Critical Thinking Inquiries, 153
 Managerial Perspective, 153
 Negligence, 154
 Duty Owed, 154
 Breach of Duty, 154
 Proximate Cause, 157
 Injury, 158
 Defenses to Negligence, 159
 Contributory Negligence, 159
 Comparative Negligence, 159
 Assumption of the Risk, 160
 Strict Liability, 160
 Defenses to Strict Liability, 163
 Alternatives to Tort, 163

Chapter 9

Property, 168

Critical Thinking Inquiries, 169
 Managerial Perspective, 169
 Defining Property, 170
 Personal Property, 172
 Acquisition of Personal Property, 172
 Real Property, 175
 Fixtures, 176
 Estates, 178
 Concurrent Ownership, 180
 Transfer of Real Property, 182
 Extent of Ownership Interest, 183
 Private Restrictions on Land Use, 186
 Public Restrictions on Land Use, 188

Chapter 10

Estates and Trusts, 192

Critical Thinking Inquiries, 193
 Managerial Perspective, 193
 Intestate Distribution, 194
 Per Stirpes Distribution, 194
 Per Capita Distribution, 194
 Order of Distribution, 194
 Wills, 195
 Capacity, 196
 Signed Writing, 196
 Witnesses, 197
 Types of Wills, 197
 Amendment and Revocation of Wills, 198
 Administration of Estates, 200
 Probate, 200
 Responsibilities of the Representative, 200
 Types of Probate, 200
 Probate Contests, 200
 Estate Taxes, 202
 Alternatives to Probate, 202
 Spousal Protection, 203
 Marriage, 203
 Dower, 203
 Elective Rights, 203
 Mansion Rights, 204
 Widow's Allowance, 204
 Household Exemption, 204
 Living Wills, 204
 Trusts, 207
 Parties to the Trust, 207
 Classification of Trusts, 208
 Modification and Termination of Trusts, 210

UNIT II COMMERCIAL TRANSACTIONS, 213

Part III Contract Law, 215

Chapter 11

Introduction to Contracts, 216

Critical Thinking Inquiries, 217
 Managerial Perspective, 217
 Nature of Contracts, 218
 History of Contracts, 218
 Definition of a Contract, 220
 Basis of a Contract, 220
 Purpose of Contract Law, 220
 Contract and Tort Distinguished, 221
 Sources of Contract Law, 221
 Common Law, 221
 The Uniform Commercial Code, 221

Classifications of Contracts, 223
 Valid, Void, and Voidable, 223
 Formal and Informal, 223
 Unilateral and Bilateral, 224
 Executed and Executory, 224
 Oral and Written, 224
 Express and Implied, 225
 Essentials of a Contract, 226

Chapter 12

The Agreement, 230

Critical Thinking Inquiries, 231
 Managerial Perspective, 231
 The Offer, 232
 Present Contractual Intent, 232
 Definiteness and Certainty of Terms, 235
 Communication of the Offer, 237
 Terminating the Offer, 237
 Rejection and Counteroffer, 237
 Lapse of Time, 238
 Revocation, 238
 Death or Incapacity of the Offeror or Offeree,
 238
 *Destruction of the Subject Matter and Intervening
 Illegality*, 238
 Making the Offer Irrevocable, 239
 Acceptance, 239
 Manifestation of Assent, 239
 Acceptance of the Terms of the Offer, 241
 Acceptance by the Proper Offeree, 243
 Communicating the Acceptance, 243

Chapter 13

Capacity and Genuine Assent, 248

Critical Thinking Inquiries, 249
 Managerial Perspective, 249
 Legal Capacity, 250
 Contracts with Minors, 250
 Contracts with the Mentally Incompetent, 253
 Contracts with Intoxicated Persons, 255
 Fraud, 255
 False Assertions, 256
 Fraudulent Assertions, 258
 Justifiable Reliance, 258
 Injury and Remedies, 259
 Duress, 259
 Undue Influence, 260
 Mistake, 260
 Mutual Mistake, 261
 Unilateral Mistake, 262

Chapter 14

Consideration and Its Substitutes, 266

- Critical Thinking Inquiries, 267
- Managerial Perspective, 267
- Consideration, 268
 - Legal Benefit or Detriment, 268*
 - The Preexisting Duty Rule, 271*
 - Bargained-For Exchange, 274*
- Promissory Estoppel, 276
 - Promissory Estoppel Distinguished from Consideration, 276*
 - Promissory Estoppel Applied, 277*
- Written Obligations, 277

