

Contents

Part One

THE LEGAL ENVIRONMENT OF BUSINESS

CHAPTER 1

An Introduction to Dynamic Business Law 2

Law and Its Purpose 5

Classification of the Law 5

Sources of Business Law 6

Constitutions 6

Statutes 6

Cases 7

Administrative Law 9

Treaties 9

Executive Orders 10

Schools of Jurisprudence 11

Global and Comparative Law 12

Appendix A-1: Critical Thinking and Business Law 13

CHAPTER 2

Business Ethics 16

Case Opener

Nike and "Sweatshop Labor" 16

Business Ethics and Social Responsibility 18

Business Law and Business Ethics 19

Case 2-1: Rexford Kipps et al. v. James Cailler et al. 20

The WPH Framework for Business Ethics 23

Who Are the Relevant Stakeholders? 24

What Are the Ultimate Purposes of the Decision? 26

How Do We Make Ethical Decisions? 27

Case Opener Wrap-Up: Nike 30

Summary 31

Point/Counterpoint 31

Questions & Problems 32

Appendix A-2: Theories of Business Ethics 35

CHAPTER 3

The U.S. Legal System 40

Case Opener

Questionable Jurisdiction over Caterpillar 40

Jurisdiction 42

Original versus Appellate Jurisdiction 42

Jurisdiction over Persons and Property 42

Subject-Matter Jurisdiction 45

Case 3-1: Wachovia Bank, N.A. v. Schmidt 46

Venue 47

The Structure of the Court System 48

The Federal Court System 48

State Court Systems 49

Threshold Requirements 51

Standing 51

Case or Controversy 52

Ripeness 52

Steps in Civil Litigation 53

The Pretrial Stage 53

The Trial 58

Case 3-2: J.E.B. v. Alabama, ex. rel. T.B. 59

Appellate Procedure 62

Case Opener Wrap-Up: Caterpillar 63

Summary 64

Point/Counterpoint 64

Questions & Problems 65

CHAPTER 4

Alternative Dispute Resolution 68

Case Opener

Mandatory Arbitration at Hooters 68

Primary Forms of Alternative Dispute Resolution 71

Negotiation 71

Mediation 71

Arbitration 74

Case 4-1: Scott Folb v. Motion Picture Industry Pension & Health Plans et al. 75

Case 4-2: Jerome Brown v. ABF Freight Systems, Inc. 80

Case 4-3: Robert Gilmer v. Interstate/Johnson Lane Corporation 83

Case 4-4: Equal Employment Opportunity Commission v. Waffle House, Inc. 85

Other ADR Methods 87

Med-Arb 87

Summary Jury Trial 88

Minitrial 88

Early Neutral Case Evaluation 89

Private Trials 89

Court-Annexed ADR 90

Use of ADR in International Disputes 91

Case Opener Wrap-Up: Hooters 93

Summary 93

Point/Counterpoint 94
Questions & Problems 94

CHAPTER 5

Constitutional Principles 100

Case Opener

Regulations on Interstate Wine Sales: A Violation of the Commerce Clause? 100

The U.S. Constitution 102

Judicial Review 102

The Supremacy Clause and Federal Preemption 103

The Commerce Clause 104

The Commerce Clause as a Source of Authority for the Federal Government 104

The Commerce Clause as a Restriction on State Authority 105

Case 5-1: Christy Brzonkala v. Antonio Morrison et al. 106

Case 5-2: National Electrical Manufacturers Association v. William H. Sorrell, Attorney General of the State of Vermont, John Kassel et al. 109

Taxing and Spending Powers of the Federal Government 111

Other Constitutional Restrictions on Government 112

The Privileges and Immunities Clause 112

The Full Faith and Credit Clause 112

The Contract Clause 113

The Amendments to the Constitution 113

The First Amendment 113

Case 5-3: Bad Frog Brewery v. New York State Liquor Auth. 117

The Fourth Amendment 122

The Fifth Amendment 123

Case 5-4: Hildegard Gora et al. v. City of Ferndale 124

Case 5-5: Lucas v. South Carolina Coastal Commission 126

The Ninth Amendment 128

The Fourteenth Amendment 129

Case Opener Wrap-Up: Wine Sales Regulation 129

Summary 130

Point/Counterpoint 132

Questions & Problems 133

CHAPTER 6

International and Comparative Law 136

Case Opener

Unocal and Myanmar 136

Doing Business Internationally 138

Ethical Considerations 140

The General Agreement on Tariffs and Trade 142

Regional Trade Agreements 143

Comparative Law 144

Legal Systems and Procedures 145

Civil Law Systems 145

Common Law Systems 145

Other Legal Systems 146

Substantive Law 146

Comparative Contract Law 146

Comparative Employment Law 150

Case 6-1: DOE v. Unocal Corporation 153

Dispute Settlement in an International Context 154

Litigation 154

Arbitration 156

Case 6-2: Best Concrete Mix Corp. v. Lloyd's of London Underwriters 157

Case Opener Wrap-Up: Unocal 158

Summary 159

Point/Counterpoint 160

Questions & Problems 160

CHAPTER 7

Crime and the Business Community 166

Case Opener

Untenable Trading 166

Elements of a Crime 168

Classification of Crimes 169

Common Crimes Affecting Business 169

Property Crimes against Business 169

White-Collar Crime 170

Case 7-1: United States of America v. Gerson Cohen 176

Liability for Crimes 181

Corporate Criminal Liability 181

Liability of Corporate Executives 181

Case 7-2: United States v. Park 182

Defenses to Crimes 183

Infancy 183

Mistake 183

Intoxication 184

Insanity 184

Duress 185

Entrapment 185

Necessity 185

Justifiable Use of Force 185

Constitutional Safeguards 186
 Fourth Amendment Protections 186
 Fifth Amendment Protections 186
 Sixth Amendment Protections 187
 Eighth Amendment Protections 187
 Fourteenth Amendment Protections 187
 The Exclusionary Rule 188

Criminal Procedure 188
 Pretrial Procedure 188

Case 7-3: Miranda v. Arizona 190

Trial Procedure 193
 Posttrial Procedure 193

Tools for Fighting Business Crime 194
 The Racketeer Influenced and Corrupt Organizations Act 194
 The False Claims Act 195
 The Sarbanes-Oxley Act 196

Case Opener Wrap-Up: Untenable Trading 197
 Summary 197
 Point/Counterpoint 199
 Questions & Problems 200

CHAPTER 8

Tort Law 202

Case Opener

Rubin v. U.S. News 202
 Introduction to Tort Law 204
 Classification of Torts 204
 Intentional Torts 205

Intentional Torts against Persons 205

Case 8-1: Nellie Mitchell v. Globe Inc. d/b/a "Sun" 211

Case 8-2: Wal-Mart Stores, Inc. v. Martin Rodriguez 214

Case 8-3: Cindy R. Lourcey et al. v. Estate of Charles Scarlett 217

Intentional Torts against Property 219
 Intentional Torts against Economic Interests 221

Damages Available in Tort Cases 223
 Compensatory Damages 223
 Nominal Damages 223
 Punitive Damages 224

Case 8-4: Clark v. Chrysler Corporation 226

Case Opener Wrap-Up: The Resolution of Rubin v. U.S. News 228
 Summary 229
 Point/Counterpoint 230
 Questions & Problems 231

CHAPTER 9

Negligence and Strict Liability 236

Case Opener

Tort Liability for the Boy Scouts of America? 236
 Introduction to Negligence and Strict Liability 238
 Elements of Negligence 238
 Duty 238

