

# **General Principles of Business and Economic Law**



# General Principles of Business and Economic Law

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An Introduction to Contemporary Legal  
Principles Governing Private and Public  
Economic Activity at the National and  
Supranational Levels

**John W. Head**

UNIVERSITY OF KANSAS SCHOOL OF LAW

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# Preface & Acknowledgments

Anyone who benefits from this book owes a lot to Cliff Thompson. Professor Thompson, who has served as the dean of numerous law schools both in the USA and elsewhere, is a colleague and friend of mine who directed a long-term, highly successful legal education project in Indonesia that started in the mid-1990s and lasted about a decade. It was in helping some with that project—the so-called “ELIPS” Project\*—that I proposed to prepare a short book on “economic law”. Professor Thompson embraced that idea and made sure that the book—titled *A General Introduction to Economic Law*—got printed, distributed, and used widely in Indonesia.

Even after the conclusion of the ELIPS project a few years ago, Professor Thompson has continued his support for legal education in Indonesia. One form that his continued support has taken is the publication of revised editions of the earlier *General Introduction* book and some other ELIPS-generated books for use in Indonesia. Moreover, seeing the benefit that such efforts have brought to that country, Professor Thompson has encouraged me to prepare a new version of the *General Introduction* book for audiences outside Indonesia.

Hence this book. As explained more fully in my remarks under “The Aim, Perspective, and Structure of this Book”, I hope that having this revised work published by Carolina Academic Press will prove beneficial to a broad audience in several countries—including not

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\* The ELIPS Project, financed in part by the US Agency for International Development, first focused on “Economic Law and Improved Procurement Systems” and later concentrated on “Economic Law, Institutional and Professional Strengthening”.

only the USA but also several other countries in which there is a serious need to develop the legal infrastructure, and particularly the programs of legal education, that are so necessary in order to prosper in a globalized economy.

In the way of thanks and acknowledgments, therefore, I would give particular attention to the work of the ELIPS Project and its dedicated staff, to the University of Indonesia (where much of the ELIPS work was headquartered and which assisted in the printing and distribution of numerous books emerging from the ELIPS Project), and to the University of Wisconsin, which served as the institutional home for further printing and distribution efforts. My own work has been personally aided greatly by the contributions of numerous other people, including Adijayah Yusuf, Irene Sulaiman, Putti Ranni Damai, and other Indonesian friends and colleagues—and of course by my colleagues at the University of Kansas Law School. Particularly helpful contributions of time and guidance came from Professors Phil DeLaTorre, Chris Drahozal, Webb Hecker, and Stephen Ware, as well as from Lucia Orth. Research assistance was given generously, cheerfully, and patiently by Alexandra Lasley English, Katie Lula, and Christine Ohlen, to whom I give special thanks. Support from the University of Kansas General Research Fund is also, as always, gratefully acknowledged.

# List of Acronyms

CIF	cost, insurance, and freight
CISG	United Nations Convention on Contracts for the International Sale of Goods
CoCom	the Coordinating Committee on Multilateral Export Controls
ECOSOC	Economic and Social Council (of the United Nations)
EU	European Union
FIFO	first in, first out
FOB	free on board
GATT	General Agreement on Tariffs and Trade
G-7	Group of Seven (USA, UK, France, Germany, Japan, Italy, and Canada)
G-8	the Group of Seven plus the Russian Republic
GUIDEC	General Usage for International Digitally Ensured Commerce
ICANN	the Internet Corporation for Assigned Names and Numbers
ICC	International Chamber of Commerce
ICSID	International Centre for the Settlement of Investment Disputes
ILO	International Labour Organization
IMF	International Monetary Fund

INCOTERMS	international commercial terms, issued by the ICC
ITO	International Trade Organization (never created)
LIFO	last in, first out
MIGA	Multilateral Investment Guarantee Agency
MFN	most-favored nation
NTB	non-tariff barrier
OECD	Organisation for Economic Cooperation and Development
REACH	the EU's Registration, Evaluation, and Authorization of Chemicals program
TRIMs	[Agreement on] Trade-Related Investment Measures
TRIPs	[Agreement on] Trade-Related Aspects of Intellectual Property Rights
UCP	Uniform Customs and Practice, issued by the ICC
ULB	Uniform Law on Bills of Exchange and Promissory Notes
UNCITRAL	United Nations Commission on International Trade Law
UNDP	United Nations Development Program
VAT	value-added tax
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

## Introduction

# The Aim, Perspective, and Structure of This Book

### About the Term “Economic Law”

This book is designed to give readers a basic familiarity with several key topics that they should know about in order to understand the relationship between law and economic activity. Any country’s economic development—and, on an individual level, the economic well-being of a particular individual or family or business entity—takes place within the context of laws. Some of those laws provide the means by which individuals can join together into companies for the purpose of carrying out business. Some establish a system by which that business can get access to banking services, such as financing for the purchase and sale of goods. Other laws set forth minimum requirements as to how a company should treat its employees, or refrain from damaging the environment, or conduct its business fairly.

This complicated web of law is often referred to as “economic law” or as “business law”. In my view, the first of these two terms (“economic law”) is the more accurate and descriptive of the two because it casts a “wider net” of meaning—and, as will become clear from the pages that follow, the relationship between law and economic activity encompasses a great many subjects indeed. The term “business law”, however, is more familiar in some countries, including for example, the USA, and it is in deference to this familiarity of usage that I have settled on the title for this book: General Principles of Business and Economic Law.