Chapter 15

Illegal Agreements, 280

- Critical Thinking Inquiries, 281
- Managerial Perspective, 281
- What Makes an Agreement Illegal? 282
- Agreements Contrary to Statute, 282
 - Wagering Agreements, 282*
 - Licensing and Registration Statutes, 283*
- Agreements Contrary to Common Law, 286
 - Ancillary and Primary Restraints, 286*
 - Restraints of Trade in a Sale of a Business, 287*
 - Restraints of Trade in an Employment Contract, 288*
 - Remedies Available for Overbroad Restrictive Covenants, 289*
- Agreements Contrary to Public Policy, 289
 - Agreements Detrimental to Morality, 289*
 - Unconscionable Agreements, 291*
- The Effect of Illegality, 294

Chapter 16

Contracts in Writing, 298

- Critical Thinking Inquiries, 299
- Managerial Perspective, 299
- Historical Background, 300
- Satisfying the Writing Requirements, 300
- Classes of Contracts Covered by the Statute of Frauds, 301
 - Suretyship Agreements, 301*
 - Estate Representative Agreements, 303*
 - Contracts for the Sale of Land, 303*
 - Promises Not to Be Performed within One Year, 305*
 - Contracts for the Sale of Goods, 305*
 - Other Classes of Contracts, 306*

- The Parol Evidence Rule, 307
- The Interpretation of Contracts, 309

Chapter 17

Third Parties, 314

- Critical Thinking Inquiries, 315
- Managerial Perspective, 315
- Third-Party Beneficiaries, 316
 - Donee Beneficiary, 316*
 - Creditor Beneficiary, 317*
 - Incidental Beneficiary, 318*
 - Warranty Extension to Third Parties, 319*
 - Identity of Beneficiaries, 320*
- Assignments, 320
 - Form of Assignment, 320*
 - Assignable Rights, 321*
 - Rights of the Assignee, 325*
 - Notice of Assignments, 325*
- Delegation of Duties, 327

Chapter 18

Performance, Discharge, and Remedies, 330

- Critical Thinking Inquiries, 331
- Managerial Perspective, 331
- Conditions, 332
 - Precedent Conditions, 332*
 - Subsequent Conditions, 332*
 - Concurrent Conditions, 332*
 - Express Conditions, 332*
 - Implied Conditions, 333*
 - Constructive Conditions, 333*
- Performance, 333
 - Substantial Performance, 333*
 - Effect of Delay, 336*
 - Anticipatory Repudiation, 336*
 - Performance of the Sales Contract, 336*
- Discharge, 337
 - Discharge by a Change in Circumstances, 337*
 - Discharge by Assent, 342*
- Remedies, 343
 - Damages, 343*
 - Restitution, 347*
 - Specific Performance, 348*

Part IV Sales, 351

Chapter 19

Sales Contract: Nature and Formation, 352

- Critical Thinking Inquiries, 353
- Managerial Perspective, 353

- Introduction, 354
 - Scope of Article 2*, 354
 - General Principles Under the Code*, 356
 - Unconscionability*, 358
- Contract Formation, 359
 - Offer and Acceptance*, 360
 - Consideration*, 368
 - Writing*, 369
- The International Sales Contract: The Convention on Contracts for the International Sale of Goods, 372
 - Scope of CISG*, 373
 - General Provisions*, 373
 - Formation: The Agreement*, 373
 - Consideration*, 374
 - Statute of Frauds*, 374
- Chapter 20*
- Performance of the Sales Contract*, 376
- Critical Thinking Inquiries, 377
- Managerial Perspective, 377
- Introduction, 378
 - Tender*, 378
- Conforming Goods, 378
 - Seller's Obligation to Deliver the Goods*, 378
 - Buyer's Obligation to Accept the Goods and Make Payment*, 380
- Nonconforming Goods, 381
 - Perfect Tender*, 381
 - Buyer's Right of Inspection*, 381
 - Buyer's Options*, 382
 - Buyer's Duties toward Rejected Goods*, 382
 - Buyer's Right to Revoke Acceptance*, 384
 - Seller's Right to Cure*, 388
 - Excuses*, 389
- The International Sales Contract, 393
 - Seller's Obligation to Accept the Goods and Make Payment*, 393
 - Nonconforming Goods*, 394
- Chapter 21*
- Title Concerns and Risk of Loss*, 396
- Critical Thinking Inquiries, 397
- Managerial Perspective, 397
- Transfer of Title, 398
 - Identification*, 398
 - When Title Transfers*, 398
- Problems Regarding Title, 399
 - Void versus Voidable Title*, 399
 - Entrusting Possession to a Merchant*, 402
 - Bulk Sales*, 404
- Risk of Loss, 405
 - Risk of Loss: Agreement of the Parties*, 405
 - Risk of Loss: No Breach*, 405
 - Risk of Loss: Breach*, 408
- Documents of Title, 410
 - Introduction*, 410
 - The Bailee's Obligations*, 412
 - Good Faith Purchasers*, 413
- The International Sales Contract, 413
 - Title*, 413
 - Risk of Loss*, 413
- Chapter 22*
- Warranties and Remedies*, 418
- Critical Thinking Inquiries, 419
- Managerial Perspective, 419
- Warranties, 420
 - Warranty of Title*, 420
 - Express Warranties*, 420
 - Implied Warranties*, 422
 - Warranty as a Basis for Products Liability*, 428
- Remedies of Seller and Buyer, 430
 - Seller's Remedies*, 431
 - Buyer's Remedies*, 437
 - Remedies Available to Both Buyers and Sellers*, 439
- The International Contract, 440
 - Warranties*, 440
 - Remedies*, 440
- Chapter 23*
- The Law of Products Liability*, 444
- Critical Thinking Inquiries, 445
- Managerial Perspective, 445
- Products Liability Law Overview, 446
 - The Evolution of Products Liability Law*, 446
 - Types of Defects*, 447
 - Theories of Recovery*, 447
- Warranty Theories, 448
 - Express Warranties*, 448
 - Implied Warranties*, 448
 - Proving a Breach of Warranty*, 449
 - Magnuson-Moss Warranties*, 450
- Negligence, 451
 - Proving Negligence*, 451
- Strict Liability, 452
 - Basic Coverage of Strict Products Liability*, 452
 - Possible Plaintiffs*, 453
 - Possible Defendants*, 453
 - The Prima Facie Case*, 453

