

I

REAL AND PERSONAL PROPERTY

The 'common law' (or 'rule of law') system is predicated upon the notion that individuals may own property (whether real or personal), and that their legally enforceable ownership rights (which are often not absolute) will be protected and enforced by a legal system whose statutes and case law precedents are knowable and reasonably predictable.

Conceptually, all property is divided into real property and personal property. The rights of individual ownership of real property often must be balanced against the rights of adjacent or nearby owners, and the rights of society as a whole. For these reasons, zoning regulations, environmental restrictions, and even sometimes, the taking of private property (with just compensation) in the interest of the public good, are all risks and realities which are knowingly undertaken by the owners of real property.

Personal (i.e., non-real) property comes in many forms. Its ownership is also often not absolute. For example, as discussed under Security Agreements, below, and especially in a commercial context, one person may own personal property, while another has an as-yet unrealized and contingent right (a security interest) to obtain and liquidate that personal property for the purpose of satisfying a debt, if that debt is not paid according to its terms. This is not to suggest that security interests may not be had in real property; in fact, this arrangement is very common.

Aside from the rights of property ownership which involve the use and control of the property (such as it may be circumscribed by the rights of others), are the rights to transfer that right to others, or to sell the property, or to sell one's interest in the property ... for fair value.

BASIC PRINCIPLES OF PROPERTY

- A. Kinds of Property
 - 1. Real and personal
 - 2. Fixtures
 - 3. Tangible and Intangible

- B. Incidents of Property Ownership
 - 1. Transfer during Life
 - 2. Transfer on Death
 - 3. Taxation

- C. Transfer of Ownership
 - 1. Sale
 - 2. Gift

- a. Delivery
 - b. Intent
 - 3. Will or Descent
- D. Concurrent Ownership
 - 1. Joint Tenancies with Rights of Survivorship
 - 2. Tenancies in Common
- E. Bailments in the Commercial Setting
 - 1. Essential Elements of a Bailment
 - a. Delivery of Possession
 - b. Personal Property
 - c. Possession for a Determinable Time
 - d. Restoration of Possession to the Bailor
 - e. Bailee's Duty to Exercise Due Care
 - 2. Selected Types of Bailments
 - a. Warehousing
 - b. Carriers of Goods
 - 1. Duty to Carry
 - 2. Duty to Deliver to the Right Person
 - 3. Liability for Loss or Damage
 - c. Leases of Real Property
- F. Documents of Title
 - 1. Types of Documents of Title
 - a. Warehouse Receipts
 - 1. Duties of Warehousemen
 - 2. Lien of Warehouseman
 - b. Bills of Lading
 - 1. Duties of Issuer of Bill of Lading
 - 2. Through Bills of Lading
 - 3. Lien of Carrier
 - 2. Negotiability of Documents of Title
 - a. Negotiation
 - 1. Rights Acquired by Negotiation
- G. Categories of Intellectual Property
 - 1. Trade Secrets
 - 2. Trade Symbols
 - a. Types of Trade Symbols
 - b. Registration
 - c. Infringement and Remedies
 - 3. Trade Names

4. Copyrights
 - a. Procedures
 - b. Rights
 - c. Ownership
 - d. Infringement and Remedies
5. Patents
 - a. Patentability
 - b. Procedures
 - c. Infringement and Remedies

INTERESTS IN REAL PROPERTY

- A. Present Interests
 1. Fee Simple
 2. Life Estate
 - a. Dower and Curtesy
- B. Future Interests
 1. Reversions
 2. Remainders
 - a. Vested Remainders
 - b. Contingent Remainders
 - c. Rule Against Perpetuities
- C. Leases
 1. Creation and Duration of the Lease
 - a. Definite Terms
 - b. Periodic Tenancy
 - c. Transfer of Interests in a Lease
 1. Transfers by Landlord
 2. Transfer by Tenant
 - A. Assignment
 - B. Sublease
 2. Tenant's Obligations
 - a. Pay rent per agreement
 - b. Care of premises per agreement
 3. Landlord's Obligations
 - a. Quiet Enjoyment
 - b. Fitness for Use
 - c. Care of premises per agreement
- D. Concurrent Ownership
 1. Joint Tenancies with Rights of Survivorship
 2. Tenancies in Common
 3. Tenancies by the Entireties

- 4. Condominiums
 - 5. Cooperatives
- E. 1. Easements
- a. Type of Easements
 - b. Creation of Easements
 - 1. By Express Grant or Reservation
 - 2. Implied Grant or Reservation
 - 3. Necessity
 - 4. Prescription