Case 9-1: Roland C. Feichtner v. City of Cleveland et al. 240

Breach of Duty 242
 Causation 242

Case 9-2: Palsgraf v. Long Island Railroad Company 243

Damages 244

Plaintiff's Doctrines 245
 Res Ipsa Loquitur 245

Case 9-3: Janet Kambat v. St. Francis Hospital et al. 246

Negligence Per Se 248
 Special Plaintiff's Doctrines and Statutes 249

Defenses to Negligence 249
 Contributory Negligence 249
 Comparative Negligence 250
 Assumption of the Risk 250

Case 9-4: Ex Parte Emmette L. Barran III 251

Special Defenses to Negligence 253

Strict Liability 253

Case 9-5: Gregory Scorza v. Alfredo Martinez and Worldwide Primates, Inc. 254

Case Opener Wrap-Up: Boy Scouts of America 255
 Summary 255
 Point/Counterpoint 256
 Questions & Problems 257

CHAPTER 10

Product Liability 260

Case Opener

Ford and Bridgestone/Firestone 260
 Theories of Liability for Defective Products 262
 Negligence 262

Case 10-1: Billy Wayne Frith and Wanda Frith as Parents and Natural Guardians of Joshua Brent Frith, a Minor v. BIC Corporation 267

Strict Product Liability 269

Case 10-2: Welge v. Planters Lifesavers Co. 271

Case 10-3: Sperry-New Holland, a Division of Sperry Corporation v. John Paul Prestage and Pam Prestage 273

Case 10-4: James A. Peterson, Adm'r of the Estate of Maradean Peterson et al. v. Lou Backrodt Chevrolet Co. 276

Warranty 277

Market Share Liability 278

Case 10-5: Steven Thomas, a Minor, by His Guardian ad Litem, Susan M. Gramling, Plaintiff-Appellant-Petitioner, v. Clinton L. Mallett, Billie R. Mallett, & Germantown Mutual Ins. Co., Defendants 280

Case Opener Wrap-Up: Ford and Bridgestone/Firestone 282

Summary 283

Point/Counterpoint 283

Questions & Problems 284

CHAPTER 11

Liability of Accountants and Other Professionals 288

Case Opener

Questionable Accounting at WorldCom 288

Common Law Accountant Liability to Clients 290

Accountant Liability for Negligence 290

Accountant Liability for Breach of Contract 292

Accountant Liability for Fraud 292

Common Law Accountant Liability to Third Parties 293

Liability Based on Privity or Near-Privity (the Ultramares Rule) 294

Case 11-1: Credit Alliance Corp. v. Arthur Andersen & Co. 294

Liability to Foreseen Users and Foreseen Class of Users (the Restatement Rule) 296

Liability to Reasonably Foreseeable Users 297

Case 11-2: Bily v. Arthur Young & Co. 297

Accountants' and Clients' Rights 300

Working Papers 300

Accountant-Client Privilege 300

Federal Securities Law and Accountant Liability 301

The Securities Act of 1933 301

The Securities Exchange Act of 1934 303

Case 11-3: Great Neck Capital Appreciation Inv. P'ship, L.L.P. v. PricewaterhouseCoopers, L.L.P. 305

The Private Securities Litigation Reform Act of 1995 307

The Sarbanes-Oxley Act of 2002 307

Liability of Other Professionals 308

Case Opener Wrap-Up: WorldCom 309

Summary 310

Point/Counterpoint 311

Questions & Problems 313

CHAPTER 12

Intellectual Property 320

Case Opener

Owning Ideas: A Question of Intellectual Property 320

Intellectual Property 322

Trademarks 322

Case 12-1: Otokoyama Co. Ltd., a Japanese Corporation v. Wine of Japan Import, Inc. 324

Case 12-2: Toys "R" Us, Inc. v. Canarsie Kiddie Shop, Inc. 325

Trade Dress 328

Federal Trademark Dilution Act of 1995 329

Copyrights 329

Case 12-3: Ty Inc. v. GMA Accessories Inc. 330

Case 12-4: Princeton University Press v. Michigan Document Services, Inc. 332

Patents 333

Trade Secrets 335

International Protection of Intellectual Property 335

The Berne Convention of 1886 335

The Universal Copyright Convention of 1952, as Revised in 1971 336

The Paris Convention of 1883 336

The 1994 Agreement on Trade-Related Aspects of Intellectual Property Rights 336

Case Opener Wrap-Up: Owning Ideas: A Question of Intellectual Property 337

Summary 338

Point/Counterpoint 339

Questions & Problems 339

Part Two

CONTRACTS

CHAPTER 13

Introduction to Contracts 342

Case Opener

A Questionable Contract 342

The Definition of a Contract 344

Elements of a Contract 344

Defenses to the Enforcement of a Contract 344

The Objective Theory of Contracts 344

Sources of Contract Law 345

Common Law 345

Uniform Commercial Code 345

Classification of Contracts 346

Bilateral versus Unilateral Contracts 346

Case 13-1: D.L. Peoples Group, Inc. v. Hawley 347*Express versus Implied Contracts 348***Case 13-2: Pache v. Aviation Volunteer Fire Co. 349***Quasi-Contracts 350***Case 13-3: DCB Const. Co., Inc. v. Central City Development Co. 351***Valid, Void, Voidable, and Unenforceable Contracts 353**Executed versus Executory Contracts 354**Formal versus Informal Contracts 354*

Interpretation of Contracts 355

Case Opener Wrap-Up: The Questionable Contract 356

Summary 356

Point/Counterpoint 357

Questions & Problems 357

CHAPTER 14**Agreement 360****Case Opener**

The Problematic Promotion 360

Elements of the Offer 362

*Intent 362***Case 14-1: Lucy v. Zehmer 362***Definite and Certain Terms 365**Communication to the Offeree 365***Case 14-2: Andrus v. State, Department of Transportation, and City of Olympia 366**

Termination of the Offer 366

*Revocation by the Offeror 367**Rejection or Counteroffer by the Offeree 368**Death or Incapacity of the Offeror 368**Destruction or Subsequent Illegality of the Subject Matter 368**Lapse of Time or Failure of Another Condition Specified in the Offer 368*

The Acceptance 369

*Manifestation of Intent to Be Bound to the Contract 369**Acceptance of Definite and Certain Terms: The Mirror-Image Rule 371**Communication to the Offeror 371***Case 14-3: Osprey L.L.C. v. Kelly-Moore Paint Co. 372****Case 14-4: Trinity Homes, L.L.C. v. Fang 373**

Case Opener Wrap-Up: Harrier Jet 376

Summary 376

Point/Counterpoint 377

Questions & Problems 378

CHAPTER 15**Consideration 382****Case Opener**

Upper Deck—Contract Liability or Gift? 382

What Is Consideration? 384

Rules of Consideration 384

*Lack of Consideration 384***Case 15-1: Anthony A. Labriola v. Pollard Group Inc. 385***Adequacy of Consideration 386***Case 15-2: Thelma Agnes Smith v. David Phillip Riley 388***Illusory Promise 389**Past Consideration 390**Preexisting Duty 390***Case 15-3: Cloud Corporation v. Hasbro, Inc. 391**

Uniform Commercial Code: Requirement and Output Contracts 394

Partial Payment of a Debt 395

Case Opener Wrap-Up: Upper Deck 397

Summary 398

Point/Counterpoint 399

Questions & Problems 399

CHAPTER 16**Capacity and Legality 404****Case Opener**

A Wasted Education 404

Capacity 406

*Minors 406***Case 16-1: Swalberg v. Hannegan 407****Case 16-2: Kim Young v. Phillip Weaver 410***Mentally Incapacitated Persons 412**Intoxicated Persons 413*

Legality 414

*Contracts That Violate State or Federal Statutes 414**Agreements in Contradiction to Public Policy 416***Case 16-3: Alfred W. Gann and Connie A. Gann, Husband and Wife, Plaintiffs-Appellees, v. Gerry Morris, Defendant-Appellant 418****Case 16-4: Eric Lucier and Karen A. Haley v. Angela and James Williams, Cambridge Associates, Ltd., and Al Vasys 421***Effect of Illegal Agreements 423*