- Defenses to a Strict Products Liability Action*, 455
- Tort Reform, 459
 - Is There a Need for Reform?* 459
 - The Proposals*, 460
- Federal Product Regulation, 462
 - National Traffic and Motor Vehicle Safety Administration*, 462
 - Food and Drug Administration*, 462
 - Consumer Product Safety Commission*, 464

Part V Commercial Paper, 467

Chapter 24

Negotiability, 468

- Critical Thinking Inquiries, 469
- Managerial Perspective, 469
- Introduction, 470
 - The Importance of Negotiability*, 470
 - The Law*, 470
 - Types of Negotiable Instruments and the Parties to Them*, 471
- Requisites of Negotiability, 471
 - Writing*, 473
 - Promise or Order*, 473
 - Unconditional*, 474
 - Fixed Amount*, 476
 - Money*, 480
 - No Other Undertaking*, 480
 - Payable on Demand or at a Definite Time*, 481
 - Payable to Order or to Bearer*, 483
 - Miscellaneous Provisions that Do Not Affect Negotiability*, 484

Chapter 25

Transfer and Negotiation, 488

- Critical Thinking Inquiries, 489
- Managerial Perspective, 489
- Introduction, 490
- Holder, 490
 - Possession*, 490
 - Good Title*, 490
- Indorsements, 492
 - Types of Indorsements*, 493
 - Forgeries*, 497

Chapter 26

Holder in Due Course, 502

- Critical Thinking Inquiries, 503
- Managerial Perspective, 503

- Holder in Due Course, 504
 - Holder of a Negotiable Instrument*, 504
 - Authenticity*, 504
 - Value*, 504
 - In Good Faith and without Notice*, 507
 - Without Notice that Instrument Is Overdue*, 509
 - Notice of Forgery or Alteration*, 510
 - Notice of a Claim*, 510
 - Notice of a Defense*, 510
 - Special Purchases*, 511
 - Not Fatal Knowledge*, 511
 - Payee as a Holder in Due Course*, 511
- Shelter Rule, 511
 - General Rule*, 511
 - Party to the Fraud Exception*, 512
 - Transfer that Is Not a Negotiation*, 513
- Claims and Defenses, 514
 - Rights of a Holder in Due Course*, 514
 - Rights of a Nonholder in Due Course*, 517
- Legislative Limitations, 517

Chapter 27

Liability of the Parties, 522

- Critical Thinking Inquiries, 523
- Managerial Perspective, 523
- Contract Liability, 524
 - Signature by an Authorized Agent*, 524
 - Maker's Contract*, 526
 - Drawer's Contract*, 528
 - Indorser's Contract*, 528
 - Technical Rights*, 529
 - Drawee's Contract*, 533
 - Surety's Contract*, 535
- Warranty Liability, 539
 - Transfer Warranties*, 539
 - Presentment Warranties*, 540

Chapter 28

The Bank and Its Customers, 544

- Critical Thinking Inquiries, 545
- Managerial Perspective, 545
- The Relationship Between the Bank and Its Customers, 546
 - Scope of Article 4*, 546
 - Duties of the Bank*, 546
 - Duties of the Customer*, 552
 - The Bank Statement Rule*, 552
- Bank Collections and Deposits, 555
 - The Process*, 556
 - Final Payment Rule*, 557

