

Module 4: Legal Environment

4.1 Ethics

- Theories of Ethics
 - Deontological: ethical obligations regardless of consequences
 - Natural Rights—John Locke
 - Rights to life, health, and liberty
 - Natural (intrinsic to humanity), universal, inalienable
 - Declaration of Independence
 - Categorical Imperative—Immanuel Kant
 - Ethical obligations regardless of preferences or consequences
 - Treat others as ends, not means
 - Consequentialist: focus on impact rather than motives
 - Utilitarianism—Jeremy Bentham, John Stuart Mill
 - An action is justified if it does the greatest good for the greatest number of people

4.1 Ethics

- Legal Ethics
 - Rules governing the conduct of lawyers
 - Each state has legal ethics rules (based on American Bar Association's Model Rules of Professional Conduct)
 - Lawyers have duty to act in best interest of clients
- Malpractice
 - Action for negligence against lawyers for improper or unethical conduct or for violating ethics rules
- Attorney/Client Privilege
 - Prevents attorney/client communications from being revealed in court or elsewhere absent consent of client
 - Must be attorney/client relationship and must be communications intended to be confidential
- Conflicts of Interest
 - Concurrent Conflict: attorney cannot simultaneously represent two clients if the representation of one will be adverse to or significantly impair ability to represent the interests of the other client
 - Can be waived if disclosed to clients and they agree
 - Former conflict: attorney cannot represent a client in the same or substantially similar matter if client's interests are materially adverse to former client unless former client consents in writing. Attorney also cannot use information from former representation in a way that is adverse to interests of former client.
 - No business dealings with client unless terms are reasonable, client has opportunity to seek independent advice, and client agrees in writing
 - All consents must be informed consents

4.2 Social Responsibility of Corporations

Shareholder Primacy Theory (*Dodge v. Ford Motor Co.*)

Stakeholder or Social Entity Theory: Corporations have obligations not only to shareholders but to other stakeholders (workers, community, environment, etc.)

Permitted (not required) under corporate law (and 30 states have Other Constituency statutes)

Charitable contributions permitted if reasonable

4.3 Government Regulation and Administrative Agencies

- Administrative Agencies carry out specific governmental functions delegated by the legislature through enabling acts
- Some agencies are part of the executive branch, but some are independent
- Agencies are required to hold public meetings and Federal Information Act requires disclosure of information about agency functions and decision-making, unless the information is exempted by statute
- Administrative Law Judges(ALJs) adjudicate claims related to the agency
- Administrative Procedure Act sets procedures for agency rule-making and adjudication
- ALJ proceedings have relaxed evidentiary standards
- ALJ proceedings are usually reviewed by internal appeal boards
- Agency decisions are subject to court review as to whether decision is arbitrary and capricious.

4.4 Environmental Law

- 1969: National Environmental Policy Act
- 1970: Environmental Protection Agency
- Clean Air Act: authorizes EPA to create national air quality standards that states must obey or face sanctions
- Clean Water Act: authorizes EPA to set maximum levels of contaminants in the water; companies must receive permits to discharge pollutants and must monitor for compliance
- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) : establishes a fund to clean up and remediate hazardous waste sites and allows states to recover from current or past owners of the site
- Resource Conservation and Recovery Act: rules for handling of toxic wastes at current sites
- Toxic Substances Control Act
- Federal Environmental Pesticide Control Act

4.5 Securities and Antitrust Law

- Securities Regulation
 - Securities Act of 1933 (Securities Act)
 - Securities Act of 1934 (Exchange Act)
 - Securities and Exchange Commission
 - State “Blue Sky” Laws
 - Registration and Disclosure Requirements Under the Securities Act
 - Section 12(a)(1): strict liability penalties for failure to register
 - Section 11: civil penalties for material misrepresentations or omissions in registration statement (subject to negative causation and due diligence defenses)
 - Section 12(a)(2): civil penalties for material misrepresentations related to prospectuses (subject to negative causation and reasonable knowledge defenses)

4.5 Securities and Antitrust Law

- Securities and transactions exempt from regulation under federal securities laws
 - federal, state, municipal govts
 - Charitable institutions
 - Banks
 - Bankruptcy trustee
 - Maturity date under 9 months
 - Insurance/annuity contracts
 - Conversions or exchanges with existing shareholders or employees
 - Transactions occurring outside US or in one state
 - Securities regulated by other federal laws

4.5 Securities and Antitrust Law

- Section 4 of the Securities Act exempts from registration
 - Transactions not by an issuer or underwriter
 - Private placement transactions to sophisticated investors
 - Regulation D
 - Rule 504: aggregate offer price under one million dollars (no ads)
 - Rule 505: fewer than 35 non-accredited investors; aggregate price under 5 million dollars (ad restrictions; disclosure to non-accredited)
 - Rule 506: fewer than 35 non-accredited investors, so long as the non-accredited investors are sophisticated (ad restrictions; disclosure to non-accredited)
 - Accredited investors: over a million dollars net worth; venture capital firms; trusts with assets over \$5 million; directors/officers of issuing company

4.5 Securities and Antitrust Law

- Resale of Securities
 - Securities Act (Rule 144)
 - “Control persons” reselling securities purchased through private offerings must:
 - Have held securities for at least a year;
 - Sell through a broker;
 - Sell through a transaction involving a limited percentage of the firm’s securities

4.5 Securities and Antitrust Law

- Exchange Act regulates
 - Public Companies
 - Companies offering securities on a national exchange
 - Companies with assets over \$5 million and over 500 shareholders
 - Companies that voluntarily register

