



SEVENTH EDITION



BUSINESS LAW

UNIFORM COMMERCIAL CODE

STANDARD VOLUME



SOUTH-WESTERN PUBLISHING CO.

Cincinnati Chicago Burlingame, Calif. Dallas New Rochelle, N. Y.

L56

1965

LL Card No. 65-10415



Classes and Sources of Law

An understanding of the law requires a knowledge of its forms, classifications, and sources.

• **Forms of the Law.** *Constitutional law* includes the constitutions in force in the particular area or territory. In each state, two constitutions are in force, the state and the national constitutions. Federal regulation of business is based primarily on the clause of the Constitution of the United States authorizing Congress to regulate interstate and foreign commerce, and to a lesser extent on the clauses conferring the powers to tax, to borrow money, to adopt bankruptcy laws, to establish and regulate the currency, to fix standards of weights and measures, to operate the post office, to grant patents and copyrights, and to regulate the economy as a step in preparing for, waging, or recovering from the effects of war.¹

Statutory law includes statutes adopted by the lawmakers. Each state has its own legislature and the United States has the Congress, both of which enact laws. In addition, every city, county, or other subdivision has some power to adopt ordinances or local statutes.

Of rapidly increasing importance are the *administrative regulations* for business, such as rules of the Securities and Exchange Commission and the National Labor Relations Board. The regulations promulgated by national and state administrative agencies generally have the force of statute and are therefore part of the law.

Law also includes principles that are expressed for the first time in court decisions. This is *case law*. For example, when a court must decide a new question or problem, its decision becomes a *precedent* and stands as the law for that particular problem in the future. This rule that a court decision becomes a precedent to be followed in similar cases is the *doctrine of stare decisis*.

In England, common or community law developed in the centuries following the Norman Conquest in 1066. This *common law* was a body of unwritten principles that were based on customs and usages of the community. These principles were recognized and enforced by the courts. By the time the colonies were founded in

¹ Art. I, Sec. 8, Cl. 1-5, 7, 8, 11.

America, the English common law had become a definite, established body of principles and was brought over to the New World to become the basis for the law of the colonies and of virtually all of the states of the United States.

Law also includes treaties made by the United States, and proclamations and orders by the President of the United States or by other public officials.

• Classifications of Law

1) Classification Based upon Subject Matter. Law is classified for convenience in terms of the subject matter involved. Thus the area of law relating to contracts is contract law, the area relating to corporations is corporation law, and the area relating to rights on the seas is admiralty law.

The law may also be divided into the categories of (a) contracts, (b) torts, and (c) crimes. *Contract law* relates to the effect given agreements and the remedies for their breach.

The *law of torts* relates to the rights which an injured person has against another, apart from any contract, for damage done to the property or person of the injured claimant. Business torts include fraud, the infliction of harm by the making of statements known to be false or with reckless disregard to their truth in consequence of which the person who relies on such statements sustains loss; slander, the spoken defamation of another; libel, the written or pictorial defamation of another; disparagement of goods and slander of title; unfair competition; infringement of trade-marks, patents, and copyrights; wrongful interference with business relations and with contracts; and combinations to divert trade.

The *law of crimes* deals with those acts which are offenses against the state. Business crimes include the use of false weights, measures, and labels; the use of counterfeit money; obtaining money or property by false pretenses, or by swindles and confidence games; the use of the mails to defraud; forgery, the false making or material alteration of an instrument with intent to defraud; libel; lottery; price discrimination; unfair competition; and the making of monopolies and contracts in restraint of trade.

2) Substantive and Procedural Law. Law is sometimes classified in terms of its character as *substantive law*, which defines the substance of legal rights and liabilities, and as *procedural* or adjective *law*, which specifies the procedure that must be followed in enforcing those rights and liabilities.

3) **Classification Based upon Nature of the Law.** The great body of our law is *declaratory*, that is, it declares that a person has particular rights; if those rights are violated, the law specifies the procedures by which the injured party can enforce those rights or obtain damages for their breach. Some laws are *mandatory*, requiring the performance of an act, such as labeling drugs with a statement of their chemical composition and directions for use. Other laws are *prohibitive*, such as one prohibiting conspiracies and combinations in restraint of trade. Still other laws are *permissive*, such as a statute that permits proper persons to form a corporation.

✓ 4) **Public and Private Law.** Law is classified as *public law* when it deals with the organization of government or with the relation of government to the individual. It includes, for example, *administrative law*, which deals with the mechanics by which government carries out its functions. Law which deals with the rights and liabilities between private persons, corporations, partnerships, and other organizations is called private law.