- Excuses in the Bank-Collection Process*, 557
- Funds Availability*, 558
- Computer Processing of Checks*, 559
- Electronic Funds Transfer, 562
 - Article 4A*, 562

Chapter 29

Wrongdoing and Error, 564

- Critical Thinking Inquiries, 565
- Managerial Perspective, 565
- Forgery, 566
 - Forged Drawer's Signatures*, 566
 - Forged Indorsements*, 568
- Material Alteration, 569
- Preclusion of Asserting, 570
 - Impostor Rule*, 570
 - Fictitious Payee*, 572
 - Negligence*, 574
 - Other Employee Fraud*, 573
- Encoding Errors, 578
 - Overencoding*, 578
 - Underencoding*, 578

Part VI Debtor-Creditor Rights, 581

Chapter 30

Creation and Perfection of a Security Interest: Introduction to Secured Transactions, 582

- Critical Thinking Inquiries, 583
- Managerial Perspective, 583
- Scope of Article 9, 584
 - Exclusions from Article 9 Coverage*, 585
- Classification of Collateral, 586
 - Goods*, 586
 - Semi-intangible*, 588
 - Intangible*, 588
- Creation of a Security Interest, 588
 - Security Agreement*, 589
 - Value*, 589
 - Debtor's Rights in the Collateral*, 592
- Perfection, 592
 - Automatic Perfection*, 592
 - Perfection by Possession*, 595
 - Perfection by Filing*, 596

Chapter 31

Enforcing the Security Interest: Priority and Default, 604

- Critical Thinking Inquiries, 605
- Managerial Perspective, 605

Priorities, 606

- Rights of Unperfected Secured Parties*, 606
- Priority among Secured Creditors*, 607
- Priority between Perfected Secured Parties and Lien Creditors*, 610
- Priority between Perfected Secured Parties and Purchasers*, 612
- Courses of Action on Debtor Default, 616
 - Default*, 616
 - Secured Party's Options after Default*, 617

Chapter 32

Debtor-Creditor Law, 622

- Critical Thinking Inquiries, 623
- Managerial Perspective, 623
- Introduction, 624
- State Collection Efforts, 624
 - Garnishment*, 624
 - Attachment*, 624
 - Repossession*, 624
 - Levy and Execution*, 624
 - Realizing on the Collateral*, 625
 - Non-Bankruptcy Arrangements*, 625
- Straight Bankruptcy, 625
 - Commencing the Proceedings*, 626
 - Gathering the Property*, 626
 - Distributing the Property*, 632
 - Discharge*, 633
- Chapter 11, 634
 - Commencing the Case*, 634
 - Operation of the Business*, 634
 - Debtor Protection*, 635
 - Plan of Rehabilitation*, 635
- Chapter 13, 637
- Morality of Bankruptcy 637

Chapter 33

Consumer Protection, 642

- Critical Thinking Inquiries, 643
- Managerial Perspective, 643
- Historical Perspective, 644
- Incurring the Debt, 644
 - Equal Credit Opportunity Act*, 645
 - Truth in Lending Act*, 646
 - Fair Credit Reporting Act*, 648
 - Electronic Funds Transfer Act*, 651
- Collecting the Debt, 654
 - Fair Credit Billing Act*, 654
 - Fair Debt Collection Practices Act*, 655
- Judicial Remedies, 656

Prejudgment Remedies, 656
Postjudgment Remedies, 657
 Lender Liability, 657
 Contracts, 657
 Torts, 658
 Statutory Laws, 658

Chapter 34

International Sales Transactions, 662

Critical Thinking Inquiries, 663
 Managerial Perspective, 663
 Documentary Deliveries, 664
 Bills of Lading, 664
 Intermodal Transport, 668
 Financing International Sales: Collecting the Buyer's Payment, 668
 Open Accounts, 668
 Prepayment, 668
 Payment by Draft, 669
 Letters of Credit, 669
 Alternatives to Traditional Documentary Sales, 678
 Computerized Contracting, Documentation, and Payments, 679
 Secondary Markets for Payments, 679
 Public Institutional Financial Assistance, 680
 Countertrade, 680

UNIT III BUSINESS ORGANIZATIONS, 687

Part VII Agency, 691

Chapter 35

Agency Relationships, 692

Critical Thinking Inquiries, 693
 Managerial Perspective, 693
 Nature of Agency, 694
 Types of Agencies, 694
 Formation of Agency, 695
 Capacity, 695
 Agent's Authority, 695
 Nondelegable Duties, 696
 Duties of Agent toward Principal, 696
 Fiduciary Duty of Loyalty, 696
 Duty of Care, 700
 Obedience, 701
 Accounting, 701
 Communication, 701
 Principal's Rights and Remedies, 703