TRANSFER AND CONTROL OF REAL PROPERTY

- A. Transfer of Real Property
- 1. Purchase and Sale Agreement
 - a. Formation
 - b. Marketable Title
 - 2. Deeds
 - a. Types of Deeds
 - 1. Warranty
 - 2. Quitclaim
 - b. Formal Requirements
 - 1. Consideration
 - 2. Description of the Land
 - 3. Character of the Interest Conveyed
 - 4. Execution
 - c. Recordation
 - 3. Secured Transactions
 - a. Mortgages (to secure Promissory Notes)
 - b. Rights and Duties
 - c. Foreclosure
- B. Public and Private Controls
- 1. Zoning
 - a. Enabling Acts and Zoning Ordinances
 - b. Variance
 - c. Pre-existing Non-conforming Uses
 - d. Judicial Review of Zoning
 - 1. Invalidity of Zoning Ordinance
 - 2. Unreasonable Application of Zoning Ordinance
 - 2. Eminent Domain
 - a. Public Use
 - b. Just Compensation

3. Private Restrictions Upon Land Use
 - a. Nature of Restrictive Covenants

II

CONTRACTS

It is inherent in the ownership of property that the property's owner has the right to transfer his or her interest in the property. That transfer can take several forms, such as a sale, a gift, or a transfer which is triggered by operation of law upon the owners's death.

In a commercial context, such transfers are typically in the form of sales, where value is exchanged for value. Such arrangements require an agreement between the parties (a so-called "meeting of the minds"), wherein one party agrees to transfer certain rights to the other party in exchange for a transfer of rights by the other party. Such an agreement is called a contract.

Contracts do not always have a property-for-property exchange as their basis. Many contracts involve the promise to provide services, either in exchange for property, or in exchange for other services. The legal principles which underlie contracts for the sale of real property, as distinct from personal property, as distinct from services, are similar in many ways, but are also different due to the fact that they are governed by different bodies of law.

Some contracts must be in writing, such as those affecting the ownership of real property, but many may be unwritten. If a dispute over a contract does arise, however, it is often easier to resolve if there exists a written description of its terms.

If one party does not live up to the terms of a contract, he or she (or, in the case of a business entity, it) can recover economic damages through the legal system. The measure of those damages is such that the non-breaching party is to be made whole ... is to be placed in as good a financial position as would have been the case if the contract had been performed as agreed.

DEVELOPMENT OF THE LAW OF CONTRACTS

- A. Common Law
- B. Uniform Commercial Code (Article 2; Sale of Goods)
- C. Types of Contracts Outside the Code
 1. Real Property
 2. Services

MUTUAL ASSENT

- A. Offers
 - 1. Elements of an Offer
 - a. Communication
 - b. Intent
 - c. Definiteness
 - 1. Open Terms
 - 2. Output, Requirements and Exclusive Dealings
 - 2. Duration of Offers
 - a. Lapse of Time
 - b. Revocation
 - 1. Option Contracts
 - 2. Firm Offers Under the Code
 - c. Rejection
 - d. Counteroffer
 - e. Death or Incompetency
 - f. Destruction of Subject Matter
 - g. Subsequent Illegality
- B. Acceptances
 - 1. Definiteness of Acceptance
 - a. Mirror Image Rule
 - b. Battle of the Forms (UCC)
 - c. Silence Rarely Equals Acceptance
 - 2. Time of Acceptance
 - a. Authorized Means
 - b. Unauthorized Means
 - c. Reasonable Medium Rule
 - 3. Assignment and Delegation
 - 4. Capacity
 - 5. Illegality

PERFORMANCE, BREACH AND DISCHARGE

- A. Discharge by Performance
- B. Discharge by Breach
 - 1. Substantial Performance
 - 2. Anticipatory Repudiation
- C. Discharge by Agreement of the Parties
 - 1. Mutual Rescission
 - 2. Substituted Contracts

- 3. Accord and Satisfaction
 - 4. Novation
- D. Discharge by Operation of Law
- 1. Subsequent Illegality
 - 2. Impossibility
 - 3. Bankruptcy
 - 4. Statute of Limitations

ASSIGNMENT OF CONTRACT RIGHTS AND DELEGATION OF CONTRACT DUTIES

Assignment and Delegation

- A. Assignment of Rights
 - 1. Rights of the Assignee
 - a. Obtains Rights of Assignor
 - b. Notice to Obligor
- B. Delegation of Duties
 - 1. Effect on Rights of Obligee

Third-Party Beneficiary Contracts

- A. Intended Beneficiary
 - 1. May Enforce Contract in Court if Equitable Relief Warranted
 - 2. May Seek Damages in Court
- B. Incidental Beneficiary

