

## THE LEGAL ASPECTS OF FINANCE

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Within the time allotted, I do not propose, even if I were able, to cover all of the legal aspects of finance, but only to consider this topic briefly within the framework of the theme "Law as a Bridge Builder in the Business Administration Curriculum."

Finance has been defined as "The act of providing the means of payment." Professors Guthmann and Dougall, in their book "Corporate Financial Policy," (Third Edition, 1955) say: "Broadly speaking, business finance can be defined as the activity concerned with the raising and administering of the funds used in the business."

These authors are keenly aware of the close relationship of law and finance in stating:

"Just as problems of financing are intimately connected with problems of operation, so the subject of finance is interrelated with such subjects or fields of study as law and accounting. The corporation is a creature of the state, and its functioning is hedged about by a mass of legal restrictions. Decisions involving financial policy must always be considered with respect to their legality as well as to their expediency. For example, when the directors of a company meet to decide on the question of the amount and type of dividends to be declared, their decision is affected by the legal status of the proposed action as well as by its economic and financial justification. Our discussion of financial policy, therefore, involves us in frequent allusions to the legal aspects of finance. . . ."

In discussing the legal aspects of finance as related to the business school curriculum, our inquiry should be: What are the legal aspects of finance as that subject is currently taught in business-school courses, and where does business law fit into these courses?

The starting point is an examination of recent, standard, currently-used textbooks on finance. I therefore reviewed, in addition to the previously mentioned book of Guthmann and Dougall, certain other modern textbooks, namely "Introduction to Business Finance" by Bion B. Howard and Miller Upton (1953); "Financial Management" by Robert W. Johnson (1959); and "Financial Organization and Management" by Charles W. Gerstenberg (1959).

Anyone desiring to know the extent to which finance is related to the subject matter of law ought to examine the indices of these and other standard text-

books on finance. A mere checking of the index reveals numerous references to subjects of a legal nature, including Agents, Assignments of Accounts Receivable, Bankruptcy, Blue Sky Legislation, Bonds and Indentures, Commercial Paper, Common Stock, Conditional Sales Contracts, Consolidation, Contracts, Corporations, Cumulative Voting, Directors and Officers of Corporations, Dividends, Documents of Title, Leases, Marshalling of Assets, Massachusetts Trusts, Mergers, Mortgages, Non-Voting Stock, No Par Stock, Options, Partnerships, Preferred Stock, Promoters, Proxies, Sales, Stockholders, Voting and Voting Trusts, and Warrant Rights.

This list is by no means complete, but even a partial listing demonstrates that the textbooks on finance fully admit and recognize the legal aspects of finance. Certain legal principles, legal concepts, and rules of law, are indispensable to the teaching of finance.

The next point to consider is the manner in which these legal concepts and principles are treated in standard textbooks on finance and to inquire whether their treatment is such as to minimize the importance of a separate course in business law. The study which I have made of highly recommended textbooks on business finance convinces me that a separate and independent course in business law is not only absolutely necessary for the student, but that the teachers of business law should become more aware of the importance of their subject to the student of finance. It should be realized that, unless students obtain a genuine understanding and grasp of the principles of business law before commencing the study of finance, they may be misled by overly broad generalizations with respect to legal concepts as treated in textbooks on finance.

The authors of these books, and no doubt professors in the classroom as well, assume that the student of finance understands the legal terminology and the basic legal concepts which they employ. The teacher of finance has a wealth of strictly business ideas and theories to impart. He knows that these ideas and theories, to be feasible, must be tailored to and comply with existing rules of law. But to him the law is merely one of the external elements. Like the winds, the seas, and the clouds, it blows and must be reckoned with, yet it is strictly collateral to the purposes and needs of his principal interest which is the flow of funds and the long-term and short-term financing of business requirements. Consequently, the authors of textbooks on finance make statements of legal import which, while understandable and forgivable from the standpoint of the teacher of finance, are only partially true with respect to the law. A partial truth can be misleading.