Duties of Principal toward Agent, 708
 Compensation, 709
 Reimbursement and Indemnity, 710
 Noninterference, 710
 Agent's Rights and Remedies, 711
 Termination of Agency, 711
 Power versus Right, 711
 Irrevocable Agency, 712
 Act of the Parties, 712
 Operation of Law, 713
 Post-Termination Relationships, 714

Chapter 36

Agency: Third Party Relations, 718

Critical Thinking Inquiries, 719
 Managerial Perspective, 719
 Contract Liability of the Principal, 720
 Express Authority, 720
 Implied Authority, 720
 Apparent Authority and Estoppel, 723
 Lingering Apparent Authority and Notice, 725
 Ratification, 726
 Third Party's Duty to Determine Authority, 728
 Soliciting Agent, 729
 Authority to Hire Subagent, 729
 Contract Liability of Agent, 730
 Conduit Theory, 730
 Unauthorized Contracts, 730
 Authorized Contracts, 731
 Tort Liability, 734
 Master's Direct Liability, 734
 Servant's Direct Liability, 734
 Respondeat Superior, 735
 Criminal Liability, 743

Part VIII Partnerships, 747

Chapter 37

Partnership: Creation and Duties, 748

Critical Thinking Inquiries, 749
 Managerial Perspective, 749
 Introduction, 750
 Partnership Law, 750
 Partnership Definition, 750
 Entity versus Aggregate Theory of Partnerships, 753
 Joint Ventures, 754
 Mining Partnerships, 755
 Partnership Formation, 756
 Articles of Partnership, 757

- The Partnership's Firm Name*, 757
- Partnership by Estoppel*, 757
- Partnership Property, 759
 - Tenancy in Partnership*, 759
 - Individual versus Partnership Property*, 759
 - Partner's Interest*, 761
- Creditor's Rights, 762
 - Partners' Individual Liability*, 762
 - Creditors of Individual Partners: Charging Order*, 763
 - RUPA Approach*, 763
- Partners' Rights and Duties among Themselves, 763
 - Partner Fiduciary Duties*, 764
 - Financial Rights*, 765
 - Rights in Dissolution*, 766
- Partners' Tort Liability, 767
- Partners' Criminal Liability, 767

Chapter 38

Partnership: Operation and Termination, 770

- Critical Thinking Inquiries, 771
- Managerial Perspective, 771
- Introduction, 772
- Individual Partner's Authority, 772
 - Carrying on Partnership Business in the Usual Way*, 773
 - Express Authority*, 774
 - Apparent Authority*, 774
 - Ratification*, 774
 - Authority in Particular Transactions*, 774
 - RUPA Statement of Partnership Authority*, 775
- Management of the Partnership, 776
 - Managing Partner or Committee*, 777
 - Partner Deadlock*, 778
- Incoming and Outgoing Partners, 778
 - Incoming Partner's Liability*, 778
 - Outgoing Partner's Financial Rights*, 779
 - Outgoing Partner's Liability: Preexisting Debts*, 780
 - Outgoing Partner's Liability: New Debts*, 780
- Dissolution, 781
 - Dissolution by Act of Parties*, 784
 - Dissolution by Operation of Law*, 784
 - Dissolution by Court Decree*, 784
 - Postdissolution Options*, 785
 - The Winding-Up Alternative*, 785
 - Continuation of Partnership Business*, 788
 - Distribution of Assets*, 791

Chapter 39

Limited Partnerships, 796

- Critical Thinking Inquiries, 797
- Managerial Perspective, 797
- Justifications for Limited Partnerships, 798
 - Uses for Limited Partnerships*, 798
- Law Applicable to Limited Partnerships, 799
- Limited Partnership Formation, 799
 - Defective Formation*, 800
 - Partner Capacity*, 802
 - Foreign Limited Partnership Registration*, 803
- Liability of Limited Partners, 803
 - Use of Limited Partner's Name*, 803
 - Limited Partner's Control*, 804
 - Corporate Limited Partners*, 806
- Partners' Rights in Limited Partnerships, 808
 - Limited Partnership Agreement*, 808
 - Financial Rights*, 809
 - Membership Rights*, 809
 - Partnership Governance Rights*, 810
- General Partner Rights and Duties, 810
- Dissolution, 812
 - Winding Up*, 812
 - Distribution of Assets*, 812
- Taxation of Limited Partnerships, 813
- Publicly Traded Limited Partnerships, 813