REMEDIES

- A. Monetary Damages
 - 1. Compensatory Damages
 - 2. Consequential Damages
 - 3. Foreseeability of Damages
 - 4. Punitive Damages
 - 5. Liquidated Damages
 - 6. Duty to Mitigate Damages
- B. Equitable Remedies
 - 1. Specific Performance
 - 2. Injunctions (Negative and Affirmative)

- C. Recission and Restitution
- D. Limitations on Remedies
 - 1. Election of Remedies
 - 2. Laches
 - 3. Intervening Rights of Third Parties

III

AGENCY

- The use of agents permits a business person to accomplish a greater volume of commercial transactions than would be possible for the business person working alone. This concept is sometimes referred to as “human leverage”, and can be analogized to the concept of “financial leverage”. Financial leverage exists when one uses borrowed money in an effort to make a profit. With less of one’s own money at stake, the rate of return on investment can be dramatically improved. Unfortunately, the potential for losses can be similarly magnified through the use of financial leverage.

As with financial leverage, human leverage creates both the potential for greater profitability, and the potential for greater loss. Agents sometimes make promises on behalf of principals which are beyond the scope of their authority. Such promises are nevertheless binding on the principal, if the agent had the apparent authority to bind the principal in the manner in which he purported to do. In this respect, the law tends to protect third parties who rely upon objective appearances to their detriment.

Similarly, an agent may do a job in an unworkmanlike manner, or in such a manner that a third party is injured. In many circumstances, the financial losses which are suffered by a third party as a result of the unworkmanlike or negligent acts of an agent are the financial responsibility of the principal.

The relationship between principal and agent is a contractual one. As such, principals and agents are generally free to structure their relationships as they see fit. The relationships between principals and third parties, however, and between agents and third parties, arise outside the framework of the principal-agent contract, and as such, are governed by a different body of law.

RELATIONSHIP OF PRINCIPAL AND AGENT

- A. Scope of Agency Purposes
- B. Creation of Agency

1. Contractual Relationship
 2. Statute of Frauds
- C. Duties of Agent to Principal
1. Duty of Obedience
 2. Duty of Diligence
 3. duty to Inform
 4. Duty to Account
 5. Fiduciary Duty
- D. Duties of Principal to Agent
1. Contractual Duties
 - a. Compensation
 - b. Reimbursement
 - c. Indemnification
 2. Statutory Safety Duties
- E. Termination of Agency
1. Acts of the Parties
 - a. Lapse of Time
 - b. Mutual Agreement of the Parties
 - c. Fulfillment of Purpose
 - d. Revocation of Authority
 - e. Renunciation by the Agent
 2. Operation of Law
 - a. Bankruptcy
 - b. Death
 - c. Incapacity
 - d. Change in Business Conditions
 - e. Loss or Destruction of the Subject Matter
 - f. Disloyalty of Agent
 - g. Change of Law
 - h. Outbreak of War

RELATIONSHIP WITH THIRD PARTIES

- A. Relationship of Principal and Third Persons
1. Contract Liability of the Principal
 - a. Types of Authority
 1. Actual Express Authority
 2. Actual Implied Authority
 3. Apparent Authority
 2. Tort Liability of the Principal

- a. Direct Liability of Principal
 - b. Vicarious Liability of Principal for Acts of Agent
 - 1. Respondeat Superior
 - 2. Torts of Independent Contractor
 - 3. Criminal Liability of the Principal
- B. Relationship of Agent and Third Persons
- 1. Contract Liability of Agent
 - a. Non-Fully Disclosed Principal
 - b. Unauthorized Contracts
 - 2. Tort Liability of Agent

IV

BUSINESS ENTITIES

The simplest form of business entity is the “sole proprietorship”, in which one person has complete ownership and control of the business. A sole proprietorship may, and often does, employ many agents, and in this manner, may conduct a very large volume of business. Nonetheless, the sole proprietor is the only individual with an investment at risk, and therefore, the only individual who is entitled to receive distributions of net profits, if any, or the net proceeds, if any, of liquidation.

Frequently, in order to assemble a sufficient amount of capital, or for the purpose of joining together a needed blend of talents, two or more individuals will band together as co-owners of a business. This type of business entity is known as a “partnership”. A partnership is generally based upon an agreement between or among the partners with respect to a broad variety of business-related issues, including the amount of capital contribution to be made by each, the day-to-day responsibilities (if any) and the resulting compensation of each, and the manner in which net profits and proceeds of liquidation are to be distributed.

