

S M I T H & R O B E R S O N ' S

BUSINESS LAW

16TH EDITION

RICHARD A. MANN

BARRY S. ROBERTS

SMITH & ROBERSON'S

Business Law

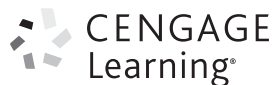
SIXTEENTH EDITION

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PREFACE

The format of the *Sixteenth Edition* follows the tradition established by prior editions, in that chapters contain narrative text, illustrations, cases consisting of selected court decisions, chapter summaries, and end-of-chapter questions and case problems. We have added several new features: Chapter Objectives at the beginning of every chapter, Applying the Law in a number of chapters, Practical Advice throughout the narrative text in every chapter, and Taking Sides at the end of chapters.

TOPICAL COVERAGE

This text is designed for use in business law and legal environment of business courses generally offered in universities, colleges, schools of business and commerce, community colleges, and junior colleges. By reason of the text's broad and deep coverage, instructors may readily adapt this text to specially designed courses in business law or the legal environment of business by assigning and emphasizing different combinations of chapters.

Furthermore, this text covers the following parts of the CPA Exam: (1) the legal responsibilities and liabilities of accountants section and (2) the corporate governance portion of the business environment and concepts section. See the inside front cover of this text for a detailed listing of the CPA Exam topics covered in this text as well as the chapters covering each topic.

Emphasis has been placed upon the regulatory environment of business law: the first eight chapters introduce the legal environment of business, and *Part 9 (Chapters 39 through 46)* addresses government regulation of business.

UP-TO-DATE

The constitutional law chapter (*Chapter 4*) discusses the U.S. Supreme Court's decisions in the cases challenging the constitutionality of the Patient Protection and Affordable Care Act and the Defense of Marriage Act. The two torts

chapters (*Chapters 7 and 8*) have been revised to incorporate Volume 2 of the new Restatement of the Law Third, Torts: Liability for Physical and Emotional Harm, which was approved and published in 2011. Coverage of the 2012 amendments to Uniform Commercial Code (UCC) Article 4A has been added. The Secured Transactions chapter (now *Chapter 37*) covers the most significant provisions of the 2010 amendments to UCC Article 9. The Intellectual Property chapter (now *Chapter 39*) includes the changes made by the Leahy-Smith America Invents Act of 2011 and the Foreign and Economic Espionage Penalty Enhancement Act of 2012. The chapter on Securities Regulation (now *Chapter 43*) covers the Jumpstart Our Business Startups Act of 2012, the Stop Trading on Congressional Knowledge Act of 2012, and the U.S. Securities and Exchange Commission's new disclosure rules clarifying how companies can use social media to disseminate information. Also, former *Chapters 27 and 28* have been combined into one chapter, titled "Transfer and Holder in Due Course" to integrate the concepts covered.

READABILITY OF NARRATIVE TEXT

To make the text as readable as possible, all unnecessary "legalese" has been omitted, and necessary legal terms have been printed in boldface and clearly defined, explained, and illustrated. Each chapter is carefully organized with sufficient levels of subordination to enhance the accessibility of the material. The text is enriched by numerous illustrative hypothetical and case examples, which help students relate the material to real-life experiences. The end-of-chapter cases are cross-referenced in the text, as are related topics covered in other chapters.

CHAPTER OBJECTIVES

Each chapter now begins with a list of learning objectives for the student.

APPLYING THE LAW

A number of chapters include a new feature—Applying the Law—that provides a systematic legal analysis of a specific concept learned in that chapter. It consists of (1) the facts of a hypothetical case, (2) an identification of the broad legal issue presented by those facts, (3) a statement of the applicable rule, (4) the application of the rule to the facts, and (5) a legal conclusion in the case.

PRACTICAL ADVICE

In this edition, we have added to each chapter a number of statements that illustrate how legal concepts covered in that chapter can be applied to common business situations.