Case Opener Wrap-Up: A Wasted Education 425

Summary 426

Point/Counterpoint 426
 Questions & Problems 427

CHAPTER 17

Legal Assent 430

Case Opener

A Disagreement over an Agreement 430
 The Importance of Legal Assent 432
 Mistake 432

Unilateral Mistake 433

Mutual Mistake 433

Case 17-1: Ronald Jackson and Willa Jackson, Appellant v. Robert R. Blanchard, Helen M. Blanchard, Maynard L. Shellhammer, and Philip Schlemmer, Appellee 435

Misrepresentation 437

Innocent Misrepresentation 437

Case 17-2: Mark Siech and Pam Siech, Plaintiffs-Respondents v. Erv's Sales & Service, Defendant-Appellant 438

Negligent Misrepresentation 439

Fraudulent Misrepresentation 439

Case 17-3: Gary W. Cruse and Venita R. Cruse v. Coldwell Banker/Graben Real Estate, Inc. 440

Undue Influence 443

Duress 445

Case 17-4: Elizabeth Curran v. Ho Sung Kwon 445

Unconscionability 446

Case 17-5: Orville Arnold and Maxine Arnold, Plaintiffs v. United Companies Lending Corporation, a Corporation, and Michael T. Searls, an Individual, Defendants 447

Case Opener Wrap-Up: A Disagreement over an Agreement 449

Summary 449

Point/Counterpoint 450

Questions & Problems 450

CHAPTER 18

Contracts in Writing 454

Case Opener

Dairy Farm Dispute 454

Statute of Frauds 456

Contracts Falling within the Statute of Frauds 457

Contracts Whose Terms Prevent Possible Performance within One Year 457

Promises Made in Consideration of Marriage 457

Contracts for One Party to Pay the Debt of Another If the Initial Party Fails to Pay 458

Case 18-1: Power Entertainment, Inc., et al. v. National Football League Properties, Inc. 459

Contracts Related to an Interest in Land 460

Contracts for the Sale of Goods Totaling More than \$500 462

Further Requirements Specific to Certain States 462

Exceptions to the Statute of Frauds 463

Admission 463

Partial Performance 463

Promissory Estoppel 464

Exceptions under the UCC 464

Case 18-2: Barbara H. Kalas v. Edward W. Cook, Executor (Estate of Adelma G. Simmons) 465

Sufficiency of the Writing 466

Case 18-3: Stewart Lamle v. Mattel, Inc. 467

Parol Evidence Rule 469

Case 18-4: First Data POS, Inc. v. Joseph Willis et al. 470

Exceptions to the Parol Evidence Rule 472

Contracts That Have Been Subsequently Modified 472

Contracts Conditioned on Orally Agreed-On Terms 473

Nonfinalized, Partially Written and Partially Oral, Contracts 473

Contracts Containing Ambiguous Terms 473

Incomplete Contracts 474

Contracts with Obvious Typographical Errors 474

Void or Voidable Contracts 474

Evidence of Prior Dealings or Usage of Trade 474

Integrated Contracts 475

Case Opener Wrap-Up: Dairy Farm Dispute 476

Summary 476

Point/Counterpoint 477

Questions & Problems 478

CHAPTER 19

Third-Party Rights to Contracts 482

Case Opener

Fallout from a Forgettable Fight 482

Assignments and Delegations 484

Assignment 484

Case 19-1: Traffic Control Services v. United Rentals Northwest, Inc. 487

Case 19-2: Fulton County v. American Factors of Nashville, Inc. 490*Delegation 492***Case 19-3: Forest Commodity Corp. v. Lone Star Industries, Inc., et al. 494**

Assignment of the Contract 496

Third-Party Beneficiary Contracts 497

*Intended Beneficiaries 497***Case 19-4: Lawrence v. Fox 498***Incidental Beneficiaries 503**Case Opener Wrap-Up: Fallout from a Forgettable Fight 505**Summary 505**Point/Counterpoint 506**Questions & Problems 507***CHAPTER 20****Discharge and Remedies 512****Case Opener**

The Battle of the Pharmacies 512

Methods of Discharging a Contract 514

*Conditions 514**Discharge by Performance 515**Discharge by Material Breach 517***Case 20-1: Miller v. Mills Construction, Inc. 517***Discharge by Mutual Agreement 519**Discharge by Operation of Law 519***Case 20-2: Thrifty Rent-a-Car System v. South Florida Transport 522**

Remedies 524

*Legal Remedies (Monetary Damages) 525***Case 20-3: Hadley v. Baxendale 527****Case 20-4: Parker v. Twentieth Century–Fox Film Corp. 529***Equitable Remedies 530*

Case Opener Wrap-Up: Battle of the Pharmacies 532

Summary 533

Point/Counterpoint 533

Questions & Problems 534

Part Three**DOMESTIC AND
INTERNATIONAL SALES LAW****CHAPTER 21****Introduction to Sales and Lease Contracts 538****Case Opener**

Who Is Liable for Ears Falling Off: The Farmers, the

Seed Company, or the Weather? 538

The Uniform Commercial Code 540

*The Scope of the UCC 540**The Significance of the UCC 541*

Articles 2 and 2(A) of the UCC 541

*Article 2 of the UCC 542***Case 21-1: Novamedix, Limited, Plaintiff-Appellant, v. NDM Acquisition Corporation and Vesta Healthcare, Inc., Defendants-Appellees 544****Case 21-2: Deweldon, Ltd. v. McKean 546***Article 2(A) of the UCC 548*

How Sales and Lease Contracts Are Formed under the UCC 549

*Formation in General 549**Offer and Acceptance 550***Case 21-3: Waukesha Foundry, Incorporated (Plaintiff-Appellee) v. Industrial Engineering, Incorporated (Defendant-Appellant) 551***Consideration 552**Requirements under the Statute of Frauds 552***Case 21-4: Monetti, S.P.A., and Melform U.S.A., Inc., Plaintiffs-Appellants v. Anchor Hocking Corporation, Defendant-Appellee 553***The Parol Evidence Rule 555**Unconscionability 556*

Contracts for the International Sale of Goods 556

*The Scope of the CISG 556**The Significance of the CISG 557*

Case Opener Wrap-Up: Petersons and Migro 557

Summary 558

Point/Counterpoint 559

Questions & Problems 560

CHAPTER 22**Title, Risk of Loss, and Insurable Interest 564****Case Opener**

Diamonds in Bloom 564

The Concept of Title 566

Three Kinds of Title 566

Acquiring Good Title 566

Case 22-1: Alfonso Candela, Appellant, v. Port Motors, Inc., Respondent, et al., Defendant 567*Voidable Title 568**Third-Party Purchasers and Good Title 568**Entrustment 569***Case 22-2: Gwendolyn V. Ryan v. Patterson and Son Motors, and Joe Patterson, Individually 570**

Case 22-3: Bank One, Milwaukee, N.A., Plaintiff-Appellant v. Loeber Motors, Inc., et al., Defendants-Appellees 571