Part IX Corporations, 819

Chapter 40

Corporate Formation and Capital Structure, 820

- Critical Thinking Inquiries, 821
- Managerial Perspective, 821
- Nature of Corporations, 822
 - Characteristics of Corporations*, 822
 - Classification of Corporations*, 823
- Limited Liability: Piercing the Corporate Veil, 826
 - Alter Ego*, 827
 - Inadequate Capitalization*, 827
 - Deep Rock Doctrine*, 828
 - Parent-Subsidiary Corporations*, 828
- Incorporation Process, 830
 - Corporate Charter*, 831
 - Organizational Meeting*, 831
 - Bylaws*, 832
 - Defective Incorporation*, 832
- Corporate Promoters, 833
 - Promoters' Duties*, 834
 - Liability on Preincorporation Contracts*, 835
- Corporate Powers, 837

<i>Ultra Vires</i> , 837	
Foreign Corporations, 838	
<i>Doing Business</i> , 838	
Capital Structure, 840	
<i>Stock</i> , 841	
<i>Bonds</i> , 842	
<i>Stock and Bonds Compared</i> , 842	
<i>Other Securities</i> , 844	
<i>Stock Subscriptions</i> , 844	
<i>Stock Transfers</i> , 846	
<i>Chapter 41</i>	
<i>Shareholder Rights</i> , 850	
Critical Thinking Inquiries, 851	
Managerial Perspective, 851	
The Corporate Democracy Model, 852	
Shareholder Meetings, 853	
<i>Notice and Quorum</i> , 854	
<i>Open Forum Concept</i> , 854	
<i>Shareholder Consents</i> , 854	
Shareholder Voting, 855	
<i>Voting Mechanics</i> , 855	
<i>One-share/One-vote</i> , 856	
<i>Cumulative Voting</i> , 856	
<i>Proxy Voting</i> , 858	
<i>International Shareholder Voting</i> , 858	
Financial Rights, 859	
<i>Preemptive Rights</i> , 859	
<i>Distributions</i> , 860	
<i>Redemptions and Repurchases</i> , 863	
<i>Inspection of Corporate Records</i> , 865	
Shareholder Suits, 866	
<i>Shareholder Direct Suits</i> , 867	
<i>Shareholder Derivative Litigation</i> , 868	
Shareholder Rights in Close Corporations, 871	
<i>Shareholder Voting Arrangements</i> , 872	
<i>Chapter 42</i>	
<i>Officers and Directors: Management Powers and Duties</i> , 874	
Critical Thinking Inquiries, 875	
Managerial Perspective, 875	
Board of Directors, 876	
<i>Director Qualifications</i> , 876	
<i>Board Elections</i> , 876	
Director Meetings, 877	
<i>Action without Meetings</i> , 878	
<i>Board Deadlock</i> , 879	
Committees of the Board, 879	
<i>Types of Board Committees</i> , 879	

Powers of the Board, 880	
Corporate Officers, 881	
<i>Officer Power and Authority</i> , 881	
Duty of Care, 884	
<i>Duty of Attention</i> , 885	
<i>Right to Rely</i> , 885	
<i>Business Judgment Rule</i> , 885	
Fiduciary Duty of Loyalty, 889	
<i>Conflicts of Interest</i> , 889	
<i>Transactions with the Corporation</i> , 889	
<i>Interlocking Directorates</i> , 890	
<i>Competing with the Corporation</i> , 890	
<i>Corporate Opportunity Doctrine</i> , 890	
<i>Management Compensation</i> , 891	
Torts and Crimes, 893	

Chapter 43 *Fundamental Corporate Changes*, 898

Critical Thinking Inquiries, 899	
Managerial Perspective, 899	
Introduction, 900	
Charter Amendments, 901	
<i>Class Voting</i> , 901	
Corporate Combinations: Takeovers and Acquisitions, 901	
<i>Mergers and Consolidations</i> , 902	
<i>Acquisitions or Exchanges of Stock</i> , 904	
<i>Sale of Substantially All Corporate Assets</i> , 904	
De Facto Mergers, 905	
<i>Successor Liability</i> , 905	
Dissenting Shareholders' Appraisal Rights, 907	
<i>Dissenters' Appraisal Process</i> , 907	
<i>Fair Value Determination</i> , 908	
Special Problems in Corporate Control Battles, 910	
<i>Squeezeouts of Minority Shareholders</i> , 910	
<i>Fiduciary Duties of Controlling Shareholders</i> , 912	
<i>Takeover Tactics</i> , 913	
State Takeover Legislation, 916	
Dissolution, Winding Up, and Liquidation, 918	
<i>Involuntary Dissolution</i> , 919	
<i>Winding Up, Liquidation, and Termination</i> , 919	

