

Managing the Entrepreneurial University: Legal Issues and Commercial Realities.

J. Douglas Toma

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Constraints and opportunities shaped by legal considerations are significant factors in organizational policies, practices, and campus relationships. As J. Douglas Toma demonstrates in his newest book, *Managing the Entrepreneurial University: Legal Issues and Commercial Realities*, legal influences occupy an increasing role in the process of decision making in higher education, leading to “the business of higher education” necessitating the attention of legally related issues and risks.

Toma has written a practical book for higher education personnel, faculty, and researchers interested in legal challenges to higher education administration. Utilizing over 550 secondary sources, he addresses contemporary legal issues in an understandable manner, so those without legal training can easily decipher and interpret the legal principles and problems he presents. Throughout the book, Toma traces the evolution of doctrines (for example, *due process*, which he succinctly defines as “fairness in making decisions,” p. 16) and standards (such as discipline and dismissal) across changing higher education environments. Intertwined with the discussion of legal issues affecting higher education are practice scenarios addressing applied challenges. Toma offers suggestions on where changes might be warranted and provides tips for administrators in ways to ward off legal challenges.

The book broadly covers five topic areas: the legal process, discrimination, employment, students, and regulation. Chapter 1 on process provides a clear overview of the influence of different sources of law on higher education. Of particular interest to those working in the field might be Toma’s account of the litigation process. Here Toma eases administrator concerns over potential litigation by addressing steps involved in lawsuits, actors and roles, what administrators can expect throughout the litigation process, and preventative tips to help avoid litigation in the first place. In the second chapter, which focuses on the topic of discrimination, he addresses many areas that, while well-defined legally, persist in producing discrimination and hostile environments on campus. Toma reviews antidiscrimination statutes, provides examples of how ostensibly neutral policies can turn out to be discriminatory, and illustrates internal and external tensions involved in such issues as diversity, reputation, and admissions.

Employment issues, covered in chapter 3, perhaps provide the most substantial content regarding the laws’ influence on higher education practice. Here Toma links legal issues in employment matters that have arisen in an increasingly commercialized environment characterized by divergent faculty interests, commodification of research, workforce reorganization, and the complexities of tenure. Those working in higher education will likely be interested in Toma’s discussion of the contractual relationship existing between employees and institutions, including hiring considerations, evaluation criteria, and causes for dismissal. Toma’s discussion in chapter 4 of legal issues affecting students focuses on the relationship between the institution and students as consumers. With increasingly

sophisticated demands and new legal avenues available for recourse against the institution, Toma walks the reader through the evolution of student rights and due process concerns, highlighting such issues as harassment, safety, and discipline considerations. Toma's insight into student issues helps to capture the balance required between institutional interests in serving students and competing legal and fiduciary responsibilities.

Finally, chapter 5 addresses the expanded role of law on campus through the swell of regulations and compliance issues that have arisen in the entrepreneurial university. Toma offers specific regulatory and compliance examples to illustrate the breadth of influence on practice and raises questions as to ambiguity and legal interpretation. Unfortunately, this section provides but an overview of the topic and does not go into great depth in any one area.

As an introductory text for anyone having little training or preparation for dealing with legal issues that arise on campus, Toma delivers an accessible overview of important, although select, legal topics. He addresses legal issues and their ramifications in a balanced and user-friendly manner. In addition to this strength, Toma provides practical application of issues and offers proactive tips, a benefit to administrators dealing with legal issues and whose actions carry implications for institutional risk management. This text offers a starting point from which to become familiar with wide ranging issues at the intersection of academic and legal principles. It does not sufficiently delve into any one topic area, however, to provide extensive knowledge on specific issues.

Toma accomplished his stated purpose of explaining fundamental legal concepts in clear, non-technical language while grounding them in practical higher education management situations. More extensive guides on higher education law exist, whose volumes contain additional detail in a greater variety of areas

(see for example, Kaplin & Lee, 2006; and Olivas, 2006). Those guides rely more heavily on case facts and the legal reasoning underlying judicial opinions. Legal compendiums also exist on specialized subject matters: student affairs, sexual harassment, copyright, etc. that provide in-depth detail on specific areas of focus. What sets Toma's guide apart is that he provides clear baseline information in areas where legal difficulties are likely to arise in a number of higher education scenarios. Those needing more information in a specific area will likely have to supplement their reading beyond Toma's text.

This work offers two important contributions to the field. First, Toma is among few higher education scholars who have systematically linked legal issues in higher education with the emerging market-oriented university model. This model, in which university management (as opposed to a community of scholars and professional chairs) are the dominant decision makers, raises issues regarding the erosion of traditionally held values of academic freedom, self-governance, and the mission of higher education. Second, Toma expands the audience of traditional higher education law guides by making this text more accessible to staff, program directors, managers, and many more non-legally trained administrators who face routine interactions with campus legal issues as part of their academic identities.

Sadly, Doug Toma, whose insights and clear voice are so well represented in this book, died soon after it was completed. His sharp mind, generosity, and kindness are sorely missed.

REFERENCES

- Kaplin, W. A., & Lee, B. A. (2006). *The law of higher education* (4th ed.). San Francisco, CA: Jossey-Bass
- Olivas, M. A. (2006). *The law and higher education: Cases and materials on colleges in court* (3rd ed.). Durham, NC: Carolina Academic Press.



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