Business Law

The Ethical, Global, and E-Commerce Environment

SEVENTEENTH EDITION

Arlen W. Langvardt
A. James Barnes
Jamie Darin Prenkert
Martin A. McCrory
Joshua E. Perry
all of Indiana University



Brief Contents

Preface v

Part 1 Foundations of American Law

- 1 The Nature of Law 3
- 2 The Resolution of Private Disputes 35
- 3 Business and the Constitution 67
- 4 Business Ethics, Corporate Social Responsibility, Corporate Governance, and Critical Thinking 113

Part 2 Crimes and Torts

- 5 Criminal Law and Procedure 149
- 6 Intentional Torts 199
- 7 Negligence and Strict Liability 245
- 8 Intellectual Property and Unfair Competition 287

Part 3 Contracts

- **9** Introduction to Contracts 343
- 10 The Agreement: Offer 363
- 11 The Agreement: Acceptance 383
- 12 Consideration 405
- 13 Reality of Consent 425
- 14 Capacity to Contract 445
- 15 Illegality 459
- **16** Writing 483
- 17 Rights of Third Parties 507
- 18 Performance and Remedies 527

Part 4 Sales

- 19 Formation and Terms of Sales Contracts 559
- 20 Product Liability 579
- 21 Performance of Sales Contracts 631
- 22 Remedies for Breach of Sales Contracts 651

Part 5 Property

- 23 Personal Property and Bailments 673
- 24 Real Property 695
- 25 Landlord and Tenant 731
- **26** Estates and Trusts 751
- 27 Insurance Law 775

Part 6 Credit

- 28 Introduction to Credit and Secured Transactions 809
- 29 Security Interests in Personal Property 831
- 30 Bankruptcy 857

Part 7 Commercial Paper

31 Negotiable Instruments 893 xviii

- 32 Negotiation and Holder in Due Course 911
- 33 Liability of Parties 939
- 34 Checks and Electronic Transfers 963

Part 8 Agency Law

- 35 The Agency Relationship 991
- **36** Third-Party Relations of the Principal and the Agent 1011

Part 9 Partnerships

- 37 Introduction to Forms of Business and Formation of Partnerships 1031
- **38** Operation of Partnerships and Related Forms 1053
- 39 Partners' Dissociation and Partnerships' Dissolution and Winding Up 1071
- **40** Limited Liability Companies, Limited Partnerships, and Limited Liability Limited Partnerships 1091

Part 10 Corporations

- 41 History and Nature of Corporations 1115
- **42** Organization and Financial Structure of Corporations 1135
- 43 Management of Corporations 1159
- 44 Shareholders' Rights and Liabilities 1195
- 45 Securities Regulation 1227
- **46** Legal and Professional Responsibilities of Auditors, Consultants, and Securities Professionals 1279

Part 11 Regulation of Business

- **47** Administrative Law 1315
- **48** The Federal Trade Commission Act and Consumer Protection Laws 1349
- **49** Antitrust: The Sherman Act 1383
- **50** The Clayton Act, the Robinson–Patman Act, and Antitrust Exemptions and Immunities 1423
- **51** Employment Law 1455
- **52** Environmental Regulation 1497

Appendix A

The Constitution of the United States of America A-1

Appendix B

Uniform Commercial Code B-1

Glossary G-1 Index I-1 Preface v

Part 1 Foundations of American Law

1 The Nature of Law 3

Types and Classifications of Law 4

The Types of Law 4

Priority Rules 8

Classifications of Law 10

Jurisprudence 10

Legal Positivism 11

Natural Law 11

American Legal Realism 11

Sociological Jurisprudence 12

Other Schools of Jurisprudence 12

The Functions of Law 13

Legal Reasoning 13

Case Law Reasoning 14

Statutory Interpretation 18

Limits on the Power of Courts 28

APPENDIX Reading and Briefing Cases 29

2 The Resolution of Private Disputes 35

State Courts and Their Jurisdiction 36

Courts of Limited Jurisdiction 36

Trial Courts 36

Appellate Courts 37

Jurisdiction and Venue 37

Federal Courts and Their Jurisdiction 43

Federal District Courts 43

Specialized Federal Courts 46

Federal Courts of Appeals 46

The U.S. Supreme Court 46

Civil Procedure 47

Service of the Summons 47

The Pleadings 48

Motion to Dismiss 48

Discovery 49

Summary Judgment 51

The Pretrial Conference 51

The Trial 51

Appeal 54

Enforcing a Judgment 54

Class Actions 54

Alternative Dispute Resolution 58

Common Forms of ADR 58 Other ADR Devices 62

3 Business and the Constitution 67

An Overview of the U.S. Constitution 68

The Evolution of the Constitution and the Role

of the Supreme Court 69

The Coverage and Structure of

This Chapter 69

State and Federal Power to Regulate 70

State Regulatory Power 70

Federal Regulatory Power 70

Independent Checks on the Federal Government

and the States 79

Incorporation 79

Government Action 79

Means-Ends Tests 80

Business and the First Amendment 81

Due Process 94

Equal Protection 95

Independent Checks Applying Only to the

States 104

The Contract Clause 104

Burden on, or Discrimination against, Interstate

Commerce 105

Federal Preemption 106

The Takings Clause 106

4 Business Ethics, Corporate Social Responsibility, Corporate Governance, and Critical Thinking 113

Why Study Business Ethics? 114

The Corporate Social Responsibility Debate 115

Ethical Theories 115

Rights Theory 117

Justice Theory 119

Utilitarianism 119

Shareholder Theory 120

Virtue Theory 123

Improving Corporate Governance and Corporate

Social Responsibility 124

Independent Boards of Directors 126

The Law 128

Guidelines for Ethical Decision Making 129

xx Contents

What Facts Impact My Decision? 129 What Are the Alternatives? 130

Who Are the Stakeholders? 130

How Do the Alternatives Impact Society as a

Whole? 130

How Do the Alternatives Impact My Business

Firm? 131

How Do the Alternatives Impact Me, the Decision

Maker? 131

What Are the Ethics of Each Alternative? 132

What Are the Practical Constraints of Each

Alternative? 133

What Course of Action Should Be Taken and How Do

We Implement It? 133

Knowing When to Use the Guidelines 134

Thinking Critically 134

Non Sequiturs 135

Appeals to Pity 135

False Analogies 135

Begging the Question 135

Argumentum ad Populum 136

Bandwagon Fallacy 136

Argumentum ad Baculum 136

Argumentum ad Hominem 136

Argument from Authority 137

False Cause 137

The Gambler's Fallacy 137

Reductio ad Absurdum 138

Appeals to Tradition 138

The Lure of the New 138

Sunk Cost Fallacy 138

Common Characteristics of Poor Decision

Making 139

Failing to Remember Goals 139

Overconfidence 139

Complexity of the Issues 140

Resisting Requests to Act Unethically 140

Recognizing Unethical Requests and Bosses 140

Buying Time 141

Find a Mentor and a Peer Support Group 141

Find Win-Win Solutions 141

Work within the Firm to Stop the

Unethical Act 142

Prepare to Lose Your Job 143

Leading Ethically 143

Be Ethical 143

Communicate the Firm's Core Ethical Values 143

Connect Ethical Behavior with the Firm's and Workers'