5) **Law and Equity.** Law is frequently classified as being "law" or "equity." During the early centuries following the Norman Conquest, it was common for subjects of the English Crown to present to the King petitions requesting that particular favors or relief that could not be obtained in the ordinary courts of law be granted. The extraordinary or special relief granted by the chancellor, to whom the King referred such matters, was of such a nature as was dictated by principles of justice and equity. This body of principles was called *equity*. Today equity principles are administered by either a separate equity court or by a law court administering both "law" and "equity."

6) **Classification Based upon Historical Sources.** Law is sometimes classified in terms of its source as the *civil law*, which comes from the Roman civil law, and the *common law*, which is based upon the English common law or the common law that has developed in the states of the United States. The *ecclesiastical law*, which was the law enforced by the church courts, and the *law merchant*, which was the body of principles recognized by early English merchants, have been absorbed to a large extent by the common law.

During the centuries that the common law was developing in England, merchants of different nations, trading in all parts of the world, developed their own sets of rules to govern their business transactions. In many countries local authorities would permit the

merchants to set up their own temporary courts to settle disputes. In the course of time the law courts of the various countries of Europe recognized and applied the same principles that the merchants followed. In England these laws of the merchants, constituting what came to be known as the law merchant, were accepted and enforced by the law courts in the Eighteenth Century.

Much of our modern business law relating to negotiable instruments, insurance, credit transactions, and partnerships originally developed in the law merchant. To the common law we owe most of our business law relating to contracts, agency, property, bailments, carriers, torts, and crimes.

• **Business Law.** *Business law* is not a separate branch of law but rather it includes the various laws that determine the rights and liabilities of persons taking part in business transactions, whether as individuals or as businessmen. Everyone should have some knowledge of business law. As a member of society and as a voting citizen, he should understand the basic principles of law that govern our economic activities. As a person living in a nation based on free enterprise, he should know the rights and remedies which the community, through law, makes available to those who engage in business transactions.

Everyone should know how to indorse a check, the effect of making an installment purchase, whether a written agreement is required in a given situation, whether he can object if a machine he purchases does not work as he believed it would. On the other hand, there are many points which a person not specially trained in the law should not endeavor to solve for himself. Much of the law is technical and complicated. College business-law training should provide such an understanding of the law that the student will know when a business legal problem is too difficult for him to determine for himself.

• **How to Find the Law.** In order to determine what the law on a particular question or issue is, it may be necessary to examine (1) compilations of constitutions, treaties, statutes, executive orders, proclamations, and administrative regulations; (2) reports of state and federal court decisions; (3) digests of opinions; (4) treatises on the law; and (5) loose-leaf services.

1) **Compilations.** In the consideration of a legal problem in business it is necessary to determine whether the matter is affected or controlled by the Constitution, national or state; by a national treaty;

by an act of Congress or a state legislature, or by a city ordinance; by a decree or proclamation of the President of the United States, a governor, or a mayor; or by a regulation of a federal, state, or local administrative agency.

Each body or person that makes laws, regulations, or ordinances usually will compile and publish at the end of each year or session all of the matter that it has adopted. In addition to the periodical or annual volumes, it is common to compile all the treaties, statutes, regulations, or ordinances in separate volumes. To illustrate, the federal Anti-Injunction Act may be cited as the Act of March 23, 1932, 47 Stat. 70, 29 U.S.C. Sections 101 et seq. This means that this law was enacted on March 23, 1932, and that this law can be found at page 70 in Volume 47 of the reports that contain all of the statutes adopted by the Congress.

The second part of the citation, 29 U.S.C. Sections 101 et seq., means that in the collection of all of the federal statutes, which is known as the United States Code, the full text of the statute can be found in the sections of the 29th title or subdivision beginning with Section 101.

2) **Court Decisions.** For complicated or important legal cases or when an appeal is to be taken, a court will generally write an *opinion*, which explains why the court made the decision. Appellate courts as a rule write opinions. The great majority of these decisions, particularly in the case of the appellate courts, are collected and printed. In order to avoid confusion, the opinions of each court will ordinarily be printed in a separate set of reports, either by official reporters or private publishers.

In the reference "Pennoyer v. Neff, 95 U.S. 714, 24 L.Ed. 565," the first part states the names of the parties. It does not necessarily tell who was the plaintiff and who was the defendant. When an action is begun in a lower court, the first name is that of the plaintiff and the second name that of the defendant. When the case is appealed, generally the name of the person taking the appeal appears on the records of the higher court as the first one and that of the adverse party as the second. Sometimes, therefore, the original order of the names of the parties is reversed.

The balance of the reference consists of two citations. The first citation, 95 U.S. 714, means that the opinion which the court filed in the case of Pennoyer and Neff may be found on page 714 of the 95th volume of a series of books in which are printed officially the opinions of the United States Supreme Court. Sometimes the same

opinion is printed in two different sets of volumes. In the example, 24 L.Ed. 565 means that in the 24th volume of another set of books, called *Lawyers' Edition*, of the United States Supreme Court Reports, the same opinion begins on page 565.