Recourse under the UCC 573

Types of Sales Contracts 575

Simple Delivery Contract 575

Case 22-4: Emery v. Weed 576

Common-Carrier Delivery Contract 577

Case 22-5: Pileri Industries, Inc. v. Consolidated Industries, Inc. 578

Goods-in-Bailment Contract 580

Conditional Sales Contract 581

Risk of Loss during a Breach of Contract 582

When the Seller Is in Breach 582

When the Buyer Is in Breach 582

Case Opener Wrap-Up: Diamonds in Bloom 582

Summary 583

Point/Counterpoint 584

Questions & Problems 585

CHAPTER 23

Performance and Obligations under Sales and Leases 588

Case Opener

Will the Sun Shine for Alpha Chi Omega? 588

The Basic Performance Obligation 590

Good Faith 590

Specific Obligations of Sellers and Lessors 591

The Perfect Tender Rule 591

Case 23-1: Alaska Pacific Trading Co. v. Eagon Forest Products Inc. 592

Exceptions to the Perfect Tender Rule 593

Case 23-2: DeJesus v. Cat Auto Tech. Corp. 595

Case 23-3: Midwest Mobile Diagnostic Imaging v. Dynamics Corp. of America 598

Specific Obligations of Buyers and Lessees 600

The Basic Obligation: Inspection, Payment, and Acceptance 600

Exceptions to the Basic Obligation 600

Case 23-4: Hubbard v. UTZ Quality Foods, Inc. 602

Case Opener Wrap-Up: Alpha Chi Omega 604

Summary 605

Point/Counterpoint 605

Questions & Problems 606

CHAPTER 24

Remedies for Breach of Sales and Lease Contracts 610

Case Opener

Two All-Beef Patties, Special Sauce, Lettuce, Cheese . . . 610

The Goal of Contract Remedies 612

Remedies Available to Sellers and Lessors under the UCC 612

Cancel the Contract 612

Withhold Delivery 613

Resell or Dispose of the Goods 613

Sue to Get the Benefit of the Bargain 614

Case 24-1: Kenco Homes, Inc. v. Williams 614

Liquidated Damages 616

Stop Delivery 616

Reclaim the Goods 616

Remedies Available to Buyers and Lessees under the UCC 616

Cancel the Contract 616

Obtain Cover 617

Case 24-2: U.S.A. Coil & Air, Inc. v. Hodess Building Co. 617

Sue to Recover Damages 618

Recover the Goods 618

Obtain Specific Performance 618

Case 24-3: King Aircraft Sales, Inc. v. Lane 619

Reject Nonconforming Goods 620

Revoke Acceptance of Nonconforming Goods 621

Accept the Nonconforming Goods and Seek Damages 621

Modifications or Limitations to Remedies Otherwise Provided by the UCC 623

Case 24-4: Figgie International, Inc. v. Destileria Serralles, Inc. 623

Case Opener Wrap-Up: Lettuce 626

Summary 627

Point/Counterpoint 628

Questions & Problems 628

CHAPTER 25

Warranties 632

Case Opener

The Aflatoxin Problem 632

Introduction 634

Types of Warranties 634

Warranties of Title 634

Case 25-1: John Colton and Pamela Colton, Plaintiffs and Appellees, v. Lee Decker and Betty Decker, Defendants and Appellants 635

Express Warranties 637

Case 25-2: Donald Welchert, Rick Welchert, Jerry Welchert, Deborah Welchert, Appellees, v. American Cyanamid Inc., Appellant 637

Implied Warranties of Quality 639

Case 25-3: Priscilla D. Webster v. Blue Ship Tea Room, Inc. 640

Case 25-4: James Boyes and Eleanor Clouser, Plaintiffs, v. Greenwich Boat Works, Inc., Albemarle Boats, Gregory Poole Equipment Co., a/k/a Gregory Poole Power Systems, Caterpillar, Inc., Defendants 644

Warranty Rights of Third Parties 645

Case 25-5: Shelley Jo Buettner, Plaintiff-Appellant, v. R. W. Martin & Sons, et al., Defendants 646

Warranty Disclaimers and Waivers 648

Case Opener Wrap-Up: Feed Corn 650

Summary 650

Point/Counterpoint 651

Questions & Problems 652

Part Four

NEGOTIABLE INSTRUMENTS AND BANKING

CHAPTER 26

Negotiable Instruments: Negotiability and Transferability 656

Case Opener

Oral Agreements and Negotiable Instruments 656

The Need for Negotiable Instruments 658

Contracts as Commercial Paper 659

Problems with Commercial Paper 659

Types of Negotiable Instruments 659

An Overview of the Law of Negotiable Instruments 661

Case 26-1: Samuel James Thompson v. First Citizens Bank & Trust Co. 662

Requirements for Negotiability 663

Case 26-2: State v. Warner 665

Case 26-3: Ameritrust Company, N.A. v. C. K. White 668

Case 26-4: DIF Bank Deutsche Investitions Finanz GMBH v. Fluormatic Corporation of America 670

Case Opener Wrap-Up: An Oral Agreement with MGM 673

Summary 673

Point/Counterpoint 674

Questions & Problems 675

CHAPTER 27

Negotiation, Holder in Due Course, and Defenses 680

Case Opener

Stolen Money Orders and Holder in Due Course Status 680

Negotiation 682

Delivery 682

Case 27-1: Marc A. Stefano v. First Union National Bank of Virginia 683

Endorsement 685

Case 27-2: Mid-Atlantic Tennis Courts, Inc. v. Citizens Bank and Trust Company of Maryland 687

Noncriminal Endorsement Problems 689

Holder in Due Course Doctrine 690

Reason for Holder in Due Course Status 690

Requirements for Holder in Due Course Status 691

Case 27-3: Michael J. Kane, Jr. v. Grace Kroll 692

Be a Holder of a Complete and Authentic Negotiable Instrument 693

Take Instrument for Value 694

Case 27-4: Braden Corp. & Frank W. Splittorff v. The Citizens National Bank of Evansville 696

Take Instrument in Good Faith 697

Take Instrument without Notice 698

Case 27-5: Maine Family Federal Credit Union v. Sun Life Assurance Company of Canada et al. 699

Case 27-6: George T. Hathorn v. William R. Loftus 703

The Shelter Principle and HDC 705

Abuse of the Holder in Due Course Doctrine 706

Case Opener Wrap-Up: American Express 707

Summary 708

Point/Counterpoint 709

Questions & Problems 710

CHAPTER 28

Liability, Defenses, and Discharge 714

Case Opener

Citizens National Bank and the Forged Checks 714

Signature Liability 716

Primary Liability of Makers and Acceptors 716

Secondary Liability of Drawers and Endorsers 717

Accommodation Parties 720

Agents' Signatures 720

Case 28-1: Star Bank v. Theodore Jackson, Jr. 721

Warranty Liability 726

Transfer Liability 726

Presentment Warranty 727

Case 28-2: Halliburton Energy Services, Inc. v. Fleet National Bank 728

Avoiding Liability for Negotiable Instruments 729

Defenses to Liability 730

Case 28-3: First National Bank v. Reginald Robertson, Nancy Robertson, and James Nelson 732

Discharge of Liability on Instruments 734

Case Opener Wrap-Up: Citizens National Bank and the Forged Checks 735

Summary 736

Point/Counterpoint 737

Questions & Problems 738

CHAPTER 29

Checks and Electronic Fund Transfers 742

Case Opener

Posting Checks from Highest to Lowest Dollar Amount 742

Checks 744

Cashier's Checks 745

Teller's Checks 746

Traveler's Checks 746

Money Orders 747

Certified Checks 747

Why Use Cashier's, Teller's, or Certified Checks? 747

Lost, Stolen, or Destroyed Cashier's, Teller's, or Certified Checks 748

Accepting Deposits 749

The Check Collection Process 749

Types of Banks Involved in Check Collection 749

Check Collection within the Same Bank 750

Check Collection between Different Banks 750

Federal Reserve System for Clearing Checks 750

Electronic Check Presentment 751

Availability Schedule for Deposited Checks 751

The Truth-in-Savings Act 752

When a Bank May Charge a Customer's Account 752

Wrongful Dishonor 752

Case 29-1: The Twin City Bank v. Kenneth Isaacs 753

Overdrafts 755

Stop-Payment Order 755

Postdated Checks 756

Stale Checks 756

Case 29-2: Scott D. Leibling, P.C. v. Mellon PSFS (NJ) National Association 757

Death or Incompetence of a Customer 759

Forgeries and Alterations 759

Case 29-3: Weafri Well Services, Co., Ltd. v. Fleet Bank, National Association 761