4.5 Securities and Antitrust Law

- Exchange Act Requires
 - Requires regular reporting (10-K, 10-Q, 8-K)
 - Regulates announcements of shareholder votes and proxy statements
 - Regulates tender offers
 - Prohibits Control Persons from acquiring short swing profits
 - Prohibits Securities Fraud
 - Prohibits Insider Trading

4.5 Securities and Antitrust Law

- Securities Fraud (section 10(b) & Rule 10b-5)
 - Misstatement or omission
 - Materiality
 - Securities Transaction
 - Scierter (intent to deceive)
 - Reliance
 - Causation
 - Damages
- Insider Trading
 - Insider is any company employee or one who misappropriates information of the company through position of trust (e.g., fiduciary, family member, confidant)

4.5 Securities and Antitrust Law

– Antitrust Law (Sherman Act)

- Trust is a group of companies that combine together to enhance their market power
- Monopoly is a trust that dominates an industry
- Sherman Act regulates trusts or monopolies that hurt consumers by unreasonably restraining trade
 - Rule of reason
- Federal Trade Commission

4.5 Securities and Antitrust Law

Horizontal Agreements (Per Se Violations)

- Price Fixing
- Production Quotas
- Group Boycotts
- Market Division

– Vertical Agreements

- Price-related agreements (per se violation)
- Tie-in Agreements
- Exclusive Distributor Agreements
- Exclusive Dealing Agreements
- Price Discrimination (Robinson-Patman Act)

4.5 Securities and Antitrust Law

- Clayton Act
 - Prohibits mergers and acquisitions that reduce competition or create monopolies
 - Hart-Scott-Rodino Act (Section 7(a) of the Clayton Act) requires companies planning to merge to notify FTC and Justice Department

4.6 Employment and Labor Law

- Fair Labor Standards Act
 - Minimum wage
 - Overtime
 - Child Labor
- Family and Medical Leave Act
 - 12 weeks unpaid leave for serious health condition, birth of a child, spousal care
- Workers' Compensation
 - Specifies benefits for various workplace injuries
- Unemployment Compensation
 - Provides compensation for specified periods after person becomes unemployed
- Social Security Act
 - Retirement and disability benefits to retired employees
 - Funded through Federal Insurance Contributions Act
- Employee Retirement Income Security Act (ERISA)
 - Regulates defined benefit (as opposed to defined contribution) pension plans
 - Pension Benefit Guarantee Corporation
- Occupational Safety and Health Act
 - Occupational Safety and Health Administration (OSHA)
- National Labor Relations Act
 - Protects collective bargaining rights
 - National Labor Relations Board

4.6 Employment and Labor Law

- Employment Discrimination
 - Title VII of the Civil Rights Act of 1964 prohibits discrimination based on race, color, religion, sex, national origin except for bona fide occupational qualifications
 - Applies to hiring, firing, promotion, and compensation decisions as well as retaliation for filing a discrimination complaint
 - Title VII also prohibits workplace sexual harassment
 - Quid pro quo
 - Hostile environment
 - Equal Pay Act
 - Age Discrimination in Employment Act
 - Americans with Disabilities Act
 - Pregnancy Discrimination Act
 - Equal Employment Opportunity Commission

4.7 Creditors' Rights

- Creditor
- Debtor
- Debt
- Collateral
- Security Interest/Liens

4.7 Creditors' Rights

- Uniform Commercial Code Article 9 governs secured transactions
- Security interest established via attachment
 - Security agreement (or collateral owned by debtor)
 - Consideration
- Creditor can perfect security interest to protect against third parties

4.7 Creditors' Rights

- US Bankruptcy Code creates procedures for debtors to obtain protection from creditors
 - Can be voluntary or involuntary
 - Automatic stay of collection proceedings
 - Chapter 7: liquidates all assets and discharges most debt (once every eight years)
 - Chapter 11: allows a corporation to submit a plan of reorganization, but creditors have 120 days to submit a competing plan to the Bankruptcy Court
 - Chapter 13: debtor retains assets but creates a new set of repayment plans for debts

4.8 Product Liability

- Types of Product Liability
 - Manufacturing Defect
 - Design Defect
 - Inadequate Warning Defect
- Theories of Liability
 - Intentional Tort
 - Negligence
 - Strict Liability (for commercial suppliers providing unreasonably dangerous products)

4.9 Consumer Protection

- Federal Trade Commission, Department of Consumer Protection
- Consumer Financial Protection Bureau
- Fair Credit Reporting Act
- Equal Credit Opportunity Act
- Fair Debt Collection Act
- Truth in Lending Act
- Gramm-Leach-Bliley Act
- Lanham Act
- Trade Secret Laws

4.10 International Business Law

- Treaties (Bi-Lateral and Multi-Lateral)
- No Foreign Sovereign Immunity for suits involving commercial activities in the US or with a direct impact in the US.
- Trade Regulation
 - Export Trading Company Act
 - Export Administration Act and regulations
 - Bureau of Customs and Border Protection regulates imports and tariffs
 - Free trade agreements
 - World Trade Organization and the General Agreement on Tariffs and Trade (GATT)
 - WTO principles: no discrimination against foreign goods; no favored nations; preference for goods from less developed countries; more transparency
- Foreign Corrupt Practices Act
- Economic Growth and Development
 - World Bank
 - International Monetary Fund
 - Organization for Economic Cooperation and Development (OECD)