Best Interests 144

Reinforce Ethical Behavior 144

Part 2 Crimes and Torts

5 Criminal Law and Procedure 149

Role of the Criminal Law 151

Nature of Crimes 151

Purpose of the Criminal Sanction 152

Essentials of Crime 154

Constitutional Limitations on Power to Criminalize

Behavior 156

Criminal Procedure 161

Criminal Prosecutions: An Overview 161

Role of Constitutional Safeguards 162

The Fourth Amendment 162

Key Fourth Amendment Questions 162

Warrantless Searches and the Fourth Amendment 168

The Fifth Amendment 172

The Sixth Amendment 178

White-Collar Crimes and the Dilemmas of

Corporate Control 178

Introduction 178

Evolution of Corporate Criminal Liability 178

Corporate Criminal Liability Today 179

Individual Liability for Corporate Crime 180

New Directions 181

Important White-Collar Crimes 182

Regulatory Offenses 182

Fraudulent Acts 182

The Sarbanes-Oxley Act 185

Bribery and Giving of Illegal Gratuities 185

RICO 186

Computer Crime 191

6 Intentional Torts 199

Interference with Personal Rights 203

Battery 203

Assault 206

Intentional Infliction of Emotional Distress 206

False Imprisonment 209

Defamation 211

Invasion of Privacy 226

Misuse of Legal Proceedings 232

Deceit (Fraud) 233

Contents xxi

Interference with Property Rights 233

Trespass to Land 233
Private Nuisance 233
Conversion 236

Other Examples of Intentional Tort Liability 236

7 Negligence and Strict Liability 245

Negligence 246

Duty and Breach of Duty 247 Causation of Injury 261 Res Ipsa Loquitur 272 Negligence Defenses 273

Strict Liability 274

Abnormally Dangerous Activities 274 Statutory Strict Liability 278

Tort Reform 278

8 Intellectual Property and Unfair Competition 287

Protection of Intellectual Property 288

Patents 288 Copyrights 298 Trademarks 312

Trade Secrets 323

Definition of a Trade Secret 324 Ownership and Transfer of Trade Secrets 325 Misappropriation of Trade Secrets 325

Commercial Torts 327

Injurious Falsehood 327

Interference with Contractual Relations 328
Interference with Prospective Advantage 329

Lanham Act § 43(a) 332

Part 3 Contracts

9 Introduction to Contracts 343

The Nature of Contracts 343

The Functions of Contracts 344
The Evolution of Contract Law 344
The Methods of Contracting 344
Basic Elements of a Contract 345

Basic Contract Concepts and Types 348

Bilateral and Unilateral Contracts 348
Valid, Unenforceable, Voidable, and Void Contracts 348
Express and Implied Contracts 348
Executed and Executory Contracts 348

Sources of Law Governing Contracts 349

The Uniform Commercial Code: Origin and

Purposes 349

Application of Article 2 349

Application of the Common Law of Contracts 349

Law Governing "Hybrid" Contracts 349

Relationship of the UCC and the Common Law of

Contracts 352

Basic Differences in the Nature of Article 2 and the

Common Law of Contracts 352

Influence of Restatement (Second) of Contracts 353

"Noncontract" Obligations 354

Quasi-Contract 354 Promissory Estoppel 356

10 The Agreement: Offer 363

Requirements for an Offer 364

Intent to Contract 364
Definiteness of Terms 364
Communication to Offeree 369

Special Offer Problem Areas 369

Advertisements 369 Rewards 370 Auctions 372 Bids 373

Which Terms Are Included in the Offer? 373

Termination of Offers 375

Terms of the Offer 375

Lapse of Time 375
Revocation 375
Rejection 377
Death or Insanity of Either Party 380
Destruction of Subject Matter 380
Intervening Illegality 380