UNIT IV REGULATION OF BUSINESS, 923

Part X Securities Law, 929

<i>Chapter 44</i>	
<i>Regulation of the Investment Markets: Public Offerings and Private Placements</i> , 930	

Critical Thinking Inquiries, 931
 Managerial Perspective, 931
 Introduction to the Investment Markets, 932
 Underwriting, Investment, and Commercial Banking, 932
 Securities Exchanges, 933
 The Federal Securities Laws, 934
 State Blue Sky Laws, 935
 Racketeer Influenced and Corrupt Organizations, 935
 RICO Elements, 936
 Controversy Over RICO, 936
 Foreign Corrupt Practices Act, 938
 Accounting Standards Provisions, 938
 Enforcement and Administrative Process, 940
 Commodities Futures Regulation, 941
 Commodity Futures Markets, 941
 Futures Regulations, 942
 Securities and Exchange Commission, 943
 Investigatory and Enforcement Powers, 943
 SEC Rulemaking, 944
 Registration of Securities Issues, 944
 Pre-filing, Waiting, and Post-Effective Periods, 945
 Shelf Offerings, 948
 What Is a “Security”?, 949
 Investment Contracts, 949
 Exempt Transactions, 951
 Intrastate Offerings, 951
 Small Issues, 952
 Small Business Issuers, 952
 Private Placements, 952
 Integration and Resale Restriction, 953
 Securities Act Liabilities, 954
 Financial Reporting and Disclosure, 957

Chapter 45
Securities Market Regulation: Insider Trading, Proxies, Tender Offers, and Securities Professionals, 964

Critical Thinking Inquiries, 965
 Managerial Perspective, 965
 Insider Trading, 966
 Insider Trading in International Markets, 966
 Short Swing Profits: Section 16, 969
 Rule 10b-5 and Insider Trading, 971
 Enforcement of Insider Trading and Securities Fraud, 976
 The Market for Corporate Control, 980
 Proxy Contests, 981
 Proxy Statements, 982

Proxy Contest Mechanics, 982
 Proxy Rule Enforcement, 985
 Tender Offers, 986
 Williams Act Notification, 987
 What Is a “Tender Offer”?, 987
 Tender Offer Mechanics, 988
 Tender Offer Restrictions, 988
 Going Private, 989
 Regulation of the Securities Business, 989
 Broker/Dealer Regulation, 989
 Investment Advisors, 991
 Trading Practices and Irregularities, 992

Part XI Trade Regulation, 995

Chapter 46 *Restraints of Trade and Monopolies*, 996

Critical Thinking Inquiries, 997
 Managerial Perspective, 997
 Unreasonable Restraints, 998
 Rule of Reason, 998
 Per Se Standard, 1001
 Monopolies, 1009
 Relevant Market, 1009
 Market Power, 1011
 Intent, 1011
 Attempts to Monopolize, 1012
 Lawful Monopolies, 1012
 Exemptions, 1012
 Remedies, 1014

Chapter 47 *Mergers and Price Discrimination*, 1018

Critical Thinking Inquiries, 1019
 Managerial Perspective, 1019
 Mergers, 1020
 Relevant Market, 1021
 Premerger Profile, 1023
 Postmerger Prognosis, 1026
 Defenses, 1028
 Enforcement, 1028
 Price Discrimination, 1031
 Seller Discrimination, 1032
 Price Discrimination Defenses, 1035
 Cost Justification, 1037
 Buyer Discrimination, 1037
 Nonprice Discrimination, 1037

Chapter 48 *Regulation of Product Marketing*, 1042

Critical Thinking Inquiries, 1043
 Managerial Perspective, 1043
 Protecting the Product Idea, 1044
 Patent Protection, 1044
 Copyright Protection, 1044
 Trade Secret Protection, 1047
 Choosing a Product Name, 1051
 Trademarks and Trade Names, 1051
 Denying and Challenging Registration, 1052
 Trade Identity Confusion, 1053
 Packaging and Labeling Laws, 1055
 Product Pricing, 1055
 Product Advertising, 1056
 Deceptive Advertising, 1056
 FTC Remedies, 1057
 FTC Policy, 1059
 Deceptive and Unfair Sales Practices, 1059
 Antideception Statutes, 1060
 Unfair Acts and Practices, 1060
 Product Distribution, 1060
 Door-to-Door Sales, 1061
 Mail-Order Sales, 1061
 Pyramid Sales, 1061
 Other Practices, 1061