The rights and responsibilities of partners within a given partnership are governed by the partnership agreement. That agreement is a contract between or among the partners. It may or may not be in writing. To the extent that a disagreement arises between partners about a subject which was not anticipated and provided for in the partnership agreement, the partners will generally look to the Uniform Partnership Act (UPA) to “fill in the gaps”. On the other hand, if the partners have taken the step of addressing a particular issue in their partnership agreement, that document will control over the UPA.

The UPA is a self-contained collection of supposedly ideal laws relating to the subject of partnerships. There are “uniform acts” in many other substantive areas of the law. These acts are drafted by legal scholars, such as law school professors with the pertinent expertise, and

represent the views of the group as to how the particular substantive area of the law should be administered. These are not federal laws, but often become state laws when they are adopted by state legislatures. In adopting such a uniform act, a state legislature is free to tailor the act to the perceived particular needs of its state. In many areas of the law, uniform acts such as the UPA have been adopted in a substantial majority of the states of the United States, thereby creating a substantial degree of uniformity and predictability throughout the nation.

There are certain disadvantages inherent in the partnership form of doing business which have spurred the creation of the corporate form of doing business. A major advantage of a corporation over a partnership is the concept of limited liability of investors. Shareholders are the investors in a corporation. They contribute operating capital to the corporation in exchange for shares of stock in the corporation. Those shares of stock represent a percentage of ownership in the corporation which is usually proportional to the percentage which the particular shareholder's capital contribution represents to the aggregate of all of the capital contributions which have been made to the corporation by all of its shareholders.

If a corporation operates unprofitably, it can eventually fail, with the result that the investment of the shareholders will have been lost. If, after the assets of the corporation have been applied to the debts of the corporation, further indebtedness exists, the personal assets of the corporation's shareholders are not held answerable for that debt. That is not true in the case of a partnership. If the assets of a failed partnership, on the other hand, are insufficient to cover its debts, the creditors of the partnership may hold the individual partners personally liable, and may look to the personal assets of the partners for the purpose of satisfying the debt. Clearly, this difference makes it much more attractive for a would-be investor to become a shareholder of a corporation, rather than a partner in a partnership. In this way, the shareholder-investor assumes a known and limited risk. It is therefore far easier to obtain start-up or expansion capital through the sale of shares, since the risks of the investors are much more easily controlled.

Because shareholders of a corporation are not personally liable (beyond the consideration which they have paid for their shares) for the obligations of the corporation, a would-be creditor of a corporation must satisfy itself that the corporation itself has adequate assets from which to satisfy any reasonably foreseeable liability. In order to assist creditors in assessing such risks, the law requires that any business which is operating in a corporate form make this fact known to its would-be creditors. The law also requires that the corporation register with state government, and make available to the public through a state government agency enough information about its owners and structure to permit any would-be creditor to begin the process of acquiring the necessary information with which to assess the risk.

Corporations have other advantages, such as centralized management and potentially perpetual existence. They also have certain disadvantages, such as the need for a certain amount of initial and on-going paperwork and legal services. Nonetheless, the advantages would seem to outweigh the disadvantages, since the substantial majority of the aggregate commercial productivity of the United States is generated by businesses which operate in the corporate form.

PARTNERSHIPS: NATURE AND FORMATION

- A. Nature of Partnership
 - 1. Definition
 - 2. Types of Partners
 - a. General
 - b. Limited

- B. Formation of a Partnership
 - 1. Partnership Agreement
 - a. Statute of Frauds
 - b. Firm Name
 - 2. Tests of Partnership Existence
 - a. Shared Management Decision-Making
 - b. Sharing of Net Profits
 - 3. Partnership Capital and Property
 - a. Rights in Specific Partnership Property
 - b. Partner's Interest in the Partnership
 - c. Creditor's Rights

PARTNERSHIPS: RIGHTS AND DUTIES

Relationship of Partners to One Another

- A. Duties Among Partners (See Agency, by analogy)
 - 1. Duty of Obedience
 - 2. Duty of Loyalty
 - 3. Duty to Exercise Reasonable Business Judgment

- B. Rights Among Partners (See Agency, by analogy)
 - 1. Right to Share in Profits
 - 2. Right to Return of Capital on Dissolution
 - 3. Right to Compensation
 - 4. Right to Participate in Management
 - 5. Right to Choose Associates
 - 6. Enforcement Rights
 - a. Right to Information and Inspection of the Books
 - b. Right to an Accounting

Relationship Between Partners and Third Parties

- A. Contracts of Partnership with Third Parties
 - 1. Contract Liability of Partners with Third Parties