Electronic Fund Transfers 764

Types of EFT Systems 764

Consumer Fund Transfers 765

Commercial Fund Transfers 767

E-Money and Online Banking 767

Online Banking Services 768

Regulatory Compliance 768

Privacy Protection 768

The Uniform Money Services Business Act 769

Traditional Money Services 769

Internet-Based Money Services 770

Case Opener Wrap-Up: Posting Checks from Highest to Lowest Dollar Amount 770

Summary 771

Point/Counterpoint 773

Questions & Problems 774



Part Five

CREDITOR'S RIGHTS AND BANKRUPTCY

CHAPTER 30

Secured Transactions 778

Case Opener

The Underpriced Boat 778

Important Definitions Associated with Secured Transactions 780

Creation of Secured Interests 781

Written Agreement 781

Value 782

Debtor Rights in the Collateral 782

Purchase-Money Security Interest 782

Perfected Security Interest 782

Perfection by Filing 783

Perfection by Possession 784

Automatic Perfection 784

Case 30-1: Gerald Gaucher v. Cold Springs RV Corp. 785

Perfection of Movable Collateral 786

Perfection of Security Interests in Automobiles and Boats 787

The Scope of a Security Interest 788

After-Acquired Property 788

Proceeds 788

Termination of a Security Interest 788

Priority Disputes 789

Secured versus Unsecured Creditors 789

Secured versus Secured Creditors 789

Secured Party versus Buyer 790

Case 30-2: In re Charles T. Lau, Debtor 791

Default 792

Taking Possession of the Collateral 793

Case 30-3: Lester Ivy v. General Motors Acceptance Corporation & American Lenders Service Company of Jackson, Inc. 794

Case 30-4: ROC-Century Associates v. Anthony J. Giunta, Personal Representative of the Estate of Stella Saltonstall 796

Proceeding to Judgment 798

Case Opener Wrap-Up: General Motors Acceptance Corporation 799

Summary 799

Point/Counterpoint 801

Questions & Problems 801

CHAPTER 31

Other Creditors' Remedies and Suretyship 806

Case Opener

Liens and Payments for Remodeling 806

Laws Assisting Creditors 808

Statutory Liens 808

Case 31-1: Brent Martin v. Ohio Citizens Bank et al. 811

Judicial Liens 812

Mortgage Foreclosure 814

Case 31-2: United States of America v. Charles Smith 815

Creditors' Composition Agreements 816

Assignment for the Benefit of Creditors 817

Suretyship and Guaranty Contracts 817

Suretyship 818

Guaranty 818

Case 31-3: General Motors Acceptance Corporation v. Seymoure Daniels 819

Defenses of the Surety and the Guarantor 820

Rights of the Surety and the Guarantor 821

Case Opener Wrap-Up: Tri-State 821

Summary 822

Point/Counterpoint 823

Questions & Problems 823

CHAPTER 32

Bankruptcy and Reorganization 826

Case Opener

United Airlines Bankruptcy 826

The Bankruptcy Act and Its Goals 828

Title 11 of the United States Code 829

Attributes of Bankruptcy Cases 830

Perceptions of Bankruptcy 830

Case 32-1: In the Matter of: Thomas and Kathaline Laws, Debtors 831

Bankruptcy Proceedings 831

Specific Types of Relief Available 832

Chapter 7: Liquidation Proceedings 833

Case 32-2: Rousey v. Jacoway 837

Case 32-3: Margaret Kawaauhau et vir, Petitioners, v. Paul W. Geiger 841

Chapter 11: Reorganizations 844

Case 32-4: United States v. Thomas Milton Haas & Bernice Elizabeth Haas, Debtors, No. 97-6823 846

Chapter 13: Individual Repayment Plans 847

Chapter 12: Family-Farmer Plans 849

Case Opener Wrap-Up: United Airlines 850

Summary 850

Point/Counterpoint 851

Questions & Problems 851

Part Six AGENCY

CHAPTER 33

Agency Formation and Duties 854

Case Opener

National Farmers Union Insurance and an Independent Contractor 854

Introduction to Agency Law 856

Creation of the Agency Relationship 856

Expressed Agency (Agency by Agreement) 857

Agency by Implied Authority 860

Case 33-1: Granite Properties v. Granite Investment Company et al. 860

Apparent Agency (Agency by Estoppel) 861

Case 33-2: Thomas & Linda Genovese v. Theresa Bergeron 862

Agency by Ratification 863

Agency Relationships 864

Principal-Agent Relationship 864

Employer-Employee Relationship 864

Employer-Independent Contractor

Relationship 865

Duties of the Agent and the Principal 866

Case 33-3: Cynthia Walker v. John A. Lahoski et al. 867

Principal's Duties to the Agent 868

Agent's Duties to the Principal 870

Case 33-4: Sierra Pacific Industries v. Joseph H. Carter 871

Case 33-5: Gloria & Tyrone Harts v. Farmers Insurance Exchange & Gregory Pietrzak 873

Rights and Remedies 874

Principal's Rights and Remedies against the Agent 874

Agent's Rights and Remedies against the Principal 876

Case Opener Wrap-Up: National Farmers Union Insurance Company 877

Summary 877

Point/Counterpoint 878

Questions & Problems 879

CHAPTER 34

Liability to Third Parties and Termination 884

Case Opener

The Liability of the Principal? 884

Authority of the Agent: The Link to the Principal's Liability 886

Express Authority 886

Implied Authority 886

Apparent Authority and Estoppel 887

Contractual Liability of the Principal and Agent 887

Classification of the Principal 887

Authorized Acts 888

Case 34-1: The Heiby Oil Company v. Galen V. Pence et al. 889

Unauthorized Acts 890

Tort Liability and the Agency Relationship 891

Principal's Tortious Conduct 891

Case 34-2: Iglesia Cristiana la Casa del Senor, Inc., etc. v. L.M. 893

Agent Misrepresentation 895

Principal's Liability and the Independent Contractor 895

Crime and Agency Relationships 895

Termination of the Agency Relationship 896

Termination by Acts of Parties 897

Case 34-3: Angela & Raul Ruiz v. Fortune Insurance Company 898

Termination by Operation of Law 900

Case Opener Wrap-Up: Dimension 902

Summary 902

Point/Counterpoint 903

Questions & Problems 904



Part Seven

BUSINESS ORGANIZATIONS

CHAPTER 35

Forms of Business Organizations 910

Case Opener

The McDonald's Franchise Agreement 910

Major Forms of Business Organizations 912

Sole Proprietorship 912

Partnership 913

Corporation 915

Limited Liability Company 915

Specialized Forms of Business Organizations 916

Cooperative 917

Joint Stock Company 918

Business Trust 918

Syndicate 918

Joint Venture 918

Case 35-1: Judy Fitchie v. Rick Yurko 920

Franchise 921

Case 35-2: Mary Kay, Inc., a/k/a Mary Kay Cosmetics, Inc. v. Janet Isbell 923

Case 35-3: Cousins Subs Systems, Inc. v. Michael R. McKinney 927

Case Opener Wrap-Up: McDonald's 929

Summary 930

Point/Counterpoint 930

Questions & Problems 931

CHAPTER 36

Partnerships: Nature, Formation, and Operation 936

Case Opener

Rockwell and a Potential Partnership 936

Nature of the Partnership 938

Case 36-1: Max Norman v. Montgomery Wholesale Lumber 939

Partnership as a Legal Entity 941

Partnership as a Legal Aggregate 941

Formation of the Partnership 942

Partnership by Estoppel 942

Interactions between Partners 943

Duties of Partners to One Another 943

Case 36-2: Colette Bohatch v. Butler & Binion 943

Rights of the Partners in Their Interactions with Other Partners 945

Interactions between Partners and Third Parties 947
Actual Authority of the Partners 947
Implied Authority of the Partners 947
Liability to Third Parties 947

