

# The **ENTREPRENEUR'S** Guidebook Series™

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- Alan Caruba  
Bookview.com

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# PERSONAL PLANNING

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*“All I’m saying is that I think you’ve misunderstood the concept. A code of ethics doesn’t actually have to be written in CODE!”*

Smallbusinesstown.com

## ***UNDERSTANDING BUSINESS LAWS, REGULATIONS & ETHICAL CODES***

**IF you want to start a business, build a business, and stay in business, do not promise what you cannot offer, do not sell anything you're ashamed of to offer as a gift to someone close to you, and do not use misleading signs or headlines to trick people into purchasing your goods and services.**

**Furthermore, do not cross the line of legality by getting involved in illegal pyramid rackets, insider stock trading, insurance scams, fancy tax accounting, or peculiar profit-enticing chain letters.**

**In general, all your offerings must inform potential customers of the exact nature of what your are offering, its price, terms of payment including all extra charges, and the commitment involved in placing an order.**

## ***BUSINESS LAWS & REGULATIONS***

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THE LAWS and regulations pertaining to small businesses are quite extensive and have a major impact on how you will need to conduct your business. The most important of these are explained below.

### **Laws of Significance to U.S. Businesses**

The following U.S. Federal Laws are of particular significance to the small business owner operating in the U.S.:

**1890 Sherman Antitrust Act** – Prohibits coalitions and conspiracies that could restrain trade.

*Where is there dignity unless there is honesty?*

**MARCUS  
TULLIUS  
CICERO**

**1906 Pure Food and Drug Act** – Created the Food and Drug Administration (FDA) whose main function is to ban the misbranding of foods and drugs.

**1914 Clayton Act** – Further strengthened the *Sherman Act* by barring price discrimination and tied contracts that could restrain trade and competition.

**1914 Federal Trade Commission Act** – Created the Federal Trade Commission (FTC) whose main function is to prohibit unfair methods of competition.

**1935 National Labor Relations Act (Wagner Act)** – Created the National Labor Relations Board (NLRB). Gave workers



the right to organize and engage in collective bargaining.

**1936 Robinson/Patman Act** – Prohibited suppliers from selling goods of like grade and quality at different prices in order to reduce or weaken competition. Required that promotional allowances must be made available to all buyers on equal terms.

**1938 Food, Drug, and Cosmetic Act** – Broadened the authority of the FDA by adding cosmetics and therapeutic devices to foods and drugs.

**1938 Fair Labor Standards Act (Federal Wages and Hours Law)** – Established wage and hour regulations, mini-

**1938 Wheeler/Lea Act** – *Banned deceptive packaging. Expanded FTC authority to include false or misleading advertising.*

mum hourly wage, and conditions for minors who work.

**1938 Wheeler/Lea Act** – Banned deceptive packaging. Expanded FTC authority to include false or misleading advertising.

### **1939 Wool Products Labeling**

**Act** – Required that specific information be placed on labels attached to all wool products.

### **1951 Fur Products Labeling Act**

– Established label requirements for fur products, including type of fur and country of origin.

**1953 Flammable Fabrics Act** – Restricted interstate shipment of apparel that contained flammable goods. Amended to include fabrics, materials and home furnishings.

**1960 Hazardous Substances Labeling**

**Act** – Mandated that warning notices be labeled household products that contain poisonous, corrosive, or otherwise dangerous substances.

**1963 Equal Pay Act** – Required employers to give men and women equal pay for the same work.

**1964 Civil Rights Act** – Created the Equal Employment Opportunity Commission (EEOC) whose main function is to prohibit discriminatory employment practices due to race, religion, sex, color, or national origin.

**1966 Fair Packaging and Labeling Act**

– Required that ingredients be disclosed

*1966 Fair Packaging and Labeling Act – Required that ingredients be disclosed on packaged products or on labels attached to them.*

on packaged products or on labels attached to them.

**1967 Age Discrimination in Employment Act**

– Outlawed employment practices aimed at discriminating against persons between the ages of forty and sixty-five (subsequently amended to age seventy).

**1968 Consumer Credit Protection Act (Truth in Lending Act)**

– Mandated that terms and interest charges be fully disclosed to persons who buy on credit.

**1969 Child Protection and Toy Safety Act**

– Banned harmful or dangerous toys.

**1970 Fair Credit Reporting Act** – Required that credit reporting agencies keep

accurate records and provide interested consumers with access to their records.