2. Authority to Bind Partnership
 - a. Actual Express Authority
 - b. Actual Implied Authority
 - c. Apparent Authority
- B. Torts of Partnership
- C. Liability of Incoming and Outgoing Partners

CORPORATIONS: NATURE, FORMATION AND POWERS

Nature of Corporations

- A. Corporate Attributes
 1. Legal Entity
 2. Creature of the State
 3. Limited Liability of Shareholders
 4. Free Transferability of Corporate Shares
 5. Perpetual Existence
 6. Centralized Management
- B. Classification of Corporations
 1. Public or Private
 2. Profit or Non-Profit
 3. Domestic or Foreign
 4. Closely Held

Formation of a Corporation

- A. Organizing the Corporation
 1. Promoters
 2. Subscribers
- B. Formalities of Incorporation
 1. Selection of Name
 2. Draft Articles of Incorporation
 3. Organizational Board of Director's Meeting
 4. Bylaws

Corporate Powers

- A. Sources of Corporate Powers
 1. Statutory Powers

2. Express Charter Powers
 3. Implied Powers
- B. Ultra Vires Acts
1. Effect of Ultra Vires Acts
 2. Remedies for Ultra Vires Acts
- C. Liability for Torts and Crimes
- D. Piercing the Corporate Veil
1. Undercapitalization
 2. Failure to Observe Corporate Formalities
 3. Non-Segregation of Funds
 4. Subsidiary Corporations

CORPORATIONS: FINANCIAL STRUCTURE

Equity Securities (Shares)

- A. Issuance of Shares
1. Authority to Issue
 2. Amount of Consideration for Shares
 3. Payment for Shares
 - a. Type of Consideration
 - b. Valuation of Consideration
 4. Pre-emptive Rights
- B. Classes of Shares
1. Common Shares
 2. Preferred Shares
 - a. Dividend Preferences
 - b. Liquidation Preferences
 3. Voting versus Non-Voting Shares

Debt Securities (Corporate Bonds)

Dividends and Other Distributions

- A. Types of Dividends
- B. Legal Restrictions on Dividends
- C. Declarations and Payment of Dividends
- D. Liability for Improper Dividends and Distributions

Transfer of Investment Securities

- A. Ownership of Securities
 - 1. Record Ownership
 - 2. Duty of Issuer to Register Transfer of Shares
 - 3. Lost, Destroyed or Stolen Shares

- B. Transfer of Shares
 - 1. Restrictions on Transfer (Shareholder Agreements)
 - 2. Manner of Transfer
 - 3. Bona Fide Purchasers

CORPORATIONS: MANAGEMENT STRUCTURE

Corporate Governance

- A. Shareholders
- B. Board of Directors
- C. Officers

Role of Shareholders

- A. Voting Rights of Shareholders
 - 1. Election and Removal of Directors
 - 2. Approval of Fundamental Changes
 - 3. Concentration of Voting Power
 - a. Proxies
 - b. Shareholder Agreements

- B. Enforcement Rights of Shareholders
 - 1. Right to Inspect Books and Records
 - 2. Shareholder Suits
 - a. Direct Suits
 - b. Derivative Suits
 - 3. Shareholder's Right to Dissent

- C. Limited Liability of Shareholders

Role of the Directors and Officers

- A. Function of the Board of Directors
 - 1. Selection and Removal of Officers
 - 2. Capital Structure

3. Fundamental Changes
 4. Dividends
 5. Management and Compensation
- B. Election and Tenure of Directors
1. Election, Number and Tenure of Directors
 2. Vacancies and Removal of Directors
 3. Compensation of Directors
- C. Exercise of Directors' Functions
1. Meetings
 - a. Annual and Special Meetings
 - b. Shareholder and Board of Directors' Meetings
 2. Quorum and Voting
 3. Action Taken Without a Meeting
 4. Delegation of Board Powers
 5. Directors' Inspection Rights
 6. Minutes
- D. Officers
1. Selection and Removal of Officers
 2. Role of Officers
 - a. President
 - b. Vice President(s)
 - c. Secretary
 - d. Treasurer
 3. Authority of Officers
 - a. Actual Express Authority
 - b. Actual Implied Authority
 - c. Apparent Authority
- E. Duties of Directors and Officers
1. Duty of Obedience
 2. Duty of Diligence
 - a. Reliance on Others
 - b. Business Judgment Rule
 3. Duty of Loyalty
 - a. Conflict of Interests
 - b. Loans to Directors
 - c. Corporate Opportunity
 - d. Transactions in Shares
- F. Indemnification of Directors and Officers

UNIFORM COMMERCIAL CODE

Another uniform act, and perhaps the most central to commercial transactions, is the Uniform Commercial Code (UCC). Its eight substantive “Articles” cover a broad variety of topics, including the Sale of Goods (Article 2), Commercial Paper (Article 3) and Secured Transactions (Article 9). Perhaps more than any other uniform act, the UCC has achieved almost universal adoption across the United States. Again, this provides for predictability and consistency in business practices throughout the nation.

