

**RICHARDSON'S COMMERCIAL
LAW: A TEXT-BOOK
FOR SCHOOLS, COLLEGES
AND PRIVATE REFERENCE**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649693566

Richardson's Commercial Law: A Text-Book for Schools, Colleges and Private Reference by W. P. Richardson

Except for use in any review, the reproduction or utilisation of this work in whole or in part in any form by any electronic, mechanical or other means, now known or hereafter invented, including xerography, photocopying and recording, or in any information storage or retrieval system, is forbidden without the permission of the publisher, Trieste Publishing Pty Ltd, PO Box 1576 Collingwood, Victoria 3066 Australia.

All rights reserved.

Edited by Trieste Publishing Pty Ltd.
Cover @ 2017

This book is sold subject to the condition that it shall not, by way of trade or otherwise, be lent, re-sold, hired out, or otherwise circulated without the publisher's prior consent in any form or binding or cover other than that in which it is published and without a similar condition including this condition being imposed on the subsequent purchaser.

www.triestepublishing.com

W. P. RICHARDSON

**RICHARDSON'S COMMERCIAL
LAW: A TEXT-BOOK
FOR SCHOOLS, COLLEGES
AND PRIVATE REFERENCE**

UNIV. OF
RICHARDSON'S CALIFORNIA

COMMERCIAL LAW

A TEXT-BOOK FOR
SCHOOLS, COLLEGES AND PRIVATE
REFERENCE

BY

W. P. RICHARDSON, LL.D.
Dean of the Brooklyn Law School

COPYRIGHT, 1900
COPYRIGHT, 1907
BY
BADLER-ROWE COMPANY

BALTIMORE
THE H. M. ROWE COMPANY
Educational Publishers

UNIVERSITY
OF CALIFORNIA

11 15

EDUCATION DEPT.

"If one shall enter upon the study of the law under the impression that the extent of his advancement must necessarily bear some relation to the number of hours consumed in reading, and the number of pages devoured, and shall, in consequence of that mistaken impression, hurry over ground when he should proceed slowly, cautiously, and with much painstaking, he must be brought at last face to face with the fact that he is reading to little purpose, and catching but surface views."—JUDGE COOLEY.

"Not so much to endeavor to teach these things fully to you, as to induce you to learn them for yourselves."—JUDGE CURTIS.

PRESS OF
WILLIAMS & WILKINS COMPANY
BALTIMORE

PREFACE.

This book is designed to give the student, the accountant and the business man such a practical knowledge of the principles of commercial law as will enable him to avoid legal complications in carrying on any business enterprise, whether of a simple or complex nature.

No effort has been made to present some of the subjects as fully as has been attempted in many law books. That there are limitations beyond which some subjects should not be attempted in the school room is fully recognized by thoughtful teachers. The lay student, for instance, who is, in his own opinion, sufficiently well versed in the law of real property to examine the title for a piece of real estate will likely discover later that he should have obtained professional service. "A man who is his own lawyer generally has a fool for a client."

THE AUTHOR.

A SUPPLEMENTARY WORD BY THE PUBLISHER.

Since its first publication in 1900, Richardson's Commercial Law has passed through one or more large editions annually. In examining the text notice that the law principles are underscored, which distinguishes them from the less important subject matter; that each principle is illustrated in a "case" which has been passed upon by the courts and that all purely technical matter has been omitted.

NOTE TO THE TEACHER.

As each of the following subjects is taken up in the body of the text, students should be referred to the special statutory laws of your State which will be found in the Appendix, beginning on page 177: Statute of Limitations; Stay of Execution; Exemptions, Negotiable Instruments Law; Statute of Frauds; Interest; Rights of Married Women; Chattel Mortgages.

These are the only important subjects affected by statutory laws.

TABLE OF CONTENTS.

CONTRACTS

Introduction	7
Analytical Outline of Contracts	9
Offer and Acceptance	10
Capacity of Parties	14
Consideration	18
Legality of Subject-Matter	22
Fraudulent Contracts	26
Classes of Contracts	29
Contracts That Must Be Written	30
Interpretation of Contract	36
Discharge of Contract	37
Contracts for Personal Service	39
To Prevent the Violation of Contracts	41
Rules Relating to Time and Damages	42

BILLS AND NOTES.