In opinions by a state court there are also generally two citations, as in the case of "Morrow v. Corbin, 122 Tex. 553, 62 S.W. 2d 641." This means that the opinion in the lawsuit between Morrow and Corbin may be found in the 122d volume of the reports of the highest court of Texas, beginning on page 553; and also in Volume 62 of the *Southwestern Reporter*, Second Series, at page 641.

The West Publishing Company publishes a set of sectional reporters covering the entire United States. They are called sectional because each reporter, instead of being limited to a particular court or a particular state, covers the decisions of the courts of a particular section of the country. Thus the decisions of the courts of Arkansas, Kentucky, Missouri, Tennessee, and Texas are printed by the West Publishing Company as a group in a sectional reporter called the *Southwestern Reporter*.² Because of the large number of decisions involved, generally only the opinions of the state appellate courts are printed. A number of states³ have discontinued the official publication of the opinions of their courts, and those opinions are now found only in the West reporters.

The reason for the "Second Series" in the *Southwestern* citation is that when there were 300 volumes in the original series, instead of calling the next volume 301, the publisher called it Volume 1, Second Series. Thus 62 S.W. 2d Series really means the 362d volume of the *Southwestern Reporter*. Six to eight volumes appear in a year for each geographic section.

In addition to these state reporters, the West Publishing Company publishes a *Federal Supplement*, which reports the opinions of the Federal District Courts and the United States Court of Claims; the *Federal Reporter*, which formerly reported all the lower federal court

² The other sectional reporters are Atlantic—A. (Connecticut, Delaware, District of Columbia, Maine, Maryland, New Hampshire, New Jersey, Pennsylvania, Rhode Island, Vermont); Northeastern—N.E. (Illinois, Indiana, Massachusetts, New York, Ohio); Northwestern—N.W. (Iowa, Michigan, Minnesota, Nebraska, North Dakota, South Dakota, Wisconsin); Pacific—P. (Alaska, Arizona, California, Colorado, Hawaii, Idaho, Kansas, Montana, Nevada, New Mexico, Oklahoma, Oregon, Utah, Washington, Wyoming); Southeastern—S.E. (Georgia, North Carolina, South Carolina, Virginia, West Virginia); and Southern—So. (Alabama, Florida, Louisiana, Mississippi). There is also a special New York State reporter known as the New York Supplement and a special California State reporter known as the California Reporter.

³ Florida, Kentucky, Missouri, and Oklahoma (as to civil actions).

decisions but now reports only the decisions of the courts of appeals; and the *Supreme Court Reporter*, which reports the decisions of the United States Supreme Court. The Supreme Court decisions are also reported in a separate set called the *Lawyers' Edition*, published by the Lawyers Cooperative Publishing Company.

The reports published by the West Publishing Company and Lawyers Co-operative Publishing Company are unofficial reports, while those bearing the name or abbreviation of the United States or of a state, such as "95 U.S. 714" or "122 Tex. 553" are official reports. This means that in the case of the latter, the particular court, such as the United States Supreme Court, has officially authorized that its decisions be printed and that by federal statute such official printing is made. In the case of the unofficial reporters, the publisher prints the decisions of a court on its own initiative. Such opinions are part of the public domain and not subject to any copyright or similar restriction.

3) Digests of Opinions. The reports of court decisions are useful only if one has the citation, that is, the name of the book and the page number of the opinion he is seeking. For this reason, digests of the decisions have been prepared. These digests organize the entire field of law under major headings, which are then arranged in alphabetic order. Under each heading, such as "Contracts," the subject is divided into the different questions that can arise with respect to that field. A master outline is thus created on the subject. This outline includes short paragraphs describing what each case holds and giving its citation.

4) Treatises and Restatements. Very helpful in finding a case or a statute are the treatises on the law. These may be special books, each written by an author on a particular subject, such as *Williston on Contracts*, *Bogert on Trusts*, *Fletcher on Corporations*, or they may be general encyclopedias, as in the case of *American Jurisprudence*, *Corpus Juris*, and *Corpus Juris Secundum*.

A new type of treatise is found in the restatements of the law prepared by the American Law Institute. Each restatement consists of one or more volumes devoted to a particular phase of the law, such as the *Restatement of the Law of Contracts*, *Restatement of the Law of Agency*, and *Restatement of the Law of Property*. In each restatement the American Law Institute, acting through special committees of judges, lawyers, and professors of law, has set forth what the law is; and in many areas where there is no law or the

present rule is regarded as unsatisfactory, the restatement specifies what the Institute deems to be the desirable rule.

