

Intro to Business Law CLEP Notes

- Purpose of legal systems ? ——— fairness, consistency, and order
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- Common law: statutes alongside codes (case-based)
 - Civil Law: solely statutes (code-based)

 - Precedent: “divine principle” used as a guide to court cases
 - Stare Decisis: “legal principle” for determining points/steps in litigation.

 - Procedural Law——various steps such as jury selections, etc.
 - Substantive Law— based upon solely on merits, shorter process.
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- State vs. Federal Constitutions: States can create own statutes, but cannot violate Federal Constitution

 - Checks and Balances/Three Branches

 - Supremacy Clause: “The law of the land”, for treaties/legislation/constitution.
 - Commerce Clause: Congress can regulate interstate-commerce law

 - Judicial Review (Marbury vs. Madison)——Federal court permission to use Congressional to compel Madison’s appointment is found unconstitutional
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Bill of Rights

- Positive Liberties: Guaranteed rights (countries that guarantee housing, healthcare for all, etc.)
- Negative Liberty: Government will not abridge right unless it violates law, security, truth (libel/defamation) cases

- First Amendment: Freedom of speech (commercial businesses have limited protection)——-defamation, libel, misleading, inciting violence do not fall within free speech——- Establishment Clause/Free Exercise Clause
- Regulation of Speech: Content-Based vs. Content-Neutral
- Fifth Amendment: Due Process—speedy trial, jury of your own peers, etc. and Takings Clause—— Eminent Domain, “Just compensation”
- Fourteenth Amendment: Contains Equal Protection Clause——“heightened scrutiny” toward laws that limit fundamental rights
- “Rational-Basis Scrutiny” for all other laws—— laws that devalue properties/business.



Criminal Law and Civil Law

-Criminal Law

- Government: initiates charges, arrests, investigations, etc. on behalf of society---- may lead to imprisonment/fines, but needs ‘proof beyond a reasonable doubt’
- Plaintiff and Defendant

-Civil Law

- Lawsuits initiated that may involve corporations, individual citizens, and sometimes the government----lead to specific performance and/or monetary givings.
- “More likely” ex. “51%”

The Court Systems

- Trial, Appellate, and Supreme Court cases
- Appellate: Judge can reaffirm, reverse, or vacate and remand
- Supreme Court: Writ of Certiorari—ruling.
- Appeal of right v. Discretionary appeal

Court Procedures

-Civil Case

(Plaintiff v. Defendant in Federal Civil Procedure)

- Pleadings (complaint, answer, affirmative defense, motion to dismiss, counterclaim)
- “Middle Dealings”: Discovery—potential of motion for summary judgement.
- Results of Civil Jury Trial: Jury verdict, motion to dismiss, motion for direct verdict, judgement notwithstanding verdict.

Jurisdiction

- Personal Jurisdiction: which state the suit may be brought
- Subject Matter Jurisdiction: “Federal or State Courts ?”

-Federal Juris.: Diversity Jurisdiction—Citizenship of Corporations
(Domicile—ex. headquarters/foundation)

-Traditional Bases of General Jurisdiction:
Physical presence, Domicile, Consent, Waiver (*Pennoyer v. Neff*)

Formation of Contracts

- Mutual Assent: both parties agreeing

-Offer

-Acceptance

-Consideration (or detrimental reliance)

*Offer can be rejected—Objective Standard

*Counter-offer: both objection of original offer and a new offer

*Consideration: Promise that induces the other party's action.

*Detrimental Reliance: doctrine of promissory estoppel

Meaning of Contract Law Terms

*Commercial Uniform Codes—goods only, adopted in U.S. Law

*Corporations are seen as “persons” in contracts—Promisor, Promisee

*Bailment: transfer of goods, but not giving ownership

- Contract: A legally enforceable promise— can be oral, written, or implied
- Quasi-Contract: “implied in law”—could be claimed for unjust enrichment and restitution in contract absence

- Unilateral Contract—based upon performance
 - Bilateral Contract—mutual promise
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Third-Party Beneficiary Contracts

- Creditor v. Donee beneficiary contracts
 - Third-Party can assent, sue, or rely on contract
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Statutes of Fraud

- MY LEGS: Marriage, Year, Land, Executor, Goods, Surety
- Exceptions: if obligations are met or obligee admits in court/testimony that contract was made

*Promissory Estoppel can be used if
Obligee detrimentally relied on an oral promise that would otherwise fall under statutes.

Interpreting Contractual Terms

- There are a number of common issues as to whether consideration exists in a contract:
 1. Part payment is not good consideration
 2. Consideration must move from the promisee but need not flow to the promisor
 3. Consideration must be sufficient but need not be adequate
 4. Consideration cannot be illusory
 5. Consideration must not be past. Past consideration is not good consideration
 6. Moral consideration is not sufficient
 7. Performance of existing duties is not good consideration

- assignment is the process whereby a person, the *assignor*, transfers rights or benefits to another, the *assignee*.

An assignment may not transfer a duty, burden or detriment without the express agreement of the assignee. The right or benefit being assigned may be a gift (such as a [waiver](#)) or it may be paid for with a contractual [consideration](#) such as money.

- **Delegation:** act of giving another person the responsibility of carrying out the performance agreed to in a contract. Three parties are concerned with this act - the party who had incurred the obligation to perform under the contract is called the *delegator*; the party who assumes the responsibility of performing this duty is called the *delegatee*; and the party to whom this performance is owed is called the *obligee*.