Article 2 covers the “Sale” (as opposed to gift or bailment) of “Goods” (generally encompassing personal property). It relaxes the traditional law of contracts somewhat to comport with present-day commercial practices. It sets out the respective rights and responsibilities of sellers and buyers of goods. These include the liability of a manufacturer, or other seller, for injuries which are occasioned by the product as a result of their culpable conduct.

Article 3 covers Commercial Paper, encompassing negotiable documents which represent, and substitute for, money. “Negotiability” is the legal characteristic which a piece of commercial paper must have in order for its owner to be able to use it effectively as a freely transferable substitute for money. “Negotiation” is the manner in which ownership of a negotiable piece of commercial paper is transferred. Article 3 sets out criteria for a document’s negotiability, and rules for its proper negotiation.

Article 9 covers Secured Transactions, wherein property is pledged as collateral for the timely repayment of a debt which is owed by a debtor to a secured party. If the debtor fails to repay the debt to the secured party as and when it comes due, the secured party may take possession of the collateral, liquidate it, and apply the proceeds against the outstanding balance of the debt. It also governs the manner in which conflicting claims of competing creditors are prioritized. In most respects, it only applies to secured transactions in which the collateral is goods other than motor vehicles. Secured transactions in which the collateral is either real property or motor vehicles are governed by different bodies of law.

NATURE OF SALES CONTRACTS

General Principles of Sales Contracts

- A. Definition of a Sale of Goods
 - 1. Governing Law (UCC, Article 2)
 - 2. Nonsales Transactions
 - 3. Sales of Nongoods

- B. Fundamental Principles of Article 2

1. Good Faith
2. Unconscionability
3. Expansion of Commercial Practices
4. Sales By and Between Merchants
5. Liberal Administration of Remedies
6. Freedom of Contract
7. Validation and Preservation of Sales Contracts

Formation of a Sales Contract

- A. Manifestation of Mutual Assent
 1. Definiteness of an Offer
 - a. Open Price
 - b. Open Delivery
 - c. Open Quantity; Output and Requirement Contracts
 - d. Other Open Terms
 2. Irrevocable Offers
 3. Variant Acceptances
- B. Form of the Contract
 1. Statute of Frauds
 2. Parol Evidence

PRODUCT LIABILITY: WARRANTIES AND STRICT LIABILITY IN TORT

Warranties

- A. Types of Warranties
 1. Warranty of Title
 2. Express Warranties
 3. Implied Warranties
 - a. Merchantability
 - b. Fitness for Particular Purpose
- B. Obstacles to Warranty Actions
 1. Express Exclusions
 2. Disclaimer or Modification of Warranties
 3. Privity of Contract
 - a. Horizontal Privity
 - b. Vertical Privity
 4. Notice of Breach
 5. Plaintiff's Conduct
 6. Construction of Conflicting Language

Strict Products Liability

- A. Elements of Liability
 - 1. Defective Condition
 - a. Manufacturing Defect
 - b. Design Defect
 - c. Inadequate Warning or Instructions
 - 2. Unreasonable Dangerousness
- B. Obstacles to Recovery
 - 1. Disclaimers
 - 2. Misuse or Abuse of the Product
 - 3. Subsequent Alteration

COMMERCIAL PAPER: FORM AND CONTENT

- A. Negotiability
- B. Types of Commercial Paper
 - 1. Drafts
 - a. Checks
 - 2. Notes
 - a. Certificates of Deposit
- C. Form of Commercial Paper
 - 1. Writing
 - 2. Signed
 - 3. Unconditional Promise or Order to Pay
 - 4. Sum Certain In Money
 - 5. No Other Promise or Order
 - 6. Payable on Demand or At a Definite Time
 - 7. Payable to Order or to Bearer

COMMERCIAL PAPER: TRANSFER

- A. Transfer and Negotiation
- B. Indorsements
 - 1. Blank Indorsements
 - 2. Special Indorsements
 - 3. Indorsements for Deposit or Collection

SECURED TRANSACTIONS

- A. Elements of a Secured Transaction
 - 1. Debtor (and therefore, Debt)
 - 2. Secured Party
 - 3. Collateral
 - 4. Security Agreement