CASE TREATMENT

All the cases have been edited carefully to preserve the actual language of the court and to show the essential facts of the case, the issue or issues involved, the decision of the court, and the reason for its decision. We have retained the landmark cases from the prior edition. In addition, we have incorporated more than 30 recent cases, including the following U.S. Supreme Court cases: *Mims v. Arrow Financial Services, LLC*; *Nitro-Lift Technologies, LLC v. Howard*; *Williamson v. Mazda Motor of America, Inc.*; *Brown v. Entertainment Merchants Association*; *Mayo Foundation for Medical Education and Research v. United States*; *Sackett v. Environmental Protection Agency*; *Radlax Gateway Hotel, LLC v. Amalgamated Bank*; *Association for Molecular Pathology v. Myriad Genetics, Inc.*; *Matrixx Initiatives, Inc. v. Siracusano*; *Vance v. Ball State University*; *Freeman v. Quicken Loans, Inc.*; and *Morrison v. National Australia Bank Ltd.*

ILLUSTRATIONS

We have used more than 210 classroom-tested figures, diagrams, charts, tables, and chapter summaries. The figures and diagrams help the students conceptualize the many abstract concepts in the law; the charts and tables not only summarize prior discussions but also help to illustrate relationships among legal rules. Moreover, each chapter has a summary in the form of an annotated outline of the entire chapter, including key terms.

END-OF-CHAPTER QUESTIONS AND CASE PROBLEMS

Classroom-proven questions and case problems appear at the ends of chapters to test the student's understanding of major concepts. We have used the questions (based on hypo-

thetical situations) and the case problems (taken from reported court decisions) in our own classrooms and consider them excellent stimulants to classroom discussion. Students, in turn, have found the questions and case problems helpful in enabling them to apply the basic rules of law to factual situations.

TAKING SIDES

Each chapter—except for *Chapters 1* and *2*—has a new end-of-chapter feature that requires students to apply critical-thinking skills to a case-based fact situation. The students are asked to identify the relevant legal rules and develop arguments for both parties to the dispute. In addition, the students are asked to explain how they think a court would resolve the dispute.

APPENDICES

The text contains comprehensive appendices, including the Constitution of the United States (Appendix A); the Uniform Commercial Code (Appendix B); and the Revised Model Business Corporation Act (Appendix C). A comprehensive Dictionary of Legal Terms appears in Appendix D.

PEDAGOGICAL BENEFITS

Classroom use and study of this book should provide the following benefits and skills for the student:

1. Perception and appreciation of the scope, extent, and importance of the law.
2. Basic knowledge of the fundamental concepts, principles, and rules of law that apply to business transactions.
3. Knowledge of the function and operation of courts and government administrative agencies.
4. Ability to recognize the potential legal problems which may arise in a doubtful or complicated situation, and the necessity of consulting a lawyer and obtaining competent professional legal advice.
5. Development of analytical skills and reasoning power.

COMPREHENSIVE LEARNING SOLUTIONS

For more information about any of these ancillaries, visit the Mann and Roberts *Smith & Roberson's Business Law* companion website at www.cengagebrain.com.

INSTRUCTOR RESOURCES

- **Instructor's Manual** The Instructor's Manual, prepared by Richard A. Mann, Barry S. Roberts, and Beth D. Woods, contains opening ethics questions, suggested activities, and research projects; chapter outlines; teaching

notes; answers to the Questions and Case Problems; briefs to cases; and suggested case questions for students.

- **PowerPoint® Slides** These slides clarify course content and guide student note-taking during lectures.
- **Test Bank** The Test Bank contains thousands of true/false, multiple-choice, and essay questions. The questions vary in levels of difficulty and meet a full range of tagging requirements so that instructors can tailor their testing to meet their specific needs.
- **Cognero** Cengage Learning Testing Powered by Cognero is a flexible, online system that allows you to
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- **Cross-compatible capability.** Import and export content into other systems.

COURSEMATE

Cengage Learning's CourseMate for *Smith & Roberson's Business Law*, sixteenth edition, brings course concepts to life with interactive learning, study, and exam preparation tools—including an e-book—that supports the printed textbook. Brand new to this edition, student study materials and a set of auto-gradable, interactive quizzes allow students to instantly gauge their comprehension of the material. Built-in engagement tracking tools allow instructors to follow students' study activities and assess their progress.

BUSINESS LAW DIGITAL VIDEO LIBRARY

Featuring more than one hundred video clips that spark class discussion and clarify core legal principles, the Business Law Digital Video Library is organized into six series: Legal Conflicts in Business (includes specific modern business and e-commerce scenarios); Ask the Instructor (presents straightforward explanations of concepts for student review); Drama of the Law (features classic business scenarios that spark classroom participation); LawFlix (contains clips from many popular films); Real-World Legal (presents legal scenarios encountered in real businesses); and Business Ethics in Action (presents ethical dilemmas in business scenarios). For more information about the Digital Video Library, visit www.cengage.com/blaw/dvl. Access for students is free when bundled with a new textbook or can be purchased separately. Students must register for and purchase access to the Digital Video Library at www.cengagebrain.com.