**1970 Occupational Safety and Health Act** – Established the Occupational Safety and Health Administration (OSHA). Required employers to provide their workers with a safe work environment.

**1972 Equal Employment Opportunity Act** – Expanded the scope and authority of the EEOC.

**1972 Consumer Products Safety Act** – Created the Consumer Product Safety Commission (CPSC) and empowered it to set product safety standards and prohibit the sale of harmful products.

*1972 Equal Employment Opportunity Act – Expanded the scope and authority of the EEOC.*

**1974 Employee Retirement Income Security Act** – Enacted to protect and regulate employee pensions.

**1975 Equal Credit Opportunity Act** – Outlawed discrimination against credit applicants because of sex or marital status, and later amended to further discrimination on the basis of age, religion, race, or national origin.

**1975 Fair Credit Billing Act** – Enacted to protect consumers from unfair credit billing practices.

**1975 Magnuson-Moss Warranty Act** – Mandated the full disclosure of all warranty terms in clear language.

**1977 Fair Debt Collection Practices Act** – Outlawed the use of deception, har-

assessment, and other unreasonable tactics in attempts to collect past-due accounts.

## Laws of Significance to Canadian Businesses

The following Canadian Federal Laws are of particular significance to the small business owner operating in Canada:

**Canadian Federal Statutes Containing Provisions that Relate to False Advertising** – Canadian federal statutes that contain provisions relating to false or misleading advertising include:

- Bank Act
- Broadcasting Act
- Food and Drugs Act

**Consumer Packaging and Labeling Act** – *Imposes labeling standards on goods imported into Canada and minimum information requirements on all “purchased goods.”*

- Hazardous Product Act
- National Trade Mark and True Labeling Act
- Precious Metals Marking Act
- Trade Marks Act

**Consumer Packaging and Labeling Act** – Imposes labeling standards on goods imported into Canada and minimum information requirements on all “purchased goods.”

**Environmental Protection Laws** – The Canadian federal government has numerous laws to protect its citizens from small business owners who abuse the environment. Among them are the Clean Air Act of 1963 and subsequent amendments, the Solid waste

Disposal Act and the Water Quality Act (both enacted in 1965), the Noise Control Act (1972), the Pesticide Control Act (1972) and the Resource Conservation and Recovery Act (1976).

**Federal Competition Act** – Provides standards and guidelines for what the government considers false or misleading advertising, unfair competition, or illegal methods of controlling market prices.

**Safety Standards Act** – Ensures that products meet certain minimum safety standards.

**Textile Labeling Act** – Requires that a label be attached to clothing and other textile products giving the generic name of each textile fibre comprising 5% or

more of the total fibre weight of the article, and the identity of the manufacturer.

**Weights and Measures Act** – Ensures that weighing and measuring devices used for selling goods to the public, such as scales and pumps, are accurate. Weighing and measuring equipment must be inspected and approved by the Federal Department of Consumer and Corporate Affairs. New equipment requiring installation is inspected when operational, but prior to commercial use. Movable equipment can be inspected before shipping.

It should be noted that inspectors of the Weights and Measure Branch of the Federal Department of Consumer and Corporate Affairs make regular surprise inspec-

*I would rather  
be an opportunist  
and float than  
go to the bottom  
with my principles  
round my  
neck.*

**STANLEY  
BALDWIN**

tions to ensure that the equipment is accurate. You are required to keep them notified as to the whereabouts of your weight & measuring equipment.

**NOTE** For further information on Canadian laws and regulations and information regarding the rights of consumers, write to the following regulatory agencies:

- Canadian Standards Association
- Department of Health and Welfare
- Food and Drug Administration
- Postal Service

You should also write to your provincial government and inquire about what special provincial statutes exist to protect consumers. For example in Ontario, the Sale of

Goods Act requires a contract of sale above \$40 to be evidenced in writing and provided for implied conditions of marketability and fitness of the goods sold.



*If you tell the truth, you don't have to remember anything.*  
**MARK TWAIN**

## American & Canadian Law in a Nutshell

**AMERICAN AND CANADIAN** legal systems are fundamentally similar. Laws can be classified under the following four categories:

**Common Law** – The existing body of common law that underlies the American and Canadian legal system is also called customary or unwritten law. Its origins can be traced back to colonial times and beyond that, to England. It is rooted for the most part in customs. Common law is continuously being modified and refined by decisions made in the courts.

