CONTENTS

Preface viii
Acknowledgments xii

CHAPTER 1  The Canadian Legal System  1
What Is Law?  2
Sources of Law  4
The Law in Canada  8
The Constitution Act (1982) and the Charter of Rights and Freedoms  11
The Courts  16
The Litigation Process  18
Alternate Dispute Resolution  25
Administrative Law  28
   Requirement of Authority  28
   Procedural Fairness  29
Criminal Law  31
KEY TERMS  34
QUESTIONS FOR STUDENT REVIEW  35
QUESTIONS FOR FURTHER DISCUSSION  36
CASES FOR DISCUSSION  36

CHAPTER 2  Torts and Professional Liability  38
Intentional Torts  39
   Assault and Battery  40
   False Imprisonment  41
   Trespass  42
   Nuisance  43
   Defamation  44
Negligence  48
   Duty of Care  49
   Standard of Care  51
Causation and Damage  54
   Defences  54
Product Liability  57
Professional Liability  59
Other Business Torts  63
KEY TERMS  65
QUESTIONS FOR STUDENT REVIEW  65
QUESTIONS FOR FURTHER DISCUSSION  66
CASES FOR DISCUSSION  67

CHAPTER 3  Formation of Contracts  69
Consensus  70
   Offer  72
   Acceptance  77
Consideration  79
Capacity  84
   Infants  84
   Insanity and Intoxication  86
Legality  87
Intention  89
Formal Requirements  89
   Writing  90
KEY TERMS  91
QUESTIONS FOR STUDENT REVIEW  92
QUESTIONS FOR FURTHER DISCUSSION  92
CASES FOR DISCUSSION  93

CHAPTER 4  Enforcing Contractual Obligations  95
Mistake  96
   Contract Interpretation  98
   Exemption Clauses  99
Misrepresentation  100
   Innocent Misrepresentation  102
   Fraudulent Misrepresentation  103
Contents

Negligent Misrepresentation 103
Criminal Fraud 104
Duress and Undue Influence 104
Duress 104
Undue Influence 105
Unconscionability 106
Privity and Assignment 106
Privity 106
Assignment 108
Negotiable Instruments 110
Discharging Contractual Obligations 112
Performance 112
Breach 114
Frustration 115
Agreement 118
Remedies for Breach 119
Equitable Remedies 121
KEY TERMS 123
QUESTIONS FOR STUDENT REVIEW 123
QUESTIONS FOR FURTHER DISCUSSION 124
CASES FOR DISCUSSION 125

CHAPTER 5 Legislation in the Marketplace 128

The Sale of Goods Act 129
Goods or Services 130
Title and Risk 131
Obligations of the Seller 132
Consumer Protection Legislation 135
Provincial Legislation 135
Federal Legislation 142
The Federal Competition Act 142
Secured Transactions 147
Other Forms of Security 151
Bankruptcy and Insolvency 153
KEY TERMS 157
QUESTIONS FOR STUDENT REVIEW 158
QUESTIONS FOR FURTHER DISCUSSION 159
CASES FOR DISCUSSION 159

CHAPTER 6 Agency and Employment 161

Agency 162
Principal/Third-Party Relationship 163
The Agent/Third-Party Relationship 166
The Agent/Principal Relationship 167
Ending the Agency Relationship 169
Employment 170
Termination 173
Wrongful Dismissal 176
Termination by the Employee 180
Collective Bargaining 182
Organization 182
Bargaining 184
Job Action 186
Other Legislation 188
Supervising Employees 191
KEY TERMS 197
QUESTIONS FOR STUDENT REVIEW 197
QUESTIONS FOR FURTHER DISCUSSION 198
CASES FOR DISCUSSION 199

CHAPTER 7 Methods of Carrying on Business 202

Common Elements 203
The Sole Proprietor 204
Partnership 206
Creation 206
Liability of Partners 209
Dissolution 212
Limited Partners 215
Limited Liability Partnership 216
Corporations 217
Creation 218
Structure 218
Shareholders 219
Separate Legal Person 220
Limited Liability 221
Shareholder Duties 223
Shareholders’ Rights 224
Directors 227
Financing 231
Raising Funds 231
The Shareholders’ Agreement 233
Corporate Governance—Abuses and Responsibilities 234
Flexibility 237
Franchise 237
KEY TERMS 239
PREFACE

I am very pleased to have the opportunity to write a fourth edition of *Legal Fundamentals for Canadian Business* but also feel some trepidation. It is difficult to resist adding a lot more information because certainly the law is constantly changing; there are new case decisions, new legislative enactments, and new challenges facing business people that are not clearly elucidated in the current law. The difficulty is that adding more threatens the primary purpose of the text—to make the information manageable in a one-semester undergraduate course and to cover the information essential for students to enter into the business environment with confidence. So in the process of revising, I have kept the original focus clearly in mind. I have implemented a number of recommendations from reviewers, modifying, increasing, and reducing content as appropriate. I have maintained a focus on intellectual property and information technology, as they are areas where there have been dramatic legislative changes and technological advancements in recent years. I always keep in mind that a risk adverse businessperson is perhaps the most astute, and so we have increased the suggestions and ideas on how legal complications can develop and have proposed ways and means to avoid them. As usual we have replaced many of the cases with newer decisions and commented on their impact on the laws that affect business decision making. Recognizing that judicial decisions are the essential guideposts to business activity, I give full recognition to their importance in this endeavour. I am grateful to students and instructors whose use of the text suggests that I am still on the right track.