11 The Agreement: Acceptance 383

What Is an Acceptance? 383

Intention to Accept 384

Intent and Acceptance on the Offeror's Terms 387

Communication of Acceptance 391

When Is Acceptance Communicated? 391

Acceptances by Instantaneous Forms of

Communication 391

Acceptances by Noninstantaneous Forms of

Communication 391

Stipulated Means of Communication 395

Special Acceptance Problem Areas 395

xxii Contents

Acceptance in Unilateral Contracts 395

Acceptance in Bilateral Contracts 395

Silence as Acceptance 396

Acceptance When a Writing

Is Anticipated 398

Acceptance of Ambiguous Offers 400

Who Can Accept an Offer? 401

12 Consideration 405

Elements of Consideration 406

Legal Value 406

Bargained-For Exchange 408

Exchanges That Fail to Meet Consideration

Requirements 410

Illusory Promises 410

Preexisting Duties 412

Past Consideration 416

Exceptions to the Consideration

Requirement 418

Promissory Estoppel 418

Promises to Pay Debts Barred by Statutes of

Limitations 421

Promises to Pay Debts Barred by Bankruptcy

Discharge 421

Charitable Subscriptions 421

13 Reality of Consent 425

Effect of Doctrines Discussed in This

Chapter 425

Necessity for Prompt and

Unequivocal Rescission 426

Misrepresentation and Fraud 426

Relationship between Misrepresentation and

Fraud 426

Requirements for Rescission on the

Ground of Misrepresentation 426

Mistake 432

Nature of Mistake 432

Requirements for Mutual Mistake 433

Requirements for Unilateral Mistake 435

Duress 437

Nature of Duress 437

Requirements for Duress 438

Economic Duress 441

Undue Influence 441

Nature of Undue Influence 441

Determining Undue Influence 441

14 Capacity to Contract 445

What Is Capacity? 445

Effect of Lack of Capacity 446

Capacity of Minors 446

Minors' Right to Disaffirm 446

Period of Minority 449

Emancipation 449

Time of Disaffirmance 449

Ratification 449

Duties upon Disaffirmance 450

Effect of Misrepresentation of Age 452

Capacity of Mentally Impaired Persons 452

Theory of Incapacity 452

Test for Mental Incapacity 453

The Effect of Incapacity Caused by Mental

Impairment 453

Contracts of Intoxicated Persons 455

Intoxication and Capacity 455

15 Illegality 459

Meaning of Illegality 459

Determining Whether an Agreement

Is Illegal 460

Agreements in Violation of Statute 462

Agreements Declared Illegal by Statute 462

Agreements That Violate the Public Policy of a

Statute 462

Agreements That May Be in Violation of Public

Policy Articulated by Courts 463

Agreements in Restraint of Competition 463

Exculpatory Clauses 467

Family Relationships and Public Policy 470

Unfairness in Agreements: Contracts of

Adhesion and Unconscionable Contracts 471

Unconscionability 471

Contracts of Adhesion 474

Effect of Illegality 475

General Rule: No Remedy for Breach of

Illegal Agreements 475

Exceptions 475

16 Writing 483

The Significance of Writing in

Contract Law 483

Purposes of Writing 483

Writing and Contract Enforcement 484

Overview of the Statute of Frauds 484

Contents xxiii

History and Purposes 484

Effect of Violating the Statute of Frauds 484

Contracts Covered by the Statute of Frauds 484

Collateral Contracts 485

Interest in Land 485

Contracts That Cannot Be Performed within

One Year 488

Promise of Executor or Administrator to Pay a

Decedent's Debt Personally 491

Contract in Which Marriage Is

the Consideration 492

Meeting the Requirements of the Statute of Frauds 493

Nature of the Writing Required 493

UCC: Alternative Means of Satisfying the Statute of

Frauds in Sale of Goods Contracts 494

Promissory Estoppel and the Statute of Frauds 497

The Parol Evidence Rule 498

Explanation of the Rule 498

Scope of the Parol Evidence Rule 498

Admissible Parol Evidence 499

Interpretation of Contracts 501

17 Rights of Third Parties 507

Assignment of Contracts 507

Nature of Assignment of Rights 508

Creating an Assignment 509

Assignability of Rights 509

Nature of Assignee's Rights 512

Subsequent Assignments 513

Successive Assignments 513

Assignor's Warranty Liability to Assignee 513

Delegation of Duties 514

Nature of Delegation 514

Delegable Duties 514

Language Creating a Delegation 516

Assumption of Duties by Delegatee 517

Discharge of Delegator by Novation 517

Third-Party Beneficiaries 519

Intended Beneficiaries versus Incidental

Beneficiaries 519

Vesting of Beneficiary's Rights 523

18 Performance and Remedies 527

Conditions 528

Nature of Conditions 528

Types of Conditions 528

Creation of Express Conditions 531

Excuse of Conditions 531

Performance of Contracts 534

Level of Performance Expected of

the Promisor 534

Good-Faith Performance 535

Breach of Contract 536

Effect of Material Breach 536

Determining the Materiality of the Breach 536

Anticipatory Repudiation 539

Recovery by a Party Who Has Committed

Material Breach 540

Excuses for Nonperformance 540

Impossibility 540

Commercial Impracticability 543

Other Grounds for Discharge 543

Discharge by Mutual Agreement 543

Discharge by Accord and Satisfaction 543

Discharge by Waiver 544

Discharge by Alteration 544

Discharge by Statute of Limitations 544

Discharge by Decree of Bankruptcy 544

Remedies for Breach of Contract 544

Types of Contract Remedies 544

Interests Protected by Contract

Remedies 545

Legal Remedies (Damages) 545

Equitable Remedies 550

Restitution 552

Part 4 Sales

19 Formation and Terms of Sales Contracts 559

Sale of Goods 560

Leases 562

Higher Standards for Merchants 562

Code Requirements 562

Terms of Sales Contracts 562

Gap Fillers 562

Price Terms 563

Ouantity Terms 564

Output and Needs Contracts 564

Exclusive Dealing Contracts 564

Time for Performance 566

Delivery Terms 567

Title 567

xxiv Contents

Code Changes 567

General Title Rule 567

Title and Third Parties 569

Obtaining Good Title 569

Transfers of Voidable Title 569

Buyers in the Ordinary Course of Business 570

Entrusting of Goods 570

Risk of Loss 572

Terms of the Agreement 572

Shipment Contracts 573

Destination Contracts 573

Goods in the Possession of Third Parties 573

Risk Generally 573

Effect of Breach on Risk of Loss 575

Insurable Interest 575

Sales on Trial 575

Sale or Return 575

Sale on Approval 575

20 Product Liability 579

The Evolution of Product Liability Law 580

The 19th Century 580

The 20th and 21st Centuries 581

The Current Debate over Product

Liability Law 581

Theories of Product Liability Recovery 581

Express Warranty 582

Implied Warranty of Merchantability 584

Implied Warranty of Fitness 587

Negligence 590

Strict Liability 593

The Restatement (Third) 595

Other Theories of Recovery 600

Time Limitations 602

Damages in Product Liability Cases 602

The No-Privity Defense 606

Tort Cases 606

Warranty Cases 606

Disclaimers and Remedy Limitations 607

Implied Warranty Disclaimers 607

Express Warranty Disclaimers 612

Disclaimers of Tort Liability 612

Limitation of Remedies 612

Defenses 615

The Traditional Defenses 616

Comparative Principles 616

Preemption and Regulatory Compliance 618

21 Performance of Sales Contracts 631

General Rules 632

Good Faith 632

Course of Dealing 632

Usage of Trade 632

Modification 634

Waiver 634

Assignment 635

Delivery 635

Basic Obligation 635

Place of Delivery 635

Seller's Duty of Delivery 635

Inspection and Payment 636

Buyer's Right of Inspection 636

Payment 636

Acceptance, Revocation, and Rejection 636

Acceptance 636

Effect of Acceptance 639

Revocation of Acceptance 639

Buyer's Rights on Improper Delivery 642

Rejection 642

Right to Cure 644

Buyer's Duties after Rejection 644

Assurance, Repudiation, and Excuse 645

Assurance 645

Anticipatory Repudiation 645

Excuse 645

22 Remedies for Breach of Sales Contracts 651

Agreements as to Remedies 652

Statute of Limitations 654

Seller's Remedies 655

Remedies Available to an Injured Seller 655

Cancellation and Withholding of Delivery 655

Resale of Goods 655

Recovery of the Purchase Price 656

Damages for Rejection or Repudiation 656

Seller's Remedies where Buyer

Is Insolvent 658

Seller's Right to Stop Delivery 659

Liquidated Damages 659

Buyer's Remedies 660

Buyer's Remedies in General 660

Buyer's Right to Damages 660

Buyer's Right to Cover 661

Incidental Damages 661

Consequential Damages 662

Contents xxv

Damages for Nondelivery 662

Damages for Defective Goods 664

Buyer's Right to Specific Performance 667

Buyer and Seller Agreements as to Remedies 667

Part 5 Property

23 Personal Property and Bailments 673

Nature of Property 674

Classifications of Property 674

Personal Property versus Real Property 674
Tangible versus Intangible Personal Property 674