I intend no criticism of any of the textbooks cited, nor of any other textbooks on finance. These books do not deliberately or intentionally mislead the student with respect to their use of certain legal concepts and legal principles. They are necessarily purposive and therefore employ the use of legal concepts and ideas as limited to the particular subject matter. It is not their province to show that these concepts and ideas have broader and deeper application. If a rule of law is incompletely stated in a textbook on finance, it is merely a hapless and unintended casualty in that theatre of education.

By way of illustration, one of the textbooks states: "Documents of title, as the name implies, are evidences of title to the business assets." Obviously, a bill of sale, or an invoice, is also evidence of title to assets. The book contains no indication of the special stature of documents of title in the law. Bills of lading and

warehouse receipts are discussed, but the student will not learn from these textbooks that a person who is not the owner of goods represented by an endorsed order form of bill of lading or warehouse receipt may do more by way of transfer of title by delivery of the document than he may do by delivery of the goods themselves.

Another textbook states: "A warehouse receipt is simply a receipt for goods placed in a warehouse." No teacher of business law would ever say this, much less write it in a textbook. From the standpoint of the law, it is a gross understatement, yet from the standpoint of the teacher of finance, it is sufficient for his purpose, as it states all that he believes it necessary to say about warehouse receipts.

A further illustration is the definition of an assignment in the discussion of assignments of accounts receivable as a method of short-term financing. One textbook on finance states: "Assignment is the act by which a person transfers in writing to another certain property which cannot be transferred through the exercise of the principle of negotiability." A person reading this statement might enjoy the illusion that he is learning something. A student of business law who wrote this as a definition of an assignment on a final examination paper would get a zero. The quoted definition stands alone in the book which contains no discussion of the meaning or of the nature of assignment. Why is it misleading? It is misleading because it is deceptively simple and incomplete. The core of the definition is that an assignment is a transfer of property. The student conceives a transfer as meaning a movement of the ownership of certain property from one person to another. An account receivable is property. It is a chose in action. Any one who has studied assignments in the law of contracts knows that an assignment of a chose in action does not cause it to be transferred to the assignee in the sense that tangible property is transferred. All that the assignee acquires is an irrevocable power of attorney to collect the claim which has been assigned and to retain the proceeds when collected. This is the only valid concept of an assignment. A knowledge of the true nature of an assignment, and of its development by courts of equity, makes understandable the rule that the assignee takes the assigned claim subject to all defenses available against his assignor, including rights of set-off. The entire area of the rights of successive assignees of the same chose in action, and of sub-assignments, is ignored in the textbook. These textbooks usually mention that most assignments of accounts receivable are of the non-notification type, and explain that this means that the customers of the borrower are not informed of the assignment because such knowledge in the trade might adversely affect his credit rating. The legal significance of notice to the debtor, or of absence of notice, and the importance of time of notification, are nowhere mentioned. The requirement in the definition that the assignment be in writing is of less importance, although it is erroneous.

This is not a complaint against textbooks on finance or teachers of finance. It is merely an observation that where you find legal aspects, you should not also expect to find an adequate presentation of the law. A student who learns principles of business law only as these principles are reflected in courses on finance will not be adequately educated. It is like expecting to learn taxation by the way in which this subject is reflected in the course on accounting.

In summary, the following conclusions may be stated:

1. The legal aspects of finance are obvious to every student of finance.
2. The standard textbooks on finance, of necessity, deal with the subject matter of business law mainly in a definitional sense, or as a collateral but related subject.
3. The definitions of business law concepts in standard textbooks on finance are sometimes incomplete and therefore misleading.
4. The study of finance presupposes that the student has some knowledge of the basic principles of the law of contracts, agency, sales, negotiable instruments, partnerships and corporations.
5. The student who has completed one or more courses in business law is better able to understand the legal terminology and the legal concepts employed in a course on finance or financial management.
6. The student who has completed one or more courses in business law will be less likely to develop misconceptions of the law upon encountering the limited and purposive use of legal concepts in courses on finance.
7. The study of business law should be prerequisite to a course on finance or financial management, and is no less important than accounting as the foundation for such a course.
8. Inasmuch as the principles of business law, and the reasons and historical development underlying these principles, have broad application and extend beyond the limitations of the subject matter of finance, the student of business should acquire a more liberal education from the proper study of business law than from the study of finance, although neither course can replace the other.