5) *Loose-Leaf Services*. A number of private publishers, notably Commerce Clearing House and Prentice-Hall, publish loose-leaf books devoted to particular branches of the law. Periodically the publisher sends to the purchaser a number of pages that set forth any decision, regulation, or statute made or adopted since the prior set of pages was prepared. Such services are unofficial.

• **Uniform Commercial Code**. To secure uniformity as far as possible, the Commission on Uniform Laws, including representatives from all the states, has drafted statutes on various business subjects for adoption by the states. The uniform laws that had been most widely adopted by the states pertained to negotiable instruments, warehouse receipts, stock transfers, sales, bills of lading, and partnerships. In many states the law on most of these subjects is now regulated by the Uniform Commercial Code proposed by the Commission on Uniform Laws and the American Law Institute.⁴ Specifically the Code regulates the fields of sales of goods; commercial paper, such as checks; bank collections and letters of credit; warehouse receipts; bills of lading; investment securities; and secured transactions in personal property.

This book is based on the Uniform Commercial Code; that is, it sets forth the law of business as it is in force in those states which have adopted the Code. In many instances this law is also the same in states that have not adopted the Code and, unless otherwise indicated, the principles stated are the same in both Code and non-Code states. Where this is not the case, that fact is specifically pointed out.

⁴ As of October 1, 1964, the Code had been adopted in the District of Columbia and in the following states, effective as noted:

Alaska (December 31, 1962)	New Hampshire (July 1, 1961)
Arkansas (January 1, 1962)	New Jersey (January 1, 1963)
California (January 1, 1965)	New Mexico (January 1, 1962)
Connecticut (October 1, 1961)	New York (September 27, 1964)
Georgia (January 1, 1964)	Ohio (July 1, 1962)
Illinois (July 1, 1962)	Oklahoma (January 1, 1963)
Indiana (July 1, 1964)	Oregon (September 1, 1963)
Kentucky (July 1, 1960)	Pennsylvania (July 1, 1954)
Maine (January 1, 1965)	Rhode Island (January 2, 1962)
Maryland (February 1, 1964)	Tennessee (July 1, 1964)
Massachusetts (October 1, 1958)	Virginia (January 1, 1966)
Michigan (January 1, 1964)	West Virginia (July 1, 1965)
Missouri (July 1, 1965)	Wisconsin (July 1, 1965)
Montana (January 1, 1965)	Wyoming (January 1, 1962)
Nebraska (September 1, 1965)	

Questions and Problems

- 1—Check list of legal terms. The following legal terms have been introduced in this chapter. Check the list to make certain that you can define or explain and give an example of each term.
 - (a) constitutional law, statutory law, administrative regulations
 - (b) case law, precedent, doctrine of stare decisis
 - (c) contract law, law of torts, law of crimes
 - (d) substantive law, procedural law
 - (e) declaratory law, mandatory law, prohibitive law, permissive law
 - (f) public law, administrative law, private law
 - (g) equity
 - (h) civil law, common law, ecclesiastical law
 - (i) law merchant, business law
- 2—How does case law differ from constitutional and statutory law?
- 3—Howard, with the intention of defrauding Long, falsely states that he will pay for merchandise which Long sells him on credit. Howard does not pay. Is this an example of a breach of contract, a tort, or a crime?
- 4—Cobb was injured while working in a mine operated by the Gainer Coal Company. He brought an action against the company to recover damages under the statute which provided that in case of an injury resulting from the violation of the act “a right of action against the party in default shall accrue to the party injured.” Was the statute adjective law?
- 5—A statute provides that no person shall be allowed to work in specified occupations for more than eight hours a day. Is this a mandatory, permissive, or prohibitive law?
- 6—Martin threatens to sell certain wedding presents in his possession but which belong to Mr. and Mrs. Mason. The value of these presents could not be measured adequately in money damages. In other words, the loss would cause an irreparable injury. Do the Masons have a remedy?
- 7—Explain each of the following citations:
 - (a) *Murphy v. Williamson*, 180 Iowa 291, 163 N.W. 211.
 - (b) *New York Central Railroad Company v. White*, 243 U.S. 188, 61 L.Ed. 667.
 - (c) *Rice v. Schmidt*, 18 Cal. 2d 382, 115 P. 2d 498.
 - (d) *United States v. Wm. H. Rorer, Inc.*, 27 F.Supp. 671.
- 8—
 - (a) In what sectional reporter are the opinions of the highest court of your state included?
 - (b) Are all the states adjacent to your state covered by the same sectional reporter?
- 9—
 - (a) What is the function of the Commission on Uniform Laws?
 - (b) How successfully has the commission performed this function?