

Contents

Preface

xxiii

PART I

THE LEGAL ENVIRONMENT

CHAPTER 1

Overview of the U.S. Legal System

3

Learning Objectives

3

Introduction

3

Common Law and the English Antecedents of U.S. Law Today

3

Sources of Law

4

Relationships Between Sources of Law

4

 United States Constitution

5

 Statutory Law

5

 Administrative Law

6

 Caselaw

9

Federalism

9

 Federal Law

10

 State Law

10

 Supremacy

11

 Separation of Powers

11

Civil Law

12

Ethical Issues

13

Criminal Law

13

Chapter Summary

13

Relevant Web Sites

13

Exercises

14

Questions

14

Hypotheticals

14

Sample Cases

14

Key Terms

15

CHAPTER 2

The U.S. Court System

17

Learning Objectives

17

Introduction

17

The Players in a Lawsuit

17

Causes of Action

19

xi

Burden of Proof	20
Standards of Proof	20
Court Structures	22
Law and Equity	24
Federalism and Courts	25
Caselaw and Precedent	27
<i>Ethical Issues</i>	29
Chapter Summary	29
<i>Relevant Web Sites</i>	30
<i>Exercises</i>	30
<i>Questions</i>	30
<i>Hypotheticals</i>	31
<i>Sample Cases</i>	31
<i>Key Terms</i>	31
CHAPTER 3	
Contract Fundamentals	35
<i>Learning Objectives</i>	35
Introduction	35
Contract Classification	36
Mutuality of Assent	36
Offer	37
Required Terms of an Offer	38
Revocation	38
Acceptance	39
Acceptance of the Unilateral Contract	39
Consideration	39
Historical Development of Consideration	40
Bargained-For Exchange	41
Adequate Consideration	41
Not Consideration	43
Legality of the Subject Matter	44
Public Policy Considerations	44
Capacity	45
Contractual Intent	46
Misrepresentation and Fraud	47
Duress	48
Mistake	49
<i>Ethical Issues</i>	49
Chapter Summary	49
<i>Relevant Web Sites</i>	50
<i>Exercises</i>	50
<i>Questions</i>	50
<i>Hypotheticals</i>	50
<i>Sample Cases</i>	50
<i>Key Terms</i>	51

CHAPTER 4	
Contracts in Action	53
<i>Learning Objectives</i>	53
Introduction	53
Conditions	54
Express Condition	54
Constructive Condition	55
Rules of Contract Construction	55
General Rules of Construction	56
Parol Evidence Rule	56
Statute of Frauds	58
Contracts for an Interest in Real Property	58
Contracts in Consideration of Marriage	58
Contracts Not Performable Within One Year	59
Suretyship	59
Contracts for the Sale of Goods Valued at More Than a Specified Amount	59
Executor's Promise	59
Discharge of Obligation	60
Excuse of Conditions	60
Performance	60
Breach of Contract	61
Agreement of the Parties	61
Impossibility of Performance	62
Supervening Illegality	62
Death or Destruction	62
Frustration of Purpose	62
Third-Party Beneficiaries	63
Assignment	63
Remedies	64
Legal Remedies	65
Compensatory Damages	65
Punitive Damages	65
Consequential Damages	65
Liquidated Damages	66
Equitable Remedies	66
Injunctions	66
Specific Performance	66
Rescission and Restitution	66
Reformation	66
Quasi-Contractual Remedies	67
Contract Disputes	67
<i>Ethical Issues</i>	68
Chapter Summary	69
<i>Relevant Web Sites</i>	69
<i>Exercises</i>	69
<i>Questions</i>	69

<i>Hypotheticals</i>	69
<i>Sample Cases</i>	70
<i>Key Terms</i>	70
CHAPTER 5	
UCC, Commercial Paper, and Electronic Commerce	73
<i>Learning Objectives</i>	73
Introduction	73
Background of the UCC	74
Electronic Commerce	75
UCC-Related Electronic Commerce	75
Uniform Computer Information Transactions Act	76
Overview of the UCC	76
UCC Article 2: Sales of Goods	78
Negotiable Instruments	82
Chapter Summary	84
<i>Ethical Issues</i>	85
<i>Relevant Web Sites</i>	85
<i>Exercises</i>	85
<i>Questions</i>	85
<i>Hypotheticals</i>	85
<i>Sample Cases</i>	86
<i>Key Terms</i>	86
CHAPTER 6	
Agency Law	89
<i>Learning Objectives</i>	89
Introduction	89
Creation of Agency	90
Independent Contractors	90
Duties	92
Liabilities to Third Parties	92
Contractual Liability	96
Tort Liability	97
E-Agents	97
Termination of Agency	97
<i>Ethical Issues</i>	98
Chapter Summary	98
<i>Relevant Web Sites</i>	99
<i>Exercises</i>	99
<i>Questions</i>	99
<i>Hypotheticals</i>	99
<i>Sample Cases</i>	99
<i>Key Terms</i>	100