- B. Classifications of Collateral
 - 1. Goods
 - a. Consumer Goods
 - b. Farm Products
 - c. Inventory
 - d. Equipment
 - e. Fixtures
 - 2. Commercial Paper
 - a. Chattel Paper
 - b. Instruments
 - c. Documents
 - 3. Intangibles
 - a. Accounts
 - b. General Intangibles

- C. Perfection
 - 1. Filing a Financing Statement
 - a. Where to File
 - b. Improper Filing
 - 2. Possession
 - 3. Automatic Perfection

- D. Priorities of Secured Creditors
 - 1. Against Unsecured Creditors
 - 2. Against Other Secured Creditors
 - a. Perfected versus Unperfected
 - b. Perfected versus Perfected
 - c. Unperfected versus Unperfected
 - 3. Against Buyers
 - a. Buyers in the Ordinary Course of Business
 - b. Buyers of Consumer Goods
 - c. Other Buyers
 - 4. Against Lien Creditors
 - 5. Against Trustee in Bankruptcy
 - a. Priority Over Unperfected Security Interest

b. Avoidance of Preferential Transfers

F. Default

1. Sale of Collateral
2. Application of Proceeds
 - a. Cost of Sale
 - b. Debt Reduction or Elimination
 - c. Deficiency Judgment or Balance to Debtor

VI

NEGLIGENCE

The legal right of one private individual to collect money damages from another can be based either upon a breach of contract or upon a breach of a civil duty which, as matter of law, runs from one person to another even in the absence of a contract. This non-contractual liability is known as “tort” liability. The most common form of tort liability is known as the “negligence” tort.

There are four elements of a negligence tort. First, there must exist a legal duty running from the negligent party to the party who suffers damage. The existence or absence of such a legal duty is a question of law, which is therefore determined by a judge. Second, there must be a finding of fact that the party against whom damages are being sought breached that duty. In a jury trial, this determination (since it is purely factual in nature) is made by the jury. In a non-jury trial, the judge, by necessity, makes both legal and factual rulings. Third, there must have been a cause and effect relationship between the one party’s breach of duty and the other party’s damages. Finally, the damages of the damaged party must be proven and quantified. Both the third and fourth elements of the negligence tort are factual determinations.

ELEMENTS OF NEGLIGENCE

- A. Duty of Care
 1. Reasonable Person Standard
 2. Superior Skill or Knowledge
 3. Emergencies
 4. Violation of Statute
 5. Duties of Possessors of Land

- B. Proximate Cause
 1. Causation in Fact
 2. Foreseeability

- C. Injury
- D. Damages
- E. Defenses
 - 1. Comparative Negligence

VII

EMPLOYMENT LAW

Employment relationships are fundamentally contractual in nature, wherein an employer and an employee are relatively free to set the terms and conditions of their relationship. Nonetheless, since the need to be employed is so compelling from the perspective of the employee, the prospective employer enjoys a tremendous bargaining advantage. As a result, an unscrupulous prospective employer could be motivated to condition the offer of employment on terms and conditions which would be so unfavorable as to violate contemporary notions of public policy.

In furtherance of this type of public policy, many different types of employment laws have been enacted. They include the following: laws ensuring the right of unions to organize, but keeping their leaders from engaging in corrupt practices, minimum wage laws, child labor laws, laws forbidding discrimination on the basis of non-job-related physical or mental characteristics, laws mandating a safe working environment, laws providing compensation for employees who are injured during the course of their employment, laws intended to provide supplemental retirement income, and laws which continue a portion of an employee's former salary when the employee's employment is terminated for reasons other than the fault of the employee.

- A. Labor Law
 - 1. Rights of Unions to Organize
 - 2. Safeguards Against Corrupt Internal Union Practices
- B. Employment Discrimination
 - 1. Equal Pay
 - 2. Discrimination Generally
 - 3. Reverse Discrimination
 - 4. Sexual Harassment
 - 5. Comparable Worth
 - 6. Age Discrimination
- C. Employee Protection
 - 1. Employee Termination at Will

- a. Statutory Limitations
- b. Judicial Limitations
2. Occupational Safety and Health Act
3. Minimum Wage
4. Child Labor
5. Worker's Compensation
6. Social Security and Unemployment Insurance

VIII

BANKRUPTCY AND RELIEF OF DEBTORS

Capitalistic competition inevitably creates winners and losers. Some people become wealthy, and others lose their investments and become irreversibly inundated with debt. The law of bankruptcy addresses this reality in two ways. First, it provides a set of priorities pursuant to which any remaining non-exempt assets of the debtor are to be distributed among the debtor's creditors. Second, with certain exceptions, it wipes clean the slate of the debtor's obligations, and affords the debtor a so-called "fresh start".