## The Intended Audience for This Book

Despite the great breadth of coverage that the term “business and economic law” entails, this book is in fact quite short and can only offer a very brief account of business and economic law. But it is short for a particular purpose. The aim is to provide a condensed overview—a synopsis—of economic law that is straightforward enough to be understood by non-experts. By “non-experts” I mean particularly students falling in two categories. The first category comprises those students who are entering into a study of law, whether at the undergraduate or graduate level, and who wish to undertake an introductory study of “economic law” as I have defined it above. Such law students might be enrolled in a course titled “Business Law”, or they might be taking an even more general introductory course that includes one unit focusing on the subjects covered in this book.

Without doubt, law students who are concentrating their studies in business and economic law will proceed to take further, more detailed courses in several of the topics summarized in this book. For them, this book can serve as a foundation for those more detailed studies. On the other hand, for students who are not concentrating their studies in business and economic law, this book (and the course in which it is assigned as reading) can provide an overall introduction to an important area of law, with which all lawyers should have some familiarity.

The other category of students for whom this book is designed comprises those who are not focusing their studies on law at all but who are instead concentrating on political science or economics or business or a wide range of other disciplines that involve issues lying at the intersection of economic activity, political governance, and social organization. This book can help those students understand what a central role law plays in dealing with such issues. That role of law is important to understand, because law is society’s official method of imposing requirements, establishing procedures, offering solutions, resolving disputes, and reflecting societal values.

This book is designed also for an audience other than students. Law in general—and economic law in particular—increasingly affects the lives of everyone in society, including those involved in business, bank-



ing, employment, accounting, construction, manufacturing, or the arts. The condensed overview of economic law provided in the following pages can also, I hope, be of interest and assistance to them.

## Focusing on “General Principles”

Most law is *national* law. That is, the rules that govern behavior, including economic activity, exist at the level of a particular country. Only a relatively few such rules are international in scope or source. This fact reflects the current importance of the nation-state in today’s world. There are just under 200 nation-states in the world, and most of the laws in each are different from those in all the rest. Therefore, the practicing lawyer must look mainly to his or her own country for the specific legal rules that apply in a particular case.

Despite this diversity in specific legal rules, certain basic concepts do hold true in most countries. That is, some general principles of law are global in applicability and underlie the specific rules in most countries. It is those general principles, specifically in the area of business and economic law, that this book tries to identify and explain. In addition, the book also discusses some rules that have been explicitly agreed to at the international level; these include rules on international business transactions and international economic relations. Reflecting the increasing importance of those topics, they are dealt with in slightly more detail here than are the other topics of economic law.

In order to determine how best to structure a particular transaction, or how much tax to pay on business profits, or how to handle similar detailed matters, the applicable rules of the local and national jurisdiction must be studied and applied. This book is not intended to provide any answers to those specific questions. Instead, it aims to build a broad foundation of knowledge on which the applicable laws can be more intelligently understood and applied. In most cases, of course, trained lawyers should be employed to advise on specific issues, and therefore the faculties at law schools and universities will be responsible for building on the foundation described in this book, by providing instruction in the specific rules.

## Structure of This Book

The structure of the book reflects my own views about the conceptual organization of the rules of business and economic law. Many different formulations, of course, would be possible. If this book is used in the context of a specific university or law school course, the instructor might assign readings in whatever order he or she chooses. In general, however, the book tries to follow a logical path, and some of the later chapters build on discussions appearing in earlier chapters.

The book has four chapters. Chapter I explores the role and operations of business entities in the economy and covers topics of business organizations, competition law (to guard against monopolies and other perceived evils), business financing techniques, accounting rules, and bankruptcy. Chapter II covers some especially important transactional aspects of business operations: commercial transactions, settlement of disputes arising out of such transactions, banking and insurance law and practice, intellectual property protection, and cyber law. Chapter III turns to government regulation, particularly in the areas of labor law, natural resources, consumer protection, and taxation. Chapter IV examines international commerce and investment and the key international institutions that regulate such activity.

Within each chapter, related areas of law are discussed in general terms. Following each discussion is a list of further reading materials that might be of interest to learn more about the subject just discussed.

## Technical Matters and Conventions

In this book I have followed certain conventions on punctuation and usage that might be unfamiliar to some readers. These conventions include the following:

- I have followed the less-used but more logical convention of placing quotation marks inside all punctuation (unless of course the punctuation itself is included in the original material being quoted). Doing so allows the text to reflect more faithfully how the original material reads.

- The possessive form of words that end in the letter “s” have not had another letter “s” added to them—hence “the business’ assets”, not “the business’s assets”.
- The acronym noun “USA” is often used in this book in preference to the longer noun “United States”, inasmuch as there are other countries (such as Mexico) with the title “United States” in their official names. However, the term “US” has been retained for use as an adjective referring to something of or from the United States, such as “US legislation” or “US states”.<sup>1</sup>

Although this book is short, it is designed to provide access to further detail by offering citations to authorities and additional reading. I have used footnotes to cite the books, articles, treaties, and other legal materials that serve as authority for quoted or attributed passages in the main text. Those citations appear in a less abbreviated style than that used by US law journals and many US law books. I believe the heavily abbreviated style used in US legal texts can be so unfamiliar to a student audience (and obviously to a more general audience) as to create confusion or uncertainty. In addition, in the case of books, I have departed from the practice of putting the authors’ names in all capital letters. Instead, authors’ names for all works—books and articles and other items—appear in regular upper case and lower case letters; then titles of books appear in large and small capitals and titles of other works appear in italics or, in a few cases depending on the nature of the work, in regular font with quotation marks. An even more simplified form of citation is used in the “Further Readings” entries appearing at the end of each substantive discussion.

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1. In this book I have opted for the use of “US” and “USA” without periods, as this seems to be the more modern trend and also follows the usage found in acronyms for other political entities such as the United Nations (UN) and the People’s Republic of China (PRC). Naturally, I have not changed “U.S.” to “US” in any quoted material or official citations.