Breach of Contract and Remedies/Affirmative Defense to Breach

- Partial/Trivial Breach: Promisee can sue, but must perform in the meantime
- Material Breach: Promisee can sue/suspend performance, but cannot terminate contract
- Total Breach: Promisee can sue/suspend performance, terminate contract and seek alternative arrangements
- Anticipatory Repudiation: Party indicates by words that he/she will not perform action in advance-----Demand for assurances can be issue and if not given^

[Remedies]

*No punitive, emotional-stress damages or attorney fees awarded

- Direct Damages + Consequential Damage

- Compensatory Damages----- if substantial performance, the comp. Damages may only be diminution in value between perform and contract
- Liquidated Damages-----If contract specifies damages, amount is reasonable
- Restitution: Awarded to repay a party providing a benefit for the reasonable value she/he provided
- Specific Performance/Injunction to refrain from conduct

[Affirmative Defense to Discharge of Contracts]

- Lack of Capacity
- Violation of Statute of Frauds
- Duress
- Undue Influence
- Mutual Mistake
- Unilateral Mistake
- Misrepresentation
- Fraud
- Unconscionability
- Statute of Limitations

[Discharge of Contracts]

- Discharge by: Recission, Novation (Novation, in contract law and business law, is the act of: replacing an obligation to perform with another obligation; or adding an obligation to perform; or replacing a party to an agreement with a new party).
- Accord/Satisfaction

[Void Contract]:

An agreement may be void if any of the following:

- Made by incompetent parties (e.g., under the age of consent, incapacitated)
- Has a material bilateral mistake
- Has unlawful consideration (e.g., promise of sex)
- Concerns an unlawful object (e.g., heroin)
- Has no consideration on one side
- Restricts a person from marrying or remarriage
- Restricts trade
- Restricts legal proceedings
- Has material uncertain terms
- Incorporates a wager, gamble, or bet
- Contingent upon the happening of an impossible event
- Requires the performance of impossible acts

Illegal Contracts and Public Policy

*Contract that violates the law/Unenforceable

- Damage ?-----Culpability of party is much less
 - Legal contract that violates law, may still be enforceable----restitution
 - Exculpatory Clauses/Restrictive Covenants
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Ethics

- Deontological: Ethical obligations no matter the consequences----John Locke, inalienable rights/liberty-----Immanuel Kant, “treat others as ends, not means”
 - Consequentialist Ethics: “Impact in world”---utilitarianism (John Stuart Mill, Jeremy Bentham)
 - Each state has its own ethic rules----instituted by Bar Association
 - Attorney/Client Privilege
 - Malpractice, Concurrent Conflict---can be waived*
 - Former Conflict
 - No Business Dealings
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Social Responsibility of Corporations

- Shareholder Primacy Theory---obligations to environment, workers, etc.
 - Charitable Contributions---permitted, but must be reasonable
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Government Regulation and Administrative Agencies

- Legislature passes act----administrative agency (Independent or part of legislature)

- ALJ s adjudicate claims for said agency (Administrative Procedure Act)
- ALJ Proceedings: More freewheeling, “more back and forth”
- ALJ----]Appellate-----etc.
- APA-----oversees regulations, rules, etc---30-day delay before effective

Antitrust Law

- Sherman Act: Ensures trusts don't restrain trade----”rule of reason”
 - *Trust: Companies coming together to enhance market power, Monopoly: Company that dominates entire industry
- Federal Trade Commission (FTC)
- Horizontal Agreements: Price-fixing, production quotas, group boycotts, market division
- Vertical Agreements (between producers and buyers): Price-related agreements, tie-in agreements, exclusive distributor agreements, exclusive dealing agreements, price-discrimination
- Clayton Act: Prohibits mergers/acquisitions that creates monopoly/reduces competition----Hart-Scott-Rodino Act makes sure that FTC/Justice Dept. are notified of deal

Employment/Labor Law

- Workmans Comp
- National Labor Relations Act: employee organization without detriment
- Fair Labor Standards Act: minimum Wage
- Employee Retirement Income Security Act: prudent management/good governance in employee pensions, etc.

Product Liability

- Manufacturer Defect
- Design Defect
- Inadequate Warning

-Theories of Liability

- Intentional Tort
- Negligence
- Strict Liability (pertains to commercial suppliers providing unreasonably dangerous products)

Consumer Protection

- FTC
- Department of Consumer Protection
- Consumer Financial Protection Bureau

- Fair Credit Reporting Act: collection of credit info/access to credit reports
- Equal Credit Opportunity Act: no discrimination in credit opportunities
- Fair Debt Collection Act: ensures legal protection from abusive debt collection practices
- Truth in Lending Act: informed use of credit to consumers/terms and conditions divulged
- Gramm-Leach-Bliley Act: requires financial institutions to explain security of info
- Lanham Act: trademarks, service marks, unfair competition
- Trade Secret Laws

International Business Law

- Treaties (bilateral and multilateral; role of International Court of Justice)
- *No foreign sovereign immunity for suits involving U.S.
- WTO Principles: No discrimination against foreign goods; preference for goods from under-developed regions; more transparency
 - Trade Regulation: Export Trading Company Act/Export Administration Act
 - Free Trade Agreements: NAFTA, etc.
 - Foreign Corrupt Practices Act/Convention on the International Sale of Goods
 - Bureau of Customs/Border Protection: Regulates imports/tariffs

Intentional Torts

- Battery: Harmful Contact; Intent; Causation----specific or general intent sufficient with no need to show harm
 - Assault: Reasonable apprehension of imminent contact; intent; causation
 - Transferred Intent
 - Intentional Infliction of Emotional Distress
 - False imprisonment/Shoe-keeper's defense
 - Defenses: Consent, self-defense, defense of others
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Negligent Tort

- Duty (standard of care), Breach, Causation (Proximate and "but for")
 - Damages
 - Defenses: Contributory, Comparative negligence, Assumption of Risk
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Strict Liability Tort

- Absolute Duty of Care: Imposed by statute or by a court for "ultra-hazardous activity or