CHAPTER 7	
Employment Law	101
<i>Learning Objectives</i>	101
Introduction	101
Employee or Independent Contractor	102
Employment at Will	103
Common Law Claims	104
Workers' Compensation	104
Occupational Safety and Health Act of 1970	105
Family and Medical Leave Act of 1993	105
Discrimination	106
Intentional versus Unintentional Discrimination	109
Disparate Treatment	109
Disparate Impact	110
Affirmative Action	110
Income Security	111
Sexual Harassment	112
<i>Ethical Issues</i>	113
Employee Privacy	113
Chapter Summary	114
<i>Relevant Web Sites</i>	114
<i>Exercises</i>	114
<i>Questions</i>	114
<i>Hypotheticals</i>	114
<i>Sample Cases</i>	115
<i>Key Terms</i>	115
CHAPTER 8	
Property Rights	119
<i>Learning Objectives</i>	119
Introduction	119
Property Attributes	119
Property Types	121
Proof of Ownership and Title	122
Concurrent Ownership	122
Use and Control of Other's Property	124
Gifts	124
Public and External Control	125
Chapter Summary	126
<i>Ethical Issues</i>	127
<i>Relevant Web Sites</i>	127
<i>Exercises</i>	127
<i>Questions</i>	127
<i>Hypotheticals</i>	127

<i>Sample Cases</i>	128
<i>Key Terms</i>	128

CHAPTER 9

Torts and Civil Wrongs 131

<i>Learning Objectives</i>	131
Introduction	131
Basic Tort Law	132
Intentional Torts	132
Trespass	132
Assault	133
Battery	133
Unintentional Torts	134
Negligence	134
Duty and Breach	134
Causation	135
Damages	136
Res Ipsa Loquitur	136
Good Samaritan Laws	136
Defenses to Torts	136
Assumption of Risk	137
Comparative Negligence	137
Strict Liability	137
Products Liability	138
Abnormally Dangerous Activities	138
Class Action Lawsuits	139
Business Torts	139
Cyber Torts	140
<i>Ethical Issues</i>	141
Chapter Summary	141
<i>Relevant Web Sites</i>	142
<i>Exercises</i>	142
<i>Questions</i>	142
<i>Hypotheticals</i>	142
<i>Sample Cases</i>	142
<i>Key Terms</i>	143

PART II

BUSINESS FORMATS

CHAPTER 10

Legal Considerations in Selecting the Business Format 147

<i>Learning Objectives</i>	147
Introduction	147

Where to Set Up the Business	147
Control	148
Liability	148
Tax Treatment	149
Capitalization	150
Transferability of Ownership	150
<i>Ethical Issues</i>	151
Chapter Summary	151
<i>Relevant Web Sites</i>	151
<i>Exercises</i>	151
<i>Questions</i>	151
<i>Hypotheticals</i>	151
<i>Sample Cases</i>	152
<i>Key Terms</i>	152

CHAPTER 11

Overview of the Variety of Business Formats 153

<i>Learning Objectives</i>	153
Introduction	153
Sole Proprietorships	154
Owners	154
Ownership	154
Liability	154
Taxes	155
Control	155
Transferability of Interest	155
Creation	155
Continuity	156
Partnerships	156
Owners	156
Ownership	157
Liability	157
Taxes	158
Control	158
Transferability of Interest	159
Creation	159
Continuity	159
Limited Partnerships	160
Owners	160
Ownership	160
Liability	160
Taxes	161
Control	161
Transferability of Interest	161
Creation	161
Continuity	162