Public and Private Property 674

Acquiring Ownership of Personal Property 675

Production or Purchase 675

Possession of Unowned Property 675

Rights of Finders of Lost, Mislaid, and Abandoned

Property 675

Legal Responsibilities of Finders 678

Leasing 678 Gifts 679

Conditional Gifts 679

Uniform Transfers to Minors Act 679

Will or Inheritance 681

Confusion 681 Accession 681

Bailments 682

Nature of Bailments 682 Elements of a Bailment 682 Creation of a Bailment 682 Types of Bailments 682 Special Bailments 683 Duties of the Bailee 683

Duty of Bailee to Take Care of Property 683

Bailee's Duty to Return the Property 684

Bailee's Liability for Misdelivery 684

Limits on Liability 684 Right to Compensation 686

Bailor's Liability for Defects in the Bailed

Property 686

Special Bailments 687

Common Carriers 687 Hotelkeepers 687 Safe-Deposit Boxes 687 Involuntary Bailments 688 Documents of Title 688 Warehouse Receipts 688

Bills of Lading 689

Duty of Care 690

Negotiation of Document of Title 691 Rights Acquired by Negotiation 691

Warranties of Transferor of Document of Title 691

24 Real Property 695

Scope of Real Property 696

Fixtures 696

Rights and Interests in Real Property 699

Estates in Land 699

Co-ownership of Real Property 700

Interests in Real Property Owned

by Others 703

Easements 703

Creation of Easements 704

Profits 706 Licenses 706

Restrictive Covenants 706

Acquisition of Real Property 712

Acquisition by Purchase 712 Acquisition by Gift 712

Acquisition by Will or Inheritance 712

Acquisition by Tax Sale 712

Acquisition by Adverse Possession 712

Transfer by Sale 714

Steps in a Sale 714

Contracting with a Real Estate Broker 715

Contract of Sale 715 Fair Housing Act 715

Deeds 716

Form and Execution of Deed 717

Recording Deeds 717

Methods of Assuring Title 718

Seller's Responsibilities regarding the Quality of

Residential Property 718

Implied Warranty of Habitability 719
Duty to Disclose Hidden Defects 719
Other Property Condition—Related
Obligations of Real Property Owners

and Possessors 719

Expansion of Premises Liability 720 Americans with Disabilities Act 720

Land Use Control 721

Nuisance Law 721 Eminent Domain 722 xxvi Contents

Zoning and Subdivision Laws 725 Land Use Regulation and Taking 726

25 Landlord and Tenant 731

Leases and Tenancies 732

Nature of Leases 732 Types of Tenancies 732 Execution of a Lease 733

Rights, Duties, and Liabilities of the

Landlord 734

Landlord's Rights 734 Landlord's Duties 734

Landlord's Responsibility for Condition of

Leased Property 735

Landlord's Tort Liability 739

Rights, Duties, and Liabilities of

the Tenant 745

Rights of the Tenant 745 Duty to Pay Rent 745

Duty Not to Commit Waste 745 Assignment and Subleasing 745 Tenant's Liability for Injuries to

Third Persons 746

Termination of the Leasehold 746

Eviction 746

Agreement to Surrender 746

Abandonment 746

26 Estates and Trusts 751

The Law of Estates and Trusts 752

Estate Planning 752

Wills 752

Right of Disposition by Will 752

Nature of a Will 752

Common Will Terminology 752

Testamentary Capacity 753

Execution of a Will 756

Incorporation by Reference 758

Informal Wills 758

Joint and Mutual Wills 758

Construction of Wills 758

Limitations on Disposition by Will 758

Revocation of Wills 759

Codicils 760

Advance Directives: Planning for Disability 760

Living Wills 760

Durable Power of Attorney 760

Durable Power of Attorney for

Health Care 760

Federal Law and Advance Directives 761

Intestacy 761

Characteristics of Intestacy Statutes 762

Special Rules 762

Simultaneous Death 765

Administration of Estates 766

The Probate Estate 766

Determining the Existence of a Will 766

Selecting a Personal Representative 766

Responsibilities of the Personal

Representative 766

Trusts 767

Nature of a Trust 767 Trust Terminology 767 Why People Create Trusts 768 Creation of Express Trusts 768