APPROACH

Although some may raise their eyebrows at yet another business law text in an already crowded field, I have observed that most of the texts currently used are too extensive or too detailed for some courses. In this text I have attempted to create a shorter book (only 10 chapters) without sacrificing essential content. I have also found that the text usually drives the course; and many instructors complain that they don’t have enough time in a 14-week term to deal with all of the subjects they would like to cover. Sometimes instructors teach a course that must be delivered in an even more condensed time frame. Some teach specialized courses in marketing, computers, finance, and the like, and find that they have to spend so much time on a general introduction to business law that they don’t have time to focus on the law that affects the specialized topic that is the primary objective of the course. This text gives business law instructors the flexibility to deal with all of the topics, to customize their course by supplementing it with additional material, and/or to concentrate on an area of specialization.

Many instructors feel a pressing need to deliver the introductory and foundation material efficiently so that there is enough time left to cover more advanced material. Hence, in this text there is only one introductory chapter setting out the history, institutions, and litigation processes used in Canada, only one chapter on torts, and three chapters on basic contract law. A great deal of effort has gone into making these chapters as efficient as possible, while still covering the essential concepts and rules. The remaining five chapters deal with more advanced and technical information—
everything from the legal issues regarding agency and employment to the timely issues of intellectual property—and have not been simplified to the same extent as the first five. Although somewhat condensed here, these topics don’t really lend themselves to abbreviation.

FEATURES

I’ve incorporated several features into the text to engage students. Throughout the text there are Case Summaries designed to illustrate the legal concepts under discussion. Such case studies are the heart of any business law course and create a dynamic, practical environment for a subject that, without them, would be dry and uninspiring at best.

For some topics I have also included diagrams that illustrate the legal relationships in the case. There are also a number of figures and tables included throughout the text; these are designed to clarify and summarize information so that it’s easily accessible to students.

The Cases for Discussion at the end of each chapter are based on actual court reports. I have not included the decisions so that the cases can be used in assignments or for classroom discussions. Instructors have access to the actual outcomes in the Instructor’s Manual, or students can follow the reference to discover the outcome for themselves.

Also at the end of each chapter, Questions for Further Discussion can be used in class or group discussions. They raise issues with respect to the topics discussed. There are no solutions provided, as they are intended to point out the dilemmas often faced by those who make or enforce these legal principles.

Questions for Student Review

1. Why is it important for a business student to understand the law?
2. Define law and distinguish between substantive and procedural law.
3. Explain the origin and function of the Constitution Act (1867), formerly the British North America Act, and its importance with respect to how Canada is governed.
4. Explain parliamentary supremacy and its place in our legal system.
5. Indicate the importance of the Constitution Act (1982), and explain why it was important to the development of Canada.
6. How are individual human rights protected in Canada?
7. Explain the significance of the Charter of Rights and Freedoms, and identify three limitations on its application.
8. Describe the basic rights and freedoms protected in the Charter.
9. Describe the court structure in place in your province.
10. Contrast the nature and function of the provincial court and superior trial court in your province, and distinguish between the roles of trial courts and courts of appeal, including the Supreme Court of Canada.

Questions for Further Discussion

1. Discuss the relationship between law, morality, and ethics. How does an individual determine what is ethical behaviour and what is not, if one cannot use the law as the test? What role should morality and ethics play in business decisions?
2. Canada has a tradition of parliamentary supremacy inherited from Great Britain. However, this tradition has been modified somewhat by the passage of the Charter of Rights and Freedoms. Explain how the Charter has limited parliamentary supremacy, how that affects the role of the courts, and whether these changes are advantageous or detrimental to Canada as a democracy.
3. The process leading to trial is long, involved, and costly. Most jurisdictions are trying to change the procedures to alleviate delays and costs. How successful are these changes? Are there enough safeguards in place to protect the rights of people and businesses who are affected by administrative decisions?
4. What role should morality and ethics play in business decisions? What would be the outcome if the courts tried to set a social or personal moral standard? How are these traditional values preserved in Canada as a democracy?
5. The process leading to trial is long, involved, and costly. Most jurisdictions are trying to change the procedures to alleviate delays and costs. How successful are these changes? Are there enough safeguards in place to protect the rights of people and businesses who are affected by administrative decisions?