**Statutory Law** – A statute is a law that has been passed by a legislature. The collective body of statutory law in the United States is far greater than the common law. Americans are subject to federal, state, county, municipal, and town statutes. Canadians are subject to federal, state and municipal statutes.

**Law of Torts** – Deals with private, or civil, wrongs – as contrasted with public wrongs such as criminal acts. A tort is a wrongful act (intentional or unintentional) committed by one person or organization against another or against that other's property or reputation. If a tort has been committed, the wronged party can seek redress in court.

**The Law of Property** – Deals with all those materials, goods, and other things of value that people or organizations own. Real property consists of land, homes, and other buildings that are permanently affixed to land. It applies to real property as well as to personal property.

## Contract Law

OF PARTICULAR IMPORTANCE to businesses is the impact general contract law has on business dealings. In fact, the “Law of Contract” has been called “the basic foundation of business law.” It is thus essential that every business owner have a good understanding of the ramifications of this law. For a contract to be legal and enforceable in a court of law, it must meet the following requirements:

- An offer or a proposal must have been made by one party to another.
- The purpose of the offer/proposal must be legal.
- The offer/proposal must be accepted by both parties.
- Acceptance must be voluntary; intimidation, coercion, or threat cannot be used.
- “Consideration” must be present--that is, each party must give the other something of value.
- Parties to the contract must be competent--that is, of legal age and mentally sound.

### Each of the following instances calls for the signing of a contract:

- A chain-store retailer hires a maintenance firm to polish the brass on its storefronts on a monthly basis.
- A consumer puts a down payment on a new Chevrolet sedan and then arranges to repay the balance over a period of three years.
- A homeowner selects carpeting to be installed in her six-room house.
- A manufacturer arranges with a salesperson to “represent” the company in three southern states.



## HOW BUSINESS LAWS AFFECT ENTREPRENEURS

THE IMPACT of the above laws and regulations on the business community are reflected in the following essential business practices.

**NOTE** It is not within the scope of this guidebook to provide legal counsel. The following information should be considered only as guidelines for small business operations.

### Advertising Claims

Advertising claims must be kept honest. There is a great deal of difference between a baseball player saying he eats a particular brand of bread and likes it, and the

same baseball player saying that eating a particular brand of bread has a beneficial effect upon his health.

### Advertising Identification

Every offer and shipment must sufficiently identify the direct marketer. When a P.O. box is used as a reference for customer response, a street address should also be included in the advertisement.

*Advertising claims must be kept honest.*

### Automatic Telemarketing Devices

Automatic telemarketing devices generally cannot be used in America or Canada without customer permission.

## Contests & Sweepstakes

Holding a contest is a perfectly lawful advertising method. However, when a contest, sweepstakes or prize is used to promote the sale of merchandise, the rules of the contest / sweepstakes must be clearly stated. You must give the full details of the contest. Don't have hidden requirements. And be careful not to make it a lottery, which violates Acts in both the U.S. and Canada. A lottery involves payment in exchange for a chance to win a prize.

**NOTE** If considering holding a contest or sweepstakes, make sure you find out if there are any special state or provincial laws.

*The measure of a man's real character is what he would do if he knew he never would be found out.*

**THOMAS  
BABINGTON  
MACAULAY**

## Collection Practices

You must contact or at least attempt to contact customers before taking collection or legal action. It is a good idea to disclose your collection policies to a customer before a credit sale is made.

## Fraud

To protect yourself from being charged with fraud, make sure:

- you give your customers exactly what the most gullible of them expect to get
- your customers won't feel gyped
- every word and picture in your ad is true in spirit as well as in letter

## Giving Bad Advice

If you give people bad or dangerous advice, which they follow to their detriment, you could find yourself in court defending a lawsuit.

## Guarantees & Warranties

A guarantee must clearly state the name and address of the guarantor and the duration of the guarantee. Any requests for repairs, replacement or refund under the terms of a guarantee or warranty must be honored promptly. Warranties must be designated as full or limited. A limited warranty must set forth clearly what limitations are included with the offer of the warranty.

**NOTE** In an unqualified offer or refund, repair or replacement, the consumers prefer-

ence should prevail.

## Handling of Backorders

Clearly state how you will handle backorders to your customers, if a backorder situation is present, and the new anticipated delivery date. You must also continue to advise customers no less frequently than every 30 days until the backordered item is shipped or canceled. You must also allow the customer the right to cancel a backorder and/or offer the customer substitute goods. You may not automatically ship substitute goods without customer permission unless they are of a higher value.