Charitable Trusts 768
Totten Trusts 770

Powers and Duties of the Trustee 770

Liability of Trustee 771 Spendthrift Trusts 771

Termination and Modification of a Trust 771

Implied and Constructive Trusts 771

27 Insurance Law 775

Nature and Benefits of Insurance

Relationships 776

Insurance Policies as Contracts 777

Interested Parties 777

Offer, Acceptance, and Consideration 777

Effect of Insured's Misrepresentation 780

Legality 780

Form and Content of Insurance

Contracts 780

Performance and Breach by Insurer 782

Property Insurance 782

The Insurable Interest Requirement 783

Covered and Excluded Perils 783

Nature and Extent of Insurer's Payment

Obligation 787

Right of Subrogation 789

Duration and Cancellation of Policy 789

Liability Insurance 791

Types of Liability Insurance Policies 791

Liabilities Insured Against 791

Contents xxvii

Insurer's Obligations 795

Is There a Liability Insurance Crisis? 799

Bad-Faith Breach of Insurance Contract 799

Part 6 Credit

28 Introduction to Credit and Secured Transactions 809

Credit 810

Unsecured Credit 810

Secured Credit 810

Development of Security 811

Security Interests in Personal Property 811

Security Interests in Real Property 811

Suretyship and Guaranty 812

Sureties and Guarantors 812

Creation of Principal and Surety Relation 814

Defenses of a Surety 814

Creditor's Duties to Surety 815

Subrogation, Reimbursement, and Contribution 815

Liens on Personal Property 816

Security Interests in Personal Property and Fixtures

under the Uniform Commercial Code 816

Common Law Liens 816

Statutory Liens 816

Characteristics of Liens 816

Foreclosure of Lien 819

Security Interests in Real Property 819

Historical Developments of Mortgages 819

Form, Execution, and Recording 819

Rights and Liabilities 819

Foreclosure 820

Right of Redemption 820

Recent Development Concerning Foreclosures 821

Deed of Trust 822

Land Contracts 823

Mechanic's and Materialman's Liens 824

Rights of Subcontractors and Materialmen 824

Basis for Mechanic's or Materialman's Lien 824

Requirements for Obtaining a Lien 825

Priorities and Foreclosure 825

Waiver of Lien 825

29 Security Interests in Personal Property 831

Article 9 832

Security Interests under the Code 832

Security Interests 832

Types of Collateral 832

Obtaining a Security Interest 833

Attachment of the Security Interest 833

Attachment 833

The Security Agreement 833

Purchase Money Security Interests 834

Future Advances 835

After-Acquired Property 835

Proceeds 835

Perfecting the Security Interest 836

Perfection 836

Perfection by Public Filing 836

Possession by Secured Party as Public Notice 839

Control 839

Perfection by Attachment/Automatic

Perfection 839

Motor Vehicles 841

Fixtures 842

Priority Rules 842

Importance of Determining Priority 842

General Priority Rules 842

Purchase Money Security Interest in

Inventory 842

Purchase Money Security Interest in Noninventory

Collateral 844

Rationale for Protecting Purchase Money Security

Interests 845

Buyers in the Ordinary Course of Business 845

Artisan's and Mechanic's Liens 845

Liens on Consumer Goods Perfected by Attachment/

Automatic Perfection 848

Fixtures 848

Default and Foreclosure 850

Default 850

Right to Possession 850

Sale of the Collateral 850

Consumer Goods 850

Distribution of Proceeds 850

Liability of Creditor 851

30 Bankruptcy 857

The Bankruptcy Code 858

Bankruptcy Proceedings 858

Liquidations 858

Reorganizations 859

Family Farms 859

xxviii Contents

Consumer Debt Adjustments 859 The Bankruptcy Courts 859

Chapter 7: Liquidation Proceedings 859

Petitions 859

Involuntary Petitions 859 Automatic Stay Provisions 860

Order of Relief 861

Meeting of Creditors and Election of Trustee 861

Duties of the Trustee 861 The Bankruptcy Estate 862

Exemptions 862

Avoidance of Liens 865

Redemptions 865

Preferential Payments 865 Preferential Liens 866

Transactions in the Ordinary Course of Business 866

Fraudulent Transfers 866

Claims 869

Allowable Claims 869 Secured Claims 869 Priority Claims 869

Distribution of the Debtor's Estate 870

Discharge in Bankruptcy 870

Discharge 870

Objections to Discharge 870

Acts That Bar Discharge 872

Nondischargeable Debts 872

Reaffirmation Agreements 874

Dismissal for Substantial Abuse 874

Chapter 11: Reorganizations 878

Reorganization Proceeding 878

Use of Chapter 11 881

Chapter 12: Family Farmers and Fishermen 883

Relief for Family Farmers and Fishermen 883

Chapter 13: Consumer Debt Adjustments 884

Relief for Individuals 884

Procedure 884

Discharge 888

Advantages of Chapter 13 888

Part 7 Commercial Paper

31 Negotiable Instruments 893

Nature of Negotiable Instruments 894

Uniform Commercial Code 894 Negotiable Instruments 894 Negotiability 895

Kinds of Negotiable Instruments 895

Promissory Notes 895

Certificates of Deposit 896

Drafts 897

Checks 897

Benefits of Negotiable Instruments 898

Rights of an Assignee of a Contract 898

Rights of a Holder of a Negotiable Instrument 899

Formal Requirements for Negotiability 899

Basic Requirements 899

Importance of Form 900

In Writing 900

Signed 900

Unconditional Promise or Order 900

Requirement of a Promise or Order 900

Promise or Order Must Be Unconditional 900

Fixed Amount of Money 902

Fixed Amount 902

Payable in Money 903

Payable on Demand or at a Definite Time 903

Payable on Demand 903

Payable at a Definite Time 903

Payable to Order or Bearer 904

Special Terms 906

Additional Terms 906

Ambiguous Terms 908

32 Negotiation and Holder in Due Course 911

Negotiation 912

Nature of Negotiation 912

Formal Requirements for Negotiation 912

Nature of Indorsement 912

Wrong or Misspelled Name 913

Checks Deposited without Indorsement 913

Transfer of Order Instrument 913

Indorsements 915

Effects of an Indorsement 915

Kinds of Indorsements 915

Rescission of Indorsement 917

Holder in Due Course 918

General Requirements 919

Holder 919

Value 921

Good Faith 921

Overdue or Dishonored 922

Notice of Unauthorized Signature or Alteration 923

Contents xxix

Notice of Claims 923

Irregular and Incomplete Instruments 924

Shelter Rule 925

Rights of a Holder in Due Course 927

Claims and Defenses Generally 927

Importance of Being a Holder in Due Course 927

Real Defenses 927

Personal Defenses 929

Claims to the Instrument 931

Claims in Recoupment 931

Changes in the Holder in Due Course Rule for

Consumer Credit Transactions 931

Consumer Disadvantages 931

State Consumer Protection Legislation 932

Federal Trade Commission Regulation 933

33 Liability of Parties 939

Liability in General 940

Contractual Liability 940

Primary and Secondary Liability 940

Obligation of a Maker 940

Obligation of a Drawee or an Acceptor 941

Obligation of a Drawer 941

Obligation of an Indorser 941

Obligation of an Accommodation Party 942

Signing an Instrument 944

Signature by an Authorized Agent 944

Unauthorized Signature 945

Contractual Liability in Operation 946

Presentment of a Note 946

Presentment of a Check or a Draft 946

Time of Presentment 948

Warranty Liability 948

Transfer Warranties 948

Presentment Warranties 950

Payment or Acceptance by Mistake 951

Operation of Warranties 951

Other Liability Rules 953

Negligence 953

Impostor Rule 953

Fictitious Payee Rule 953

Comparative Negligence Rule Concerning Impostors

and Fictitious Payees 954

Fraudulent Indorsements by Employees 954

Conversion 957

Discharge of Negotiable Instruments 958

Discharge of Liability 958

Discharge by Payment 959

Discharge by Cancellation 959

Altered Instruments; Discharge by

Alteration 959

Discharge of Indorsers and Accommodation

Parties 960

34 Checks and Electronic Transfers 963

The Drawer-Drawee Relationship 964

Bank's Duty to Pay 964

Bank's Right to Charge to Customer's Account 964

Stop-Payment Order 967