**Case 36-3: Eric Johnson & Lori Johnson
 v. St. Therese Medical Center 948**

Liability of Incoming Parties 950

The Revised Uniform Partnership Act 950
 Case Opener Wrap-Up: Rockwell/Swenson 950
 Summary 951
 Point/Counterpoint 952
 Questions & Problems 953

CHAPTER 37

Partnerships: Termination and Limited Partnerships 956

Case Opener

Partnership Problems of First Interstate Bank 956
 Termination of the Partnership 958
 Dissolution of the Business 958
Act of Partners 959
Operation of Law 961
Act of the Court 961

Case 37-1: Liem Phan Vu v. Davis Ha et al. 961

Consequences of Dissolution 963
 Winding Up the Business 963

**Case 37-2: Bill L. Tucker v. John P. Ellbogen and
 Ellbogen-Tucker Interests 964**

**Case 37-3: Robert M. Tafoya v. Dee S. Perkins,
 No. 95CA0408 966**

Continuing the Partnership after Dissolution 968

Limited Partnerships 969
Formation of the Limited Partnership 970
*Rights and Liabilities of the Limited Partners
 and the General Partners* 970
Dissolution of the Limited Partnership 971

Limited Liability Companies 972
 Case Opener Wrap-Up: First Interstate Bank 972
 Summary 973
 Point/Counterpoint 973
 Questions & Problems 974

CHAPTER 38

Corporations: Formation and Financing 980

Case Opener

The Formation of Goodyear Tire & Rubber
 Company 980

Characteristics of Corporations 982
Legal Entity 982
Rights as a Person and a Citizen 982
Creature of the State 982
Limited Liability 982
Free Transferability of Corporate Shares 982
Perpetual Existence 983
Centralized Management 983
Corporate Taxation 983
Liability for Officers and Employees 984

Corporate Powers 984
Express and Implied Powers 984
Ultra Vires Act 984

**Case 38-1: Giulio Marsili et al. v. Pacific Gas and
 Electric Company et al. 985**

Classification of Corporations 986
Public or Private 986
Profit or Nonprofit 987
Domestic, Foreign, and Alien Corporations 987
Publicly Held or Closely Held 987
Subchapter S Corporation 987
Professional Corporations 988

Formation of the Corporation 988
Organizing and Promoting the Corporation 988

Case 38-2: Coopers & Lybrand v. Garry J. Fox 989

Selecting a State for Incorporation 990
 Legal Process of Incorporation 991
Selection of Corporate Name 991
Incorporators 991
Articles of Incorporation 991
First Organizational Meeting 992

Potential Problems with Formation of the
 Corporation 992
Responses to Defective Incorporation 993

**Case 38-3: J-Mart Jewelry Outlets, Inc. v. Standard
 Design 995**

Corporate Financing 996
Debt Securities 997
Equity Securities 997

Case Opener Wrap-Up: Goodyear 998
 Summary 999
 Point/Counterpoint 1000
 Questions & Problems 1001

CHAPTER 39

Corporations: Directors, Officers, and Shareholders 1004

Case Opener

Roles of Directors, Officers, and Shareholders of Hi-Way and Ken Corp. 1004

Importance of Regulating Interactions among Directors, Officers, and Shareholders within a Corporation 1006

Roles of Directors, Officers, and Shareholders 1006

Directors' Roles 1006

Officers' Roles 1008

Shareholders' Roles 1008

Duties of Directors, Officers, and Shareholders 1010

Duties of Directors and Officers 1010

Duties of Shareholders 1013

Case 39-1: Frieda H. Rabkin v. Philip A. Hunt Chemical Corp. 1014

Liabilities of Directors, Officers, and Shareholders 1015

Liability of Directors and Officers 1015

Case 39-2: State of Wisconsin Investment Board v. William Bartlett 1017

Liability of Shareholders 1018

Rights of Directors, Officers, and Shareholders 1018

Directors' Rights 1018

Officers' Rights 1019

Shareholders' Rights 1019

Case 39-3: Phillip Parker v. Clary Lakes Recreation Association, Inc. 1022**Case 39-4: Marquit v. Dobson 1024**

Case Opener Wrap-Up: Hi-Way and Ken Corp. 1025

Summary 1026

Point/Counterpoint 1027

Questions & Problems 1028

CHAPTER 40**Corporations: Mergers, Consolidations, Terminations 1032****Case Opener**

The Merger between Chrysler and Daimler-Benz 1032

Introduction to Mergers and Consolidations 1034

Mergers 1034

Consolidations 1034

Procedures for Mergers and Consolidations 1035

The Rights of Shareholders 1036

Case 40-1: Smith v. Van Gorkom 1037

Short-Form Mergers 1039

Appraisal Rights 1039

Case 40-2: Charland v. Country View Golf Club, Inc. 1040

Purchase of Assets 1042

Purchase of Stock 1043

The Nature of Takeovers 1043

Types of Takeovers 1043

Response to Takeovers 1044

Case 40-3: Royal Crown Companies, Inc. v. McMahon 1046

Response to Termination 1047

Dissolution 1047

Liquidation 1048

Case 40-4: Maytag Corporation v. Navistar International Transportation Co. et al. 1048

Case Opener Wrap-Up: DaimlerChrysler 1050

Summary 1051

Point/Counterpoint 1052

Questions & Problems 1053

CHAPTER 41**Corporations: Securities and Investor Protection 1056****Case Opener**

The Martha Stewart Case 1056

What Is a Security? 1058

Case 41-1: Securities and Exchange Commission v. Life Partners, Inc. 1059

Securities Regulation 1060

The Securities and Exchange Commission 1060

The Securities Act of 1933 1062

Registration Statement 1062

Prospectus 1062

Periods of the Filing Process 1063

Special Registration Provisions 1064

Exemptions under the 1933 Act 1064

Violations and Liability 1067

Case 41-2: Steven Klein, Warren Brandwine v. General Nutrition Companies, Inc. 1068

The Securities Exchange Act of 1934 1070

Section 10(b) and Rule 10b-5 1070

Insider Trading 1070

Case 41-3: Securities and Exchange Commission v. Texas Gulf Sulphur Co. 1071

The Private Securities Litigation Reform Act of 1995 1072

Outsiders and Insider Trading 1073

Case 41-4: United States of America v. David Carpenter 1073

Section 16(b) 1075

Case 41-5: John Litzler v. CC Investments, L.D.C. 1075

Proxy Solicitations 1077

Violations of the 1934 Act 1077

Regulation of Investment Companies 1078
 State Securities Laws 1078
 Case Opener Wrap-Up: Martha Stewart 1079
 Summary 1080
 Point/Counterpoint 1081
 Questions & Problems 1082

Part Eight

EMPLOYMENT AND LABOR RELATIONS

CHAPTER 42

Employment and Labor Law 1086

Case Opener

Madison and Save Right Pharmacy 1086
 Introduction to Labor and Employment Law 1088
 Fair Labor Standards Act 1089
 Family and Medical Leave Act 1090

Case 42-1: Kimberly Miller, Plaintiff-Appellee, v. AT&T Corporation, a Foreign Corporation, Defendant-Appellant 1091

Remedies for Violations of FMLA 1093

Unemployment Compensation 1094

Workers' Compensation Laws 1094

Benefits under State Workers' Compensation 1094

Historical Basis for Workers' Compensation 1095

Case 42-2: Delgado v. Phelps Dodge Chino, Inc. 1096

Employer and Employee Advantages and Disadvantages of Workers' Compensation 1097

Consolidated Omnibus Budget Reconciliation Act of 1985 1098

Employee Retirement Income Security Act of 1974 1098

Occupational Safety and Health Act of 1970 1099
Penalties under OSHA 1099

Employment-at-Will Doctrine and Wrongful Termination 1100

Employee Privacy in the Workplace 1101

Electronic Monitoring and Communication 1102

Case 42-3: United States of America, Plaintiff-Appellee, v. Eric Neil Angevine, Defendant-Appellant 1102