Cases for Discussion

   Ian was the owner of a 17-foot pleasure boat. After a day of boating on the lake and leaving the boat on its trailer to prepare for transporting it on the highway, Ian was securing the boat with the help of Dr. Simms. Ian was stretching a bungee cord over the engine when it slipped and hit Dr. Simms, causing an eye injury. He and his wife sued in negligence against Dr. Simms, claiming an employer-employee relationship existed. The trial judge held Dr. Simms liable for $1 million. The Ontario Court of Appeal reversed the decision, affirming that Dr. Simms was not required to show the active negligence of Ian and the absence of any reliance by Dr. Simms on Ian.

   This is a classic case dealing with freedom of expression. The City of Peterborough had passed a by-law prohibiting the posting of any material on city property. The by-law prohibited the posting of "any bill, poster, or other advertisement of any nature," on any...
Finally, the Questions for Student Review are designed to help students review the chapter material. As they respond to the questions, referring back to the content of the chapter, students should develop a good grasp of the concepts and principles contained in the chapter.

SUPPLEMENTS


Companion Website  The Companion Website is an online study tool for students. The Companion Website provides students with an assortment of tools to help enrich the learning experience, including an eText, glossary flashcards, student PowerPoints, self-quiz, internet exercises, short essay exercises, cases with assessments, and hyperlinked URLs. This comprehensive resource includes provincial supplements for British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, and the Atlantic provinces, covering special topics for each of these areas. These topics include a brief overview of business legislation specific to the province, along with links to relevant cases, legislation, and additional resources.

The Pearson eText feature gives students access to the text whenever and wherever they have access to the internet. eText pages look exactly like the printed text, offering powerful functionality for students and instructors. Users can create notes, highlight text in different colours, create bookmarks, zoom, click hyperlinked words and phrases to view definitions, and view the text in single-page or two-page format. Pearson eText allows for quick navigation to key parts of the eText using a table of contents and provides full-text search.

Instructor’s Manual  This manual includes a number of aids, including outlines of how lectures might be developed, chapter summaries, answers to review questions, and suggestions for conducting classroom discussions. The court decisions for the end-of-chapter cases are also provided, and sample examination questions are included for each chapter.

MyTest  MyTest from Pearson Canada is a powerful assessment generation program that helps instructors easily create and print quizzes, tests, and exams, as well as homework or practice handouts. Questions and tests can be authored online, allowing instructors ultimate flexibility and the ability to efficiently manage assessments at any time, from anywhere. MyTest for Legal Fundamentals for Canadian Business, Fourth Edition, contains a comprehensive selection of multiple-choice, true/false, and short essay questions with answers. A link to the MyTest is available on the Pearson online catalogue. These questions are also available in Microsoft Word format as a download from the online catalogue.

PowerPoint® Presentations  This supplement provides a comprehensive selection of slides highlighting key concepts featured in the text to assist instructors and students. The complete PowerPoint slides can be downloaded from the Pearson online catalogue.

Image Library  Every image from the book is available to instructors in electronic format to use in lectures and presentations. The Image Library can be downloaded from the Pearson online catalogue.
Technology Specialists  Pearson’s Technology Specialists work with faculty and campus course designers to ensure that Pearson technology products, assessment tools, and online course materials are tailored to meet your specific needs. This highly qualified team is dedicated to helping schools and instructors take full advantage of a wide range of educational resources, by assisting in the integration of a variety of instructional materials and media formats. Your local Pearson Education sales representative can provide you with more details about this service program.

CourseSmart for Instructors  CourseSmart goes beyond traditional expectations—providing instant, online access to the textbooks and course materials you need, at a lower cost for students. In addition, even as students save money, you can save time and hassle with a digital eTextbook that allows you to search for the most relevant content at the very moment you need it. Whether it's evaluating textbooks or creating lecture notes to help students with difficult concepts, CourseSmart can make life a little easier. See how when you visit www.coursesmart.com/instructors.

CourseSmart for Students  CourseSmart goes beyond traditional expectations—providing instant, online access to the textbooks and course materials you need, at an average savings of 50 percent. With instant access from any computer and the ability to search your text, you'll find the content you're looking for quickly, no matter where you are. And, with online tools like highlighting and note-taking, you can save time and study efficiently. See all the benefits at www.coursesmart.com/students.

Navigate to the book's catalogue page to view a list of available supplements. See your local sales representative for details and access.
ACKNOWLEDGMENTS

I would like to acknowledge the help of all those who have assisted in making the production of this work possible. My wife, Ruth, has helped, encouraged, and supported me in more ways than I can list. I wish to thank as well the reviewers whose suggestions and criticisms were invaluable as the text was honed and shaped into its final form, including:

Donna Boots, SIAST
George Allen, Red River College
Mary Gibbons, George Brown College
M. Linda Chiasson, University of Guelph

Also, my thanks to the firm, guiding hands of all those at Pearson, who supported me throughout the long gestation period of this text, including Gary Bennett, Vice-President; Megan Farrell, Acquisitions Editor; Lila Campbell, Developmental Editor; [to come], Production Editor; [to come] and [to come], Project Managers; and [to come], Copy Editor.