Bank's Liability for Payment after Stop-Payment

Order 970

Certified Check 971

Cashier's Check 971

Death or Incompetence of Customer 972

Forged and Altered Checks 972

Bank's Right to Charge Account 972

Customer's Duty to Report Forgeries and

Alterations 974

Check Collection and Funds Availability 977

Check Collection 977

Funds Availability 980

Check 21 981

Electronic Transfers 982

Electronic Fund Transfer Act 983

Wire Transfers 985

Part 8 Agency Law

35 The Agency Relationship 991

Creation of an Agency 992

Formation 992

Capacity 992

Nondelegable Obligations 993

Agency Concepts, Definitions, and Types 993

Authority 993

General and Special Agents 994

Gratuitous Agents 994

Subagents 994

Employees and Nonemployee Agents 994

Duties of Agent to Principal 997

Agent's Duty of Loyalty 997

Agent's Duty to Obey Instructions 999

Agent's Duty to Act with Care and Skill 999

xxx Contents

Agent's Duty to Provide Information 999

Agent's Duties of Segregation, Record-Keeping, and

Accounting 1000

Duty Not to Receive a Material Benefit 1000

Duty of Good Conduct 1000

Duties of Principal to Agent 1002

Duty to Compensate Agent 1002

Duties of Reimbursement and Indemnity 1002

Termination of an Agency 1003

Termination by Act of the Parties 1003

Termination by Operation of Law 1004

Termination of Agency Powers Given as Security 1004

Effect of Termination on Agent's Authority 1005

36 Third-Party Relations of the Principal and the Agent 1011

Contract Liability of the Principal 1012

Actual Authority 1012

Apparent Authority 1013

Agent's Notification and Knowledge 1014

Ratification 1014

Estoppel 1015

Contracts Made by Subagents 1016

Contract Liability of the Agent 1017

The Nature of the Principal 1017

Liability of Agent by Agreement 1019

Implied Warranty of Authority 1019

Tort Liability of the Principal 1020

Respondeat Superior Liability 1020

Direct Liability 1022

Liability for Torts of Nonemployee Agents 1023

Liability for Agent's Misrepresentations 1023

Tort Liability of the Agent 1024

Tort Suits against Principal and Agent 1025

Part 9 Partnerships

37 Introduction to Forms of Business and Formation of Partnerships 1031

Choosing a Form of Business 1032

Sole Proprietorship 1032

Partnership 1032

Limited Liability Partnership 1033

Limited Partnership 1033

Limited Liability Limited Partnership 1034

Corporation 1034

Professional Corporation 1034

Limited Liability Company 1035

Partnerships 1037

Creation of Partnership 1037

RUPA Definition of Partnership 1038

Creation of Joint Ventures 1040

Creation of Mining Partnerships 1041

Creation of Limited Liability

Partnerships 1041

Purported Partners 1042

Purporting to Be a Partner 1042

Reliance Resulting in a Transaction with the

Partnership 1042

Effect of Purported Partnership 1042

Partnership Capital 1044

Partnership Property 1045

Examples 1045

Partner's Partnership Interest 1047

Partner's Transferable Interest 1047

Effect of Partnership Agreement 1048

38 Operation of Partnerships and Related Forms 1053

Duties of Partners to the Partnership and Each Other 1054

Having Interest Adverse to Partnership 1054

Competing against the Partnership 1054

Duty to Serve 1056

Duty of Care 1056

Duty to Act within Actual Authority 1056

Duty to Account 1056

Other Duties 1056

Joint Ventures and Mining Partnerships 1057

Compensation of Partners 1057

Profits and Losses 1057

Management Powers of Partners 1060

Individual Authority of Partners 1060

Special Transactions 1061

Disagreement among Partners: Ordinary Course of

Business 1062

When Unanimous Partners' is Agreement Required 1063

Joint Ventures and Mining Partnerships 1063

Effect of Partnership Agreement 1063

Liability for Torts and Crimes 1065

Torts 1065

Tort Liability and Limited Liability Partnerships 1066

Crimes 1066

Contents xxxi

Lawsuits by and against Partnerships and Partners 1066

Limited Liability Partnerships 1066

39 Partners' Dissociation and Partnerships' Dissolution and Winding Up 1071

Dissociation 1072

Nonwrongful Dissociation 1072 Wrongful Dissociation 1073

Acts Not Causing Dissociation 1073

Effect of Partnership Agreement 1073

Dissolution and Winding Up the Partnership Business 1075

Events Causing Dissolution and

Winding Up 1075

Joint Ventures and Mining Partnerships 1077

Performing Winding Up 1078

Partner's Authority during Winding Up 1078

Distribution of Dissolved Partnership's

Assets 1080

Asset Distributions in a Limited Liability

Partnership 1080

Termination 1081

When the Business Is Continued 1081

Successor's Liability for Predecessor's

Obligations 1081

Dissociated Partner's Liability for Obligations

Incurred while a Partner 1081

Dissociated Partner's Liability for Obligations

Incurred after Leaving the Partnership 1081

Effect of LLP Status 1082

Buyout of Dissociated Partners 1082

Partners Joining an Existing

Partnership 1085

Liability of New Partners 1085

40 Limited Liability Companies, Limited Partnerships, and Limited Liability **Limited Partnerships 1091**

Limited Liability Companies 1092

Tax Treatment of LLCs 1092

Formation of LLCs 1092

Members' Rights and Liabilities 1093

Members' Dissociations and

LLC Dissolution 1096

Limited Partnerships and Limited Liability

Limited Partnerships 1099

The Uniform Limited Partnership Acts 1099

Use of Limited Partnerships

and LLLPs 1099

Creation of Limited Partnerships and

LLLPs 1100

Creation of LLLPs 1101

Defective Compliance with Limited

Partnership Statute 1101

Rights and Liabilities of Partners in Limited

Partnerships or LLLPs 1102

Rights and Liabilities Shared by General

and Limited Partners 1102

Other Rights of General Partners 1103

Other Liabilities of General Partners 1104

Other Rights of Limited Partners 1104

Other Liabilities of Limited Partners 1104

Partner Who Is Both a General Partner

and a Limited Partner 1104

Partners' Dissociations and Limited Partnership

Dissolution 1105

Partners' Dissociations 1105

Limited Partnership Dissolutions 1106

Mergers and Conversions 1107

Part 10 Corporations

41 History and Nature of Corporations 1115

History of Corporations 1116

American Corporation Law 1116

Classifications of Corporations 1116

Regulation of For-Profit Corporations 1118

State Incorporation Statutes 1118

State Common Law of Corporations 1118

Regulation of Nonprofit Corporations 1118

Regulation of Foreign and Alien

Corporations 1119

Due Process Clause 1119

Commerce Clause 1119

Subjecting Foreign Corporations to Suit 1119

Taxation 1120

Qualifying to Do Business 1122

Regulation of a Corporation's Internal Affairs 1124

Regulation of Foreign Nonprofit

Corporations 1124

Piercing the Corporate Veil 1125

Nonprofit Corporations 1126

xxxii Contents

42 Organization and Financial Structure of Corporations 1135

Promoters and Preincorporation

Transactions 1135

Corporation's Liability on Preincorporation

Contracts 1136

Promoter's Liability on Preincorporation

Contracts 1136

Obtaining a Binding Preincorporation Contract 1136

Preincorporation Share Subscriptions 1137

Relation of Promoter and Prospective

Corporation 1138

Liability of Corporation to Promoter 1138

Incorporation 1138

Steps in Incorporation 1138 Close Corporation Elections 1141

Defective Attempts to Incorporate 1141

De Jure Corporation 1141
De Facto Corporation 1142
Corporation by Estoppel 1142

Liability for Defective Incorporation 1142

Modern Approaches to the Defective

Incorporation Problem 1142

Incorporation of Nonprofit Corporations 1144

Liability for Preincorporation

Transactions 1145

Financing For-Profit Corporations 1145

Equity Securities 1145

Authorized, Issued, and Outstanding Shares 1146

Options, Warrants, and Rights 1146

Debt Securities 1147

Consideration for Shares 1147

Quality of Consideration for Shares 1147 Quantity of Consideration for Shares 1147