Corporations	162
Owners	162
Ownership	162
Liability	162
Taxes	163
Control	164
Transferability of Interest	164
Creation	164
Continuity	165
Limited Liability Partnerships	165
Owners	165
Ownership	165
Liability	165
Taxes	166
Control	166
Transferability of Interest	166
Creation	166
Continuity	166
Limited Liability Companies	167
Owners	167
Ownership	167
Liability	167
Taxes	167
Control	167
Transferability of Interest	168
Creation	168
Continuity	168
Chapter Summary	168
<i>Ethical Issues</i>	169
<i>Relevant Web Sites</i>	169
<i>Exercises</i>	169
<i>Questions</i>	169
<i>Hypotheticals</i>	169
<i>Sample Cases</i>	170
<i>Key Terms</i>	170
CHAPTER 12	
Formation of Corporations	173
<i>Learning Objectives</i>	173
Introduction	173
Preincorporation	173
Choice of Jurisdiction	174
Registered Agents	176
Corporate Name	177
Process	177
Articles of Incorporation	178

Purpose	178
Duration	179
Capital Stock	179
Bylaws	179
De Jure Corporations	180
Defective Corporations	180
De Facto Corporation	180
Corporation by Estoppel	180
<i>Ethical Issues</i>	181
Chapter Summary	181
<i>Relevant Web Sites</i>	181
<i>Exercises</i>	181
<i>Questions</i>	181
<i>Hypotheticals</i>	182
<i>Sample Cases</i>	182
<i>Key Terms</i>	182
CHAPTER 13	
Corporate Financial Structure	185
<i>Learning Objectives</i>	185
Introduction	185
Financing the Corporation	185
Equity Securities	186
Common Stock	186
Preferred Stock	187
Debt Securities	188
Bonds	188
Regulation	189
Chapter Summary	189
<i>Ethical Issues</i>	190
<i>Relevant Web Sites</i>	190
<i>Exercises</i>	190
<i>Questions</i>	190
<i>Hypotheticals</i>	191
<i>Sample Cases</i>	191
<i>Key Terms</i>	191
CHAPTER 14	
Qualification of Corporations in Foreign Jurisdictions and Piercing the Corporate Veil	193
<i>Learning Objectives</i>	193
Introduction	193
Jurisdiction	193
Qualification of Corporations in Foreign Jurisdictions	194

Authorization	194
Statutory Prohibitions	195
Piercing the Corporate Veil	196
<i>Ethical Issues</i>	198
Chapter Summary	198
<i>Relevant Web Sites</i>	198
<i>Exercises</i>	198
<i>Questions</i>	198
<i>Hypotheticals</i>	199
<i>Sample Cases</i>	199
<i>Key Terms</i>	199
CHAPTER 15	
Corporate Meetings	201
<i>Learning Objectives</i>	201
Introduction	201
Corporate Meetings	201
Types of Meetings	201
Requirements	203
The Future of Annual Meetings	204
Shareholder Agreements	205
Purposes and Requirements	205
Share Transfer Restrictions	205
Fundamental Corporate Changes	207
Amendments to the Articles of Incorporation	207
Mergers and Consolidations	207
Disposition of Assets	208
Dissolution of a Corporation	208
Chapter Summary	208
<i>Ethical Issues</i>	209
<i>Relevant Web Sites</i>	209
<i>Exercises</i>	209
<i>Questions</i>	209
<i>Hypotheticals</i>	208
<i>Sample Cases</i>	210
<i>Key Terms</i>	210
CHAPTER 16	
Limited Liability Companies	211
<i>Learning Objectives</i>	211
Introduction	211
Overview of Limited Liability Companies	212
Advantages and Disadvantages of LLCs	213
Advantages	213
Disadvantages	214

Organization and Control of the Limited Liability Company	214
Dissolution of the LLC	216
Chapter Summary	216
<i>Ethical Issues</i>	217
<i>Relevant Web Sites</i>	217
<i>Exercises</i>	217
<i>Questions</i>	217
<i>Hypotheticals</i>	217
<i>Sample Cases</i>	218
<i>Key Terms</i>	218
CHAPTER 17	
Partnerships and Limited Partnerships	221
<i>Learning Objectives</i>	221
Introduction	221
Overview of Partnerships	222
Partnership Agreement	222
Aggregate or Entity	223
Agency	223
Fiduciary Duty	224
Liability	224
Dissociation	224
Termination	225
Overview of Limited Partnerships	225
Certificate of Limited Partnership	226
Limited Liability of the Limited Partner	226
Chapter Summary	226
<i>Ethical Issues</i>	227
<i>Relevant Web Sites</i>	227
<i>Exercises</i>	227
<i>Questions</i>	227
<i>Hypotheticals</i>	228
<i>Sample Cases</i>	228
<i>Key Terms</i>	228
APPENDIX	
The Constitution of the United States	231
Glossary	245
Index	261