Drug Testing in the Workplace 1105

Labor Law 1105

The Wagner Act of 1935 1106

The Taft-Hartley Act of 1947 1107

The Landrum-Griffin Act of 1959 1107

The National Labor Relations Board 1107

Case 42-4: Frazier Industrial Company, Inc., Petitioner, v. National Labor Relations Board, Respondent 1109

The Collective Bargaining Process 1111

Strikes, Picketing, and Boycotts 1112

Case Opener Wrap-Up: Madison and Save Right Pharmacy 1113

Summary 1114

Point/Counterpoint 1115

Questions & Problems 1116

CHAPTER 43

Employment Discrimination 1120

Case Opener

Brad Gets Fired from "So Clean!" 1120

When May an Employee Be Fired? 1122

Federal Laws Governing Employers 1123

The Civil Rights Act—Title VII 1123

Proving Disparate-Treatment Discrimination under Title VII 1124

Proving Disparate-Impact Discrimination under Title VII 1125

Sexual Harassment under Title VII 1125

Case 43-1: Teresa Harris v. Forklift Systems, Inc. 1126

Case 43-2: Oncale v. Sundowner Offshore Services, Inc. 1128

Harassment of Other Protected Classes under Title VII 1130

Pregnancy Discrimination Act of 1987—An Amendment to Title VII 1130

Defenses to Claims under Title VII 1130

Remedies under Title VII 1131

Procedure for Filing a Claim under Title VII 1132

Age Discrimination in Employment Act of 1967 1133

Proving Age Discrimination under ADEA 1133

Case 43-3: James v. Sears, Roebuck & Co. 1134

Defenses under ADA 1135

Americans with Disabilities Act 1136

Who Is Protected under ADA? 1136

Case 43-4: Toyota Motor Manufacturing, Kentucky, Inc., Petitioner, v. Ella Williams 1137

Enforcement Procedures under ADA 1138

Remedies for Violations of ADA 1138

Equal Pay Act of 1963 1139

Defining Equal Work under EPA 1140

The Impact of Extra Duties under EPA 1140

Defenses under EPA 1141

Remedies for Violations of EPA 1141

Discrimination Based on Sexual Orientation—
Actionable? 1141

May an Employer Discriminate against a
Smoker? 1143

Employment Discrimination Internationally 1143

Case Opener Wrap-Up: Brad versus So Clean
and Jennifer 1144

Summary 1145

Point/Counterpoint 1146

Questions & Problems 1146

Part Nine

GOVERNMENT REGULATION

CHAPTER 44

Administrative Law 1150

Case Opener

Does the EPA Have an Obligation to Regulate
Automobile Emissions? 1150

Introduction to Administrative Law 1152

What Is Administrative Law? 1152

Why and How Are Agencies Created? 1152

Case 44-1: Lakeland Enterprises of Rhinelander, Inc. v. Chao 1153

Different Types of Administrative Agencies 1155

How Are Agencies Run? 1156

Informal Rule Making 1157

Formal Rule Making 1157

Hybrid Rule Making 1158

Exempted Rule Making 1158

Case 44-2: National Cable & Telecommunications Assn. v. Gulf Power Co. 1159

Regulated Negotiation 1160

Problems Associated with Rule Making 1161

Other Administrative Activities 1161

Case 44-3: Dearborn v. Real Estate Agency 1162

Limitations on Agency Powers 1163

Political Limitations 1163

Statutory Limitations 1163

Judicial Limitations 1163

Informational Limitations 1164

Federal and State Administrative Agencies 1164

Case Opener Wrap-Up: EPA 1164

Summary 1165

Point/Counterpoint 1167

Questions & Problems 1167

CHAPTER 45

Consumer Law 1172

Case Opener

The Firestone Recall 1172

The Federal Trade Commission 1174

How the FTC Brings an Action 1174

Trade Regulation Rules 1175

Deceptive Advertising 1175

Case 45-1: Kraft Inc. v. Federal Trade Commission 1177

Bait-and-Switch Advertising 1179

FTC Actions against Deceptive Advertising 1180

Telemarketing and Electronic Advertising 1181

Tobacco Advertising 1183

Labeling and Packaging Laws 1183

Sales 1184

Door-to-Door Sales 1185

Telephone and Mail-Order Sales 1185

*FTC Regulation of Sales in Specific
Industries* 1186

Credit Protection 1188

The Truth-in-Lending Act 1188

The Fair Credit Reporting Act 1189

Case 45-2: Richard D. Kennedy and Sally S. Kennedy v. Chase Manhattan Bank, USA, N.A., et al. 1191

The Fair Debt Collection Practices Act 1192

Case 45-3: George W. Heintz et al. v. Darlene Jenkins 1193

The Credit Card Fraud Act 1194

The Fair Credit Billing Act 1195

*The Fair and Accurate Credit Transactions
Act* 1195

Consumer Health and Safety 1195

The Federal Food, Drug, and Cosmetic Act 1195

Case 45-4: Food and Drug Administration et al. v. Brown & Williamson Tobacco Corporation et al. 1196

The Consumer Product Safety Act 1199

Case Opener Wrap-Up: Firestone 1200

Summary 1200

Point/Counterpoint 1201

Questions & Problems 1202

CHAPTER 46

Environmental Law 1206

Case Opener

Rogers Corporation's Hazardous Waste Debacle 1206

Alternative Means of Protecting the Environment	1208
<i>Tort Law</i>	1208
Case 46-1: Boomer v. Atlantic Cement Company	1208
<i>Government Subsidies</i>	1210
<i>Marketable Discharge Permits</i>	1210
<i>Green Taxes</i>	1211
<i>Direct Regulation</i>	1211
The Environmental Protection Agency	1212
The National Environmental Policy Act	1214
<i>Environmental Impact Statements</i>	1214
Case 46-2: Department of Transportation v. Public Citizen	1215
Regulating Air Quality	1217
<i>National Ambient Air Quality Standards</i>	1218
Case 46-3: Christine Todd Whitman, Administrator of Environmental Protection Agency, et al. v. American Trucking Associations, Inc., et al.	1220
<i>Toxic or Hazardous Air Pollutants</i>	1221
<i>Enforcement of the Clean Air Act</i>	1222
Regulating Water Quality	1222
<i>Clean Water Act</i>	1222
<i>Safe Drinking Water Act</i>	1223
Regulating Hazardous Waste	1224
<i>Resource Conservation and Recovery Act</i>	1224
<i>Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended by the Superfund Amendment and Reauthorization Act of 1986</i>	1226
Regulating Toxic Substances	1228
<i>Toxic Substances Control Act</i>	1228
<i>Federal Insecticide, Fungicide, and Rodenticide Act</i>	1228
<i>International Environmental Considerations</i>	1229
Case Opener Wrap-Up: Rogers Corporation	1231
Summary	1231
Point/Counterpoint	1233
Questions & Problems	1234
CHAPTER 47	
Antitrust Law	1238
Case Opener	
The NCAA and Restrictions on Participation in Tournaments	1238
History of and Rationale for Antitrust Law	1240
<i>The Need for Regulation</i>	1240
<i>Rationale for Antitrust Laws</i>	1240
<i>Recent Regulatory Attitudes</i>	1241
<i>Exemptions from Antitrust Law</i>	1242