Share Subscriptions 1150

Issuance of Shares 1150

Transfer of Shares 1151

Restrictions on Transferability of Shares 1151

Financing Nonprofit Corporations 1154

43 Management of Corporations 1159

Corporate Objectives 1160

Corporate Powers 1161

Purpose Clauses in Articles of Incorporation 1161

Powers of Nonprofit Corporations 1161

The Board of Directors 1161

Board Authority under Corporation Statutes 1162

Committees of the Board 1162

Who Is an Independent Director? 1163

Powers, Rights, and Liabilities of Directors as

Individuals 1163

Election of Directors 1163

Directors' Meetings 1166

Officers of the Corporation 1167

Managing Close Corporations 1167

Managing Nonprofit Corporations 1168

Directors' and Officers' Duties to the

Corporation 1169

Acting within Authority 1169

Duty of Care 1169

Board Opposition to Acquisition of Control of a

Corporation 1176

Duties of Loyalty 1180

Conflicting Interest Transactions 1180

Usurpation of a Corporate Opportunity 1181

Oppression of Minority Shareholders 1183

Trading on Inside Information 1185

Director's Right to Dissent 1185

Duties of Directors and Officers of Nonprofit

Corporations 1185

Corporate and Management Liability for Torts

and Crimes 1186

Liability of the Corporation 1186

Directors' and Officers' Liability for Torts and

Crimes 1187

Insurance and Indemnification 1190

Mandatory Indemnification of Directors 1190

Permissible Indemnification of Directors 1190

Insurance 1191

Nonprofit Corporations 1191

44 Shareholders' Rights and Liabilities 1195

Shareholders' Meetings 1196

Notice of Meetings 1196

Conduct of Meetings 1196

Shareholder Action without a Meeting 1196

Shareholders' Election of Directors 1196

Straight Voting 1196

Cumulative Voting 1197

Classes of Shares 1197

Shareholder Control Devices 1197

Fundamental Corporate Changes 1200

Procedures Required 1201

Dissenters' Rights 1201

Contents xxxiii

Shareholders' Inspection and Information

Rights 1207

Preemptive Right 1209

Distributions to Shareholders 1209

Dividends 1209

Share Repurchases 1212

Ensuring a Shareholder's Return on

Investment 1212

Shareholders' Lawsuits 1212

Shareholders' Individual Lawsuits 1212

Shareholder Class Action Suits 1213

Shareholders' Derivative Actions 1213

Defense of Corporation by Shareholder 1216

Shareholder Liability 1216

Shareholder Liability for Illegal Distributions 1216

Shareholder Liability for Corporate Debts 1216

Sale of a Control Block of Shares 1216

Shareholders as Fiduciaries 1217

Members' Rights and Duties in Nonprofit

Corporations 1219

Members' Meeting and Voting Rights 1219

Member Inspection and Information Rights 1220

Distributions of Assets 1220

Resignation and Expulsion of Members 1220

Derivative Suits 1221

Dissolution and Termination of

Corporations 1221

Winding Up and Termination 1222

Dissolution of Nonprofit Corporations 1223

45 Securities Regulation 1227

Purposes of Securities Regulation 1228

Securities and Exchange Commission 1229

SEC Actions 1229

What Is a Security? 1229

Securities Act of 1933 1232

Registration of Securities under the 1933 Act 1232

Mechanics of a Registered Offering 1232

Registration Statement and Prospectus 1233

Section 5: Timing, Manner, and Content of

Offers and Sales 1233

Exemptions from the Registration Requirements of the 1933 Act 1237

of the 1933 Act 1237

Securities Exemptions 1237

Transaction Exemptions 1238

Intrastate Offering Exemption 1238

Private Offering Exemption 1238

Small Offering Exemptions 1240

Securities Offerings on the Internet 1241

Transaction Exemptions for Nonissuers 1241

Sale of Restricted Securities 1241

Consequence of Obtaining a Securities or Transaction

Exemption 1243

Liability Provisions of the 1933 Act 1246

Liability for Defective Registration Statements 1246

Other Liability Provisions 1251

Criminal Liability 1252

Securities Exchange Act of 1934 1252

Registration of Securities under the 1934 Act 1252

Holdings and Trading by Insiders 1253

Proxy Solicitation Regulation 1254

Liability Provisions of the 1934 Act 1256

Liability for False Statements in Filed

Documents 1256

Section 10(b) and Rule 10b-5 1256

Elements of a Rule 10b-5 Violation 1257

Regulation FD 1269

Criminal Liability 1270

Tender Offer Regulation 1270

Private Acquisitions of Shares 1272

State Regulation of Tender Offers 1272

State Securities Law 1272

Registration of Securities 1272

46 Legal and Professional Responsibilities of Auditors, Consultants, and Securities Professionals 1279

General Standard of Performance 1281

Professionals' Liability to Clients 1281

Contractual Liability 1281

Tort Liability 1282

In Pari Delicto 1285

Breach of Trust 1286

Securities Law 1286

Professionals' Liability to Third Persons:

Common Law 1287

Negligence and Negligent Misrepresentation 1287

Fraud 1292

Professional's Liability to Third Parties:

Securities Law 1292

Securities Act of 1933 1293

Securities Exchange Act of 1934 1294

State Securities Law 1297

Securities Analysts' Conflicts of Interest 1297

xxxiv Contents

Dodd-Frank Act and Broker-Dealers 1299
Limiting Professionals' Liability: Professional
Corporations and Limited Liability
Partnerships 1299
Qualified Opinions, Disclaimers of
Opinion, Adverse Opinions, and Unaudited
Statements 1300
Criminal Injunctive and Administrative