Central to a debtor's right to utilize bankruptcy protection is the premise that the debt must have been incurred in a legitimate commercial context. Debts incurred as a result of dishonest dealing or bad faith will not be forgiven in bankruptcy. Public policy also forbids the forgiveness of certain other types of debt, such as child support, unpaid taxes, educational loans, and debts arising out of the operation of a motor vehicle while intoxicated.

Although the assets of a debtor in bankruptcy are generally liquidated and applied to the debtor's obligations, there are so-called "exemptions". Certain property of the debtor may not be applied to the debt because public policy dictates that the debtor not be left so impoverished that he or she is not realistically able to make ends meet. Exemptions forbid creditors, for example, from taking from the debtor the tools of his trade (up to a certain value), or a modest amount of equity which the debtor has built up in a motor vehicle.

Bankruptcy relief is available both for individuals and for corporations. A form of bankruptcy relief known as "reorganization" has become increasingly popular with corporations during the recent difficult economic times. This form of relief does not contemplate an outright liquidation of the debtor's assets, but rather, contemplates a plan of reorganization which envisions the debtor meeting its obligations, perhaps with certain limitations, and perhaps, over and extended period of time. Such a plan, which, simplistically stated, must have the approval of the creditors, may appear preferable from the creditors' point of view when contrasted with the stark possibility of receiving little or nothing from the debtor in the context of an outright liquidation of its assets.

FEDERAL BANKRUPTCY LAW

- A. Case Administration
 - 1. Commencement of the Case
 - a. Voluntary Petitions
 - b. Involuntary Petitions
 - 2. Automatic Stays
 - 3. Trustee
 - 4. Meetings of Creditors

- B. Creditors, the Debtor, and the Estate
 - 1. Creditors
 - a. Proof of Claims
 - b. Secured Claims
 - c. Unsecured Claims
 - d. Priority of Claims
 - 2. Debtor
 - a. Debtor's Duties
 - b. Debtor's Exemptions
 - c. Discharge
 - 3. The Bankrupt's Estate
 - a. Trustee's Powers
 - b. Voidable Preferences
 - c. Fraudulent Transfers

- C. Liquidation - Chapter 7
 - 1. Proceedings
 - 2. Distribution of the Estate
 - 3. Discharge

- D. Reorganization - Chapter 11
 - 1. Proceedings
 - 2. Plan of Reorganization
 - 3. Acceptance of Plan
 - 4. Confirmation of Plan
 - a. Good Faith
 - b. Feasibility
 - c. Cash Payments
 - d. Acceptance by Creditors
 - 5. Effect of Reorganization

- E. Adjustment of Debts of Individuals - Chapter 13
 - 1. Proceedings

2. The Plan
 3. Confirmation
 4. Discharge
- F. Adjustments of Debts of a Family Farmer - Chapter 12
1. Proceedings
 2. The Plan
 3. Confirmation
 4. Discharge

CREDITORS' RIGHTS AND DEBTOR RELIEF OUTSIDE BANKRUPTCY

- A. Creditors' Rights
1. Prejudgment Remedies
 2. Postjudgment Remedies
- B. Debtor's Relief
1. Compositions
 2. Assignment for Benefit of Creditors

IX

INTERNATIONAL BUSINESS TRANSACTIONS

From an economic standpoint, the world is becoming increasingly barrier-free and independent. As protectionism diminishes, opportunities for international trade increase. Simultaneously, industry must become increasingly competitive in order to maintain the market share which may have been created and sustained, in part, by non-free market influences.

Typically, any venture into the arena of international trade begins with exportation. This effort may first involve direct sales or marketing through foreign agents, and may then evolve into overseas-based distribution centers and manufacturing facilities. Licensing agreements, wherein technology is exchanged for goods, or for a stake in future profits, is often a useful approach when unconvertability of currency would otherwise create a practical barrier to trade.

- A. Creation and Enforcement of International Contracts
1. Choice of Law
 2. Choice of Forum
 3. Alternative Dispute Resolution
- B. Form of Multinational Enterprises
1. Direct Export Sales

- 2. Foreign Sales Agents
 - 3. Distribution Centers
 - 4. Licensing Agreements
 - 5. Joint Ventures
- C. Impediments to International Trade
- 1. Nonconvertability of Currency
 - a. Countertrade
 - b. 3-Cornered Exchanges
 - 2. Technical Standards
 - 3. Domestic Content Restrictions
- D. Letters of Credit