The Sherman Act	1243
<i>Jurisdiction of the Sherman Act</i>	1244
<i>Section 1 of the Sherman Act</i>	1244
Case 47-1: Continental T.V., Inc. v. GTE Sylvania Inc.	1247
Case 47-2: State Oil Company, Petitioner, v. Barkat U. Khan and Khan & Associates, Inc.	1249
<i>Section 2 of the Sherman Act</i>	1251
Case 47-3: PepsiCo, Inc., Plaintiff, v. The Coca-Cola Company, Defendant	1252
Case 47-4: Neo Gen Screening, Inc., Plaintiff, Appellant, v. New England Newborn Screening Program	1257
The Clayton Act	1258
<i>Section 2: Price Discrimination</i>	1258
<i>Section 3: Exclusionary Practices</i>	1259
<i>Section 7: Mergers</i>	1260
Case 47-5: Federal Trade Commission, Plaintiff-Appellant, v. H.J. Heinz, Co. and Milnot Holding Corp., Defendants-Appellees	1263
<i>Section 8: Interlocking Directorates</i>	1265
The Federal Trade Commission Act	1266
The Robinson-Patman Act	1266
Enforcement of Antitrust Laws	1266
<i>Public Enforcement</i>	1267
<i>Private Enforcement</i>	1267
Case Opener Wrap-Up: NCAA	1268
Summary	1268
Point/Counterpoint	1270
Questions & Problems	1271

Part Ten PROPERTY

CHAPTER 48

The Nature of Property, Personal Property, and Bailments 1276

Case Opener

Prisoners and Personal Property	1276
The Nature and Classifications of Property	1278
Personal Property	1278
<i>Voluntary Transfer of Property</i>	1278

Case 48-1: Margaret Ann Coley, Appellant, v. Margie Walker, as Administratrix of the Estate of Willodean Duke Cray 1280

Case 48-2: Heinman v. Parrish, Appellant 1282

<i>Involuntary Transfers of Personal Property</i>	1283
---	------

Case 48-3: Paul Long, Indiana State Pipe Trades Association and United Association Local v. Dilling Mechanical Contractors, Inc. 1283

Bailment 1285

Rights and Duties of the Bailor 1286

Rights and Duties of the Bailee 1286

Documents Related to Bailments 1287

Special Bailments 1288

Case 48-4: Missouri Pacific Railway Co., Appellant, v. Elmore & Stahl 1289

Case Opener Wrap-Up: Prisoners and Personal Property 1291

Summary 1291

Point/Counterpoint 1292

Questions & Problems 1293

CHAPTER 49

Real Property 1296

Case Opener

Economic Redevelopment in Poletown 1296

The Nature of Real Property 1298

Fixtures 1298

Extent of Ownership 1299

Interests in Real Property 1299

Fee Simple Absolute 1299

Conditional Estate 1299

Life Estate 1300

Case 49-1: Sauls v. Crosby 1300

Future Interest 1301

Leasehold Estates 1301

Nonpossessory Estates 1302

Co-ownership 1303

Tenancy in Common 1303

Joint Tenancy 1303

Tenancy by the Entirety 1304

Condominiums and Cooperatives 1304

Case 49-2: Natore A. Nahrstedt v. Lakeside Village Condominium Association, Inc., et al., and Respondents 1305

Voluntary Transfer of Real Property 1306

Legal Requirements 1306

Sales Transactions 1308

Involuntary Transfer of Real Property 1310

Adverse Possession 1310

Case 49-3: Jung Kee Kim v. Douval Corporation, d/b/a Wash Fair 1311

Condemnation 1313

Case 49-4: Kelo v. City of New London 1313

Restrictions on Land Use 1318

Restrictive Covenants 1318

Zoning 1318

Other Statutory Restrictions on Land Use 1320

Case 49-5: Dolan v. City of Tigard 1320

Case Opener Wrap-Up: Poletown 1322

Summary 1323

Point/Counterpoint 1324

Questions & Problems 1325

CHAPTER 50

Landlord-Tenant Law 1328

Case Opener

Landlord Liability for Tom Wenzel 1328

Creation of the Landlord-Tenant Relationship 1330

Types of Leases 1330

Fair Housing Act 1331

Case 50-1: Fair Housing Congress v. Charles Weber 1332

Rights and Duties of the Landlord and the Tenant 1334

Possession of the Premises 1334

Case 50-2: Janet I. Benitez v. Sebastiano Restifo 1335

Eviction 1336

Case 50-3: Proctor et al. v. Frame et al. 1337

Use of the Premises 1338

Case 50-4: Nancy McCormick v. Robert Moran, Small Claims #5176 1339

Maintenance of the Premises 1341

Rent 1342

Liability for Injuries on the Premises 1344

Landlord's Liability 1344

Case 50-5: Karen Jenkins v. Toni Boyce 1345

Tenant's Liability 1347

Transferring Interests of Leased Property 1347

Landlord Transfer of Interest 1348

Tenant Transfer of Interest 1348

Termination of the Lease 1348

Breach of Condition by Landlord 1349

Forfeiture 1349

Destruction of the Premises 1349

Surrender 1349

Abandonment 1350

Case Opener Wrap-Up: Landlord Liability 1350
 Summary 1350
 Point/Counterpoint 1352
 Questions & Problems 1353

CHAPTER 51

Insurance Law 1356

Case Opener

Nationwide Life Insurance 1356
 The Nature of the Insurance Relationship 1358
 Risk 1358
 Insurable Interest 1359
 The Insurance Contract 1359
 Application for Insurance 1359

Case 51-1: C. Stan Derbidge v. Mutual Protective Insurance Company 1360

Case 51-2: Equity Fire & Casualty Company v. Laurence Traver 1363
 Important Elements of the Insurance Contract 1364

Case 51-3: Eileen Nygaard v. State Farm Insurance Company 1365

Canceling the Insurance Policy 1369
 Insurer and Insured Obligations 1370
 Insurer Duty to Defend the Insured 1370
 Insured Duty to Pay Sums Owed by the Insured 1370
 Insured Duty to Disclose Information 1370
 Insured Duty to Cooperate with the Insurer 1370
 The Insurer's Defenses for Nonpayment 1370
 Types of Insurance 1371
 Liability Insurance 1371
 Fire Insurance 1373
 Marine Insurance 1373
 Life Insurance 1374

Case Opener Wrap-Up: Karon Altman 1376
 Summary 1377
 Point/Counterpoint 1378
 Questions & Problems 1379

CHAPTER 52

Wills and Trusts 1384

Case Opener

The Battle of the Billionaires 1384

Estate Planning 1386
 The Uniform Probate Code 1386
 Tools of Estate Planning 1386
 Why Individuals Engage in Estate Planning 1386

Case 52-1: Deborah Ellen Hecht v. William Everett Kane, Jr. 1387

Legal Issues Related to Wills 1389
 Intestacy Statutes 1389
 Requirements for a Legally Valid Will 1389
 Grounds for Contesting a Will 1390

Case 52-2: In re the Estate of Leanora Diaz 1390

Changing a Will 1392
Revoking a Will 1393

Case 52-3: In re the Estate of Charles Kuralt, Deceased 1393

Settlement of an Estate 1395
 Trusts as Estate Planning Tools 1395
 How and Why Individuals Create Trusts 1395
 Basic Kinds of Trusts 1396
 How Trusts Are Terminated 1397
 End-of-Life Decisions 1397
 Advance Directives 1397
 Anatomical Gifts 1399
 Choices about the Body after Death 1399

Case 52-4: Deborah M. Andrews v. William T. McGowan 1400

International Protection for Wills 1401
 Case Opener Wrap-Up: Billionaire 1402
 Summary 1403
 Point/Counterpoint 1404
 Questions & Problems 1405

APPENDIXES

APPENDIX A

The Constitution of the United States of America

APPENDIX B

Uniform Commercial Code

APPENDIX C

Title VII of the Civil Rights Act of 1964

APPENDIX D

The Civil Rights Act of 1991

Glossary G-1

Index I-1