Criminal, Injunctive, and Administrative Proceedings 1301

Criminal Liability under the

Securities Laws 1302

Other Criminal Law Violations 1303

Injunctions 1304

Administrative Proceedings 1304

Securities Exchange Act Audit

Requirements 1305

SOX Section 404 1305

Cooperation with PCAOB Investigations 1305

Ownership of Working Papers 1306 Professional–Client Privilege 1306

Part 11 Regulation of Business

47 Administrative Law 1315

Origins of Administrative Agencies 1317

Agency Creation 1318

Enabling Legislation 1318 Administrative Agencies and the

Constitution 1319

Agency Types and Organization 1323

Agency Types 1323

Agency Organization 1324

Agency Powers and Procedures 1324

Nature, Types, and Source of Powers 1324

Investigative Power 1324

Rulemaking Power 1326

Adjudicatory Power 1328

Controlling Administrative Agencies 1329

Presidential Controls 1329

Congressional Controls 1329

Judicial Review 1330

Information Controls 1339

Freedom of Information Act 1339

Privacy Act of 1974 1343

Government in the Sunshine Act 1343

Issues in Regulation 1343

"Old" Regulation versus "New"

Regulation 1343

"Captive" Agencies and Agencies'

"Shadows" 1343

Is the Agency Doing Its Job? 1344

Deregulation versus Reregulation 1344

48 The Federal Trade Commission Act and Consumer Protection Laws 1349

The Federal Trade Commission 1350

The FTC's Powers 1350

FTC Enforcement Procedures 1350

Actions in Court 1351

Anticompetitive Behavior 1354

Deception and Unfairness 1354

Deception 1354

Unfairness 1363

Remedies 1363

Consumer Protection Laws 1363

Telemarketing and Consumer Fraud and

Abuse Prevention Act 1363

Do-Not-Call Registry 1364

Do Not Track 1365

Magnuson-Moss Warranty Act 1365

Truth in Lending Act 1366

Fair Credit Reporting Act 1367

FACT Act and the Identity

Theft Problem 1371

Equal Credit Opportunity Act 1372

Fair Credit Billing Act 1372

The Dodd-Frank Act 1372

Fair Debt Collection

Practices Act 1373

Product Safety Regulation 1378

49 Antitrust: The Sherman Act 1383

The Antitrust Policy Debate 1384

Chicago School Theories 1385

Traditional Antitrust Theories 1385

Effect of Chicago School

Notions 1385

Jurisdiction, Types of Cases, and Standing 1385

Jurisdiction 1385

Types of Cases and the Role of Pretrial

Settlements 1386

Criminal Prosecutions 1386

Contents xxxv

Civil Litigation 1386

Standing 1387

Section 1—Restraints of Trade 1387

Concerted Action 1387 Per Se Analysis 1391

"Rule of Reason" Analysis 1391

Horizontal Price-Fixing 1391

Vertical Price-Fixing 1395

Horizontal Divisions of Markets 1399

Vertical Restraints on Distribution 1399

Group Boycotts and Concerted

Refusals to Deal 1400

Tying Agreements 1400

Reciprocal Dealing Agreements 1407 Exclusive Dealing Agreements 1407

Joint Ventures by Competitors 1407

Section 2—Monopolization 1408

Monopolization 1408

Attempted Monopolization 1416

Conspiracy to Monopolize 1417

50 The Clayton Act, the Robinson–Patman Act, and Antitrust Exemptions and Immunities 1423

Clayton Act Section 3 1424

Tying Agreements 1425

Exclusive Dealing Agreements 1425

Clayton Act Section 7 1425

Introduction 1425

Relevant Market Determination 1426

Horizontal Mergers 1427

Vertical Mergers 1435

Conglomerate Mergers 1436

Clayton Act Section 8 1437

The Robinson-Patman Act 1438

Jurisdiction 1438

Section 2(a) 1439

Defenses to Section 2(a) Liability 1444

Indirect Price Discrimination 1445

Buyer Inducement of Discrimination 1446

Antitrust Exceptions and Exemptions 1446

Statutory Exemptions 1446

State Action Exemption 1447

The Noerr-Pennington Doctrine 1447

Patent Licensing 1451

Foreign Commerce 1451

51 Employment Law 1455

Legislation Protecting Employee Health, Safety, and Well-Being 1456

Workers' Compensation 1456

The Occupational Safety and Health Act 1460

The Family and Medical Leave Act 1460

Legislation Protecting Wages, Pensions,

and Benefits 1461

Social Security 1461

Unemployment Compensation 1461

ERISA 1461

The Fair Labor Standards Act 1462

Collective Bargaining and

Union Activity 1462

Equal Opportunity Legislation 1463

The Equal Pay Act 1463

Title VII 1464

Section 1981 1477

The Age Discrimination in Employment Act 1477

The Americans with Disabilities Act 1478

Genetic Information Nondiscrimination Act 1483

Immigration Reform and Control Act 1483

Uniformed Services Employment and Reemployment

Rights Act 1484

Executive Order 11246 1484

State Antidiscrimination Laws 1484

Retaliation 1484

Employee Privacy 1484

Polygraph Testing 1485

Drug and Alcohol Testing 1486

Employer Searches 1486

Records and References 1486

Employer Monitoring 1487

Job Security 1487

The Doctrine of Employment at Will 1487

The Common Law Exceptions 1489

52 Environmental Regulation 1497

Historical Perspective 1498

The Environmental Protection Agency 1498

The National Environmental Policy Act 1499

Air Pollution 1499

Background 1499

Clean Air Act 1499

Ambient Air Control Standards 1499

Acid Rain Controls 1500

Control of Hazardous Air Pollutants 1500

xxxvi Contents

New Source Controls 1500

Permits 1503

Enforcement 1503

Automobile Pollution 1504

International Air Problems 1505

Water Pollution 1508

Background 1508

Early Federal Legislation 1508

Clean Water Act 1508

Discharge Permits 1508

Water Quality Standards 1509

Enforcement 1509

Wetlands 1512

Waters of the United States 1512

Ocean Dumping 1512

Liability for Oil Spills 1513

Drinking Water 1515

Waste Disposal 1515

Background 1515

The Resource Conservation and Recovery Act 1516

Underground Storage Tanks 1516

State Responsibilities 1516

Enforcement 1516

Solid Waste 1519

Superfund 1519

Community Right to Know and Emergency

Cleanup 1522

Regulation of Chemicals 1522

Background 1522

Regulation of Agricultural Chemicals 1522

Toxic Substances Control Act 1523

International Developments Concerning

Regulation of Toxic Substances 1523

Biotechnology 1525

Appendix A The Constitution of the United States of America A-1

Appendix B Uniform Commercial Code B-1

Glossary G-1 Index I-1