Negotiable Instruments Law	44
Negotiable and Non-Negotiable Paper Distinguished	45
Analysis of Drafts and Notes	47
Parties to Commercial Paper	48
Requisites of Negotiability	51
Additional Stipulations	54
Note Waiving Exemptions	55
Judgment Note	56
Collateral Note	57, 58
Form of Draft and Note	57
Maturity	62
Acceptance	64
Analysis of Drafts and Notes	67
Endorsements	68
Contracts and Liabilities of the Parties	73
Conditions of Drawer's and Endorser's Liability	76
Due Notice of Dishonor	78
Bona Fide Holder	83
Checks	86
Certified Checks	89
Certificates of Deposit; Accommodation Paper	91
Bill of Lading	92
Statute of Limitations; Table of Limitations	93

AGENCY.

Analytical Outline of Agency	96
Agency Defined; Who Are Principals; Who Are Agents	97
Capacity of Parties; How Agents May Be Appointed	98
Form of Power of Attorney	99
Powers of Agents; Principal's Liability to Third Persons	100
Wrongful Acts of Agents	102
Principal's Liability to Agents	103
Rights of Principal Against Agent; Rights of Principal Against Third Persons	104
Duties and Liabilities of Agents	106
Liability of Agents to Third Persons	109
Termination of Agency	110
Legal Maxims	114

TABLE OF CONTENTS

PARTNERSHIP.

Definition	115
How Created	116
Form of Articles of Co-partnership	117
Classes of Partners	119
Who May Be Partners; Duties of Partners to Each Other	121
Authority of Partners	122
Liability of Partners to Third Parties	125
Twofold Responsibility for Debt	126
Dissolution	127

CORPORATIONS.

Definition	133
Kinds of Corporations	134
Creation of Corporations	135
Form of Certificate of Incorporation	136
Place of Residence	137
Powers and Liabilities of Corporation	138
Rights and Liabilities of Stockholders	142
Subscription Obtained by Fraud	143
Dividends	144
Dissolution	145

FIRE INSURANCE.

Definition	147
Policy of Insurance; Agents	148
Representations and Description; Sale of Property	149
Performance of Conditions; Amount to be Recovered	150
Policies in Several Companies	151

REAL PROPERTY.

Definition	152
Real and Personal Property	153
Landlord and Tenant	154
Form of Lease	155
Title	156
Form of Warranty Deed	157
Mortgages	158
Form of Mortgage	160

SURETY AND GUARANTYSHIP.

Definition; Consideration	161
Guarantor's Liability	163

FIXTURES.

Definition	165
Landlord and Tenant	167
When Tenant Must Remove Fixtures	168

BAILMENTS.

Definition; Deposit	169
Right to Sell	171
Hire of Things and Services	172

COMMON CARRIER.

Definition	173
General Duties and Liabilities; Cannot Limit Liability for Negligence	174
Carriers of Passengers	175

CHAPTER I.

INTRODUCTION.

1. Law.—Law is any rule of civil conduct prescribed by competent political authority, commanding certain things as necessary to and forbidding certain other things as inconsistent with the peace and order of society. ²Law, in its broadest sense, is defined to be a rule of action. ³As such, it embraces many subjects which do not relate to the civil conduct of individuals, such as the law of gravitation, navigation, cause and effect, etc. ⁴In its technical sense, as above defined, it is either *international* or *municipal*.

5. International Law.—International law is that rule of civil conduct which is prescribed by the common consent of civilized nations and which regulates their intercourse with each other. ⁶As nations cannot sue or be sued by other nations, it follows that the courts have no jurisdiction to enforce rights or redress wrongs for the violation of international law. It rests for its observance and enforcement on the honor of nations.

7. Municipal Law.—Municipal law is any rule of civil conduct prescribed by the supreme power of a State or municipality which regulates the intercourse of the State or municipality with its people and of the people with each other. ⁸It acts on the unwilling as well as the willing. ⁹Courts have power to interpret and enforce an observance of its provisions, and for any violation either to punish the wrongdoer directly or compel him to make due satisfaction to the person wronged.

¹⁰American municipal law is of two kinds—Common and Statutory.

11. Common Law.—Common law is any rule of civil conduct which originated in the common wisdom and experience of society, in time became an established custom, and has finally received judicial affirmance in the decisions of the courts of last resort. ¹²It is expressed in maxims, definitions and the judgments of courts. ¹³It has been said that judges made the common law. ¹⁴It is also called *unwritten law*, because there is no record of its formal enactment.

¹⁵To explain its formation, we may suppose a question to have arisen in England, centuries ago, respecting which the written law contained no provision. Upon presenting this question to a judge he would have been compelled to per-