STUDENT GUIDE TO THE SARBANES-OXLEY ACT (ISBN 9780324827194)

This brief overview for undergraduate business students explains the Sarbanes-Oxley Act, describes its requirements, and shows how it potentially affects students in their business life. The guide is available as an optional package with the text.

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CENGAGE LEARNING'S GLOBAL ECONOMIC WATCH (GEW) RESOURCE CENTER

This is your source for turning today's challenges into tomorrow's solutions. This online portal houses the most current and up-to-date content concerning the economic crisis. Organized by discipline, the GEW Resource Center offers the solutions instructors and students need in an easy-to-use format. Included are an overview and timeline of the historical events leading up to the crisis, links to the latest news and resources, discussion and testing content, an instructor feedback forum, and a Global Issues Database. Visit www.cengage.com/thewatch for more information.

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Richard A. Mann

Barry S. Roberts



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THE LEGAL ENVIRONMENT OF BUSINESS



KENNETH GARRETT/MEDIA BAKERY

- CHAPTER 1 Introduction to Law
- CHAPTER 2 Business Ethics and the Social Responsibility of Business
- CHAPTER 3 Civil Dispute Resolution
- CHAPTER 4 Constitutional Law
- CHAPTER 5 Administrative Law
- CHAPTER 6 Criminal Law
- CHAPTER 7 Intentional Torts
- CHAPTER 8 Negligence and Strict Liability

INTRODUCTION TO LAW

CHAPTER OUTCOMES

After reading and studying this chapter, you should be able to:

- Identify and describe the basic functions of law.
- Distinguish between (1) law and justice and (2) law and morals.
- Distinguish between (1) substantive and procedural law, (2) public and private law, and (3) civil and criminal law.
- Identify and describe the sources of law.
- Explain the principle of *stare decisis*.

Law concerns the relations of individuals with one another as such relations affect the social and economic order. It is both the product of civilization and the means by which civilization is maintained. As such, law reflects the social, economic, political, religious, and moral philosophy of society. The laws of the United States influence the lives of every U.S. citizen. At the same time, the laws of each State influence the lives of its citizens and the lives of many noncitizens as well. The rights and duties of all individuals, as well as the safety and security of all people and their property, depend upon the law.

The law is pervasive. It interacts with and influences the political, economic, and social systems of every civilized society. It permits, forbids, or regulates practically every human activity and affects all persons either directly or indirectly. Law is, in part, prohibitory: certain acts must not be committed. For example, one must not steal; one must not murder. Law is also partly mandatory: certain acts must be done or be done in a prescribed way. Taxes must be paid; corporations must make and file certain reports with State or Federal authorities; traffic must keep to the right. Finally, law is permissive: individuals may choose to perform or not to perform certain acts. Thus, one may or may not enter into a contract; one may or may not dispose of one's estate by will.

Because the areas of law are so highly interrelated, an individual who intends to study the several branches of law known collectively as business law should first consider the nature, classification, and sources of law as a whole. This enables the student not only to comprehend better any given branch of law but also to understand its relation to other areas of law.

NATURE OF LAW

The law has evolved slowly, and it will continue to change. It is not a pure science based upon unchanging and universal truths. Rather, it results from a continuous effort to balance, through a workable set of rules, the individual and group rights of a society. In *The Common Law*, Oliver Wendell Holmes wrote,

The life of the law has not been logic; it has been experience. The felt necessities of the time, the prevalent moral and political theories, avowed or unconscious, even the prejudices which judges share with their fellowmen, have had a good deal more to do than the syllogism in determining the rules by which men should be governed. The law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics.

DEFINITION OF LAW

A fundamental but difficult question regarding law is this: what is it? Numerous philosophers and jurists (legal scholars) have attempted to define it. American jurists and Supreme Court Justices Oliver Wendell Holmes and Benjamin Cardozo defined law as predictions of the way that a court will decide specific legal questions. William Blackstone, an English jurist, on the other hand, defined law as "a rule of civil conduct prescribed by the supreme power in a state, commanding what is right, and prohibiting what is wrong."