Part XII Labor Law, 1063

Chapter 49

Employment Relations, 1064

Critical Thinking Inquiries, 1065
 Managerial Perspective, 1065
 Employment-at-Will, 1066
 Laws Affecting the At-Will Employment Rule, 1066
 Erosion of the Employment-at-Will Rule, 1066
 Supporting the Employment-at-Will Rule, 1069
 Drug Testing in the Workplace, 1070
 Drug Abuse: The Problem, 1070
 Drug Testing: The Employer's Motive, 1070
 Employer Response: Drug Screening, 1070
 Legal Implications of Drug Screening, 1070
 Statutory Benefits for Workers, 1072
 Minimum Wages, 1072
 Unemployment Compensation, 1073
 Social Security, 1073
 ERISA, 1073
 Federal Labor Law, 1073
 History of the Union Movement, 1074
 National Labor Relations Board, 1075
 Establishing the Collective Bargaining Relationship, 1076

Negotiating the Collective Bargaining Agreement, 1077
Strikes, Lockouts, and Boycotts, 1079
Union Membership Rights, 1080
 Workers' Safety, 1080
 OSH Act, 1080
 Workers' Compensation, 1080

Chapter 50

Equal Employment, 1082

Critical Thinking Inquiries, 1083
 Managerial Perspective, 1083
 Equal Pay Act, 1084
 Comparable Worth, 1085
 Civil Rights Act of 1964, 1085
 Disparate Treatment, 1086
 Disparate Impact, 1087
 Pattern or Practice of Discrimination, 1089
 Protected Classes, 1089
 Race, 1090
 Religion, 1090
 National Origin, 1092
 Sex, 1092
 Age, 1093
 Handicaps and Disabilities, 1094
 Statutory Exceptions to Title VII, 1095
 Bona Fide Occupational Qualification, 1095
 Professionally Developed Ability Tests, 1096
 Seniority Systems, 1096
 Sexual Harassment, 1096
 Equal Employment Enforcement, 1098
 Recordkeeping, 1099
 Agency Investigations, 1099
 Conciliation, 1099
 Affirmative Action, 1099
 Executive Order Program, 1102
 Other Remedies, 1102
 Civil Rights Act of 1991, 1102

Part XIII Corporate Social Responsibility, 1105

Chapter 51

Environmental Law, 1106

Critical Thinking Inquiries, 1107
 Managerial Perspective, 1107
 Common Law, 1108
 Nuisance, 1109
 Toxic Torts, 1111

Federal Legislative Solutions to Environmental Problems, 1113
Federal Agencies, 1113
National Environmental Policy Act, 1113
Clean Air Act, 1116
Clean Water Act, 1119
Solid and Hazardous Wastes, 1119
Superfund, 1121

Chapter 52

International Business Law, 1126

Critical Thinking Inquiries, 1127
 Managerial Perspective, 1127
 International Law, 1128
History of International Law, 1128
Domestic and International Lawmaking, 1128
Sources of International Law, 1130
 Entering a Foreign Market, 1131
Options in Doing Business Overseas, 1131
 Multinational Enterprises, 1133
Regulating the Multinational Enterprise, 1134
Problem of Expropriation, 1134
International Ethical Codes of Conduct, 1136
 International Trade Regulation—GATT, 1136
U.S. Trade Remedies, 1137
 Imports, 1138
North American Free Trade Agreement, 1138
 Resolving International Disputes, 1140
Arbitration, 1140
Litigation, 1141

Chapter 53

The Liability of Accountants and Auditors, 1144

Critical Thinking Inquiries, 1145
 Managerial Perspective, 1145
 Common Law Liability of Accountants, 1146
Contract Liability, 1146
Tort Liability, 1146

Liability to Nonclients, 1147
Defenses to Negligence, 1153
 Federal Securities Laws and Accountants Liability, 1154
Liability to Third Parties under the Securities Act of 1933, 1154
Liability to Third Parties under the Securities and Exchange Act of 1934, 1156
 Criminal Liability of Accountants, 1159
 Accountants' Working Papers and the Accountant-Client Privilege, 1159

Chapter 54

The Corporate Culture: Corporate Social Responsibility, 1162

Critical Thinking Inquiries, 1163
 Managerial Perspective, 1163
 Introduction, 1164
 Why the Market Can't Do It, 1165
Market Imperfections, 1166
 Why the Law Can't Do It, 1167
Time-Lag Problem, 1167
Making the Law, 1167
Implementing the Law, 1168
 Corporate Social Responsibility, 1168
Friedman: Make Profits, 1168
Goodpaster and Matthews: Moral Projection, 1169
Stone: A Reflective Process, 1172
 Corporate Culture, 1174
Who Creates the Corporate Culture, 1174
How to Set the Corporate Culture, 1175

Appendix A 1179

Appendix B 1191

Glossary, 1297

Table of Cases, 1333

Index, 1337