*Character is  
much easier  
kept than recov-  
ered.*

**THOMAS  
PAINE**

## Imported Merchandise

For imported merchandise, you are ultimately responsible for the safety of your customers who purchase it, not the exporter, even if the product has been tampered with or modified.

## Libel

Anything that might lower the subject in the opinion of the average reader is potentially libelous. However, potential libelous statements must be substantially untrue, or create a false impression due to the context in which they appear, before a question of libel will arise. Whether a statement is actually defamatory depends on whether it is conveyed to third parties.

To avoid libel, the highest standard of

care should be used to make certain that you never say anything about a private person that might cast him or her in a bad light. Altering a direct quotation can also give rise to libel.

*To avoid libel, the highest standard of care should be used to make certain that you never say anything about a private person that might cast him or her in a bad light.*

**NOTE** Where public officials or figures are concerned, there is a strong First Amendment argument that preserves the right to criticize – so even if the subject is identifiable and the statement false, there must generally be a showing of actual malice, intent to defame or, at least, total disregard of fact-checking procedures on the part of the publisher before damages will be awarded.

## List Use & Rental

When using a rented telephone or mailing list you must make sure you use it in accordance with the rental contract and agreement and to use list from only reputable brokers with proper list security.

## Mail Order 30 Day Rule

The FTC has enacted a 30-day mail order rule. This rule states that as a mail order vendor you must deliver merchandise to your buyer when you say you will. If you don't promise a delivery date, you must ship the merchandise no later than 30 days after you receive the order. If you don't ship the product within thirty days, the rule is that you're supposed to send a postcard and tell the customer why it's late, when it will be shipped, and *offer to cancel the*

*Offers that are likely to be mistaken for bills or invoices must not be used.*

*sale* giving the buyer a full refund. Also, any substitution of the original offer must be of similar or higher quality or approved by the customer before shipment.

## Misleading or Unclear Offers

All offers must be clear and honest. Entrepreneurs must not misrepresent a product, service, publication, solicitation or program nor must they use misleading, partially true or exaggerated statements or techniques. Offers that are likely to be mistaken for bills or invoices must not be used. All descriptions and promises should be in accordance with actual conditions, situations and circumstances existing at the time a promotion is made. All tests or survey dates referred to in an advertisement must be competent, reliable and must

support the specific claim for which it is cited. Photography or artwork when used must accurately illustrate the actual product. Print placement or other audio/visual characteristics which are likely to substantially affect the legibility or clarity of an offer or exceptions to, must also not be used.

### Negative Option Sales

Companies engaged in negative option sales operations in provinces and in states where permitted, (where the customer receives merchandise unless he instructs the seller that he does not wish to receive it), must clearly inform the customer of his obligations and rights in the original offer. Merchandise must not be shipped without having first received a cus-

tomers permission, except for free samples or gifts clearly marked as such.

### Postage, Shipping & Handling Charges

Postage, shipping and/or handling charges must reflect as accurately as possible, actual costs incurred. They must not be artificially inflated to create hidden profits.

### Premium Liability

When a free gift or premium is advertised by a company, liability of that premium is normally placed on the advertiser not the manufacturer.

### Price Comparisons

Price comparisons must be factual, verifiable and not misleading.

*Some day the ethics of business will be universally recognized, and in that day Business will be seen to be the oldest and most useful of all the professions.*

**HENRY FORD**

## Product Safety

Products must be safe in normal use and be free of defects likely to cause injury. To that end, they must meet current, recognized health and safety standards.

## Quoting Experts

Be very careful not to misquote your experts in your advertisements. It may be wise to run the article or advertisement past the person you have quoted, even if you have previously asked for their permission.

## Terms of Offer

All offers must contain a full disclosure of all the terms and conditions or be available to the consumer upon request. A full disclosure includes:

- all necessary terms and conditions of sale, including, but not limited to: how to place an order
  - calculation of total charges and any additional charges
  - credit terms, payment terms and penalties
  - FOB point, transfer of title point; customer obligations and duties
  - goods substitution for backordered items
  - return policies & procedures
  - shipping terms, policies and methods

Further disclosure at time of ordering is also necessary. This includes, but is not limited to confirming:

*It's a matter of having principles. It's easy to have principles when you're rich. The important thing is to have principles when you're poor.*

**RAY KROC**

- all charges
- backorder procedures
- confirming if applicable shipping and or delivery time
- customers obligations and duties
- procedure of canceling or returning an order
- stock, pricing and shipping delivery dates
- timing and method of billing

**NOTE** Terms of an offer should be in large enough readable type. Elderly people shouldn't need a high powered magnifying glass to read them.

*You cannot use the word "free" if you are having a two-for-one or a 1-cent sale.*

### Unsolicited Fax Mail

Don't send unsolicited fax mail (i.e. prospecting) without customer permission.

### Use of Copyrighted Material

Do not copy, use or adapt original creative material from a supplier or another catalogue without written permission or without adhering to all copyright laws.

### Use of Photos

The use of a name or picture of a person in advertising without his or her consent constitutes a violation of their right to privacy.

### Use of the Word "Free"

Products or services which are offered without cost or obligation to the consumer



may be described as free. Where a cost or obligation is required by the consumer, the offer may be described as a bonus. In general, to use the word *free*, it really must be free.



**NOTE** You cannot use the word *free* if you are having a two-for-one or a 1 cent sale.

*Morality comes from self-esteem which comes from making decisions which require risk.*

**CHRIS ARGYRIS**  
Professor, Yale University

### Words to be Careful Of

Be careful when using words like *banish, rid, stop, correct* and *end*. Also, watch the literal meanings of the words *cure, remedy, therapeutic*, and *curative* especially when used in advertising copy to promote drug-related products. Other troublesome words include: *science, scientific, test, evidence, proof, research, doctor* and *laboratory*.

## DEVELOPING A BUSINESS CODE OF ETHICS

---

ABOVE AND BEYOND all the laws and regulations that govern the legal actions of businesses, every company should develop a more personal business code of ethics.

A business code of ethics governs how your company will handle the “grey areas” of the law when it encounters them. It also attempts to establish a set of values and moral guidelines for company management and staff.

Listed below are some areas of concern a business code of ethics should address:

*He who wishes to be rich in a day will be hanged in a year.*

**LEONARDO DA VINCI**

### Demonstrations

Be truthful at all times when performing demonstrations. There is no point and trying to trick your customer. Short-term gains will be outweighed by long-term losses.

### Environmental Concerns

The small business owner of today must be aware of the needs of our physical environment beyond that which the government regulates. Year after year, fields and groves are being sprayed with pesticides and dusted with chemicals while poultry, cattle and other livestock are being raised on chemical fatteners. Lakes, streams, and rivers are quickly being contaminated with industrial waste while at the same time our atmosphere is being polluted with harmful levels of sulfur

and carbon compounds from factories and from the millions of vehicles operating daily on our roads. And if that wasn't enough, peoples' ears are assaulted everyday by the din of city traffic, roaring machinery and thundering aircraft overhead.

As a business owner, what are you going to do to address some of these problems. Your ethics policy should consider the impact your business will have on your local environment.

### Exploitation of Children

Promotions directed towards children should not exploit their credulity, lack of experience or sense of loyalty.

*The ultimate test of a moral society is the kind of world it leaves to its children.*

**REVEREND  
DIETRICH**

**BONHOEFFER**  
*Philosopher*

### Extending Goodwill

Inherent in the concept of a democratic society is the belief that those who are more affluent are responsible for the less able and less fortunate, hence, the Social Security system, programs for tainting the hard-core unemployed anti-discrimination laws, and the welfare system. A successful company is ethically responsible for giving something back to the community it has become rich off of.

### Honesty

A business that ends up serving a respectable function in a community is a business that functions at a high level of ethical behavior. The honest and fair entrepreneur is one who upholds higher and nobler objectives, rather than

merely aiming at earning profits at any cost.

### Indecent Material

Do not promote or sell material that would cause widespread offense due to the derogatory, vulgar or indecent nature of the material.

### Social Concerns

Modern managers and business owners, should be aware of any social issues that their decisions and business practices might impact.

### Staff Recruiting

Do not recruit staff from competitive organizations by calling directly into an order desk and soliciting personnel while they are working nor retain a third party to do so.

## Testimonials & Endorsements

Product and service testimonials and endorsements, when used must be:

- authorized by the person quoted
  - genuine and related to the experience of the person giving it
  - not taken out of context so as to distort the endorsers opinion or experience
- NOTE** Though perhaps not entirely ethica,l there is nothing legally wrong about paying for a testimonial. The fact that the endorser receives some compensation for giving the testimonials need not be disclosed in the advertisement.

*Men of business must not break their word twice.*

**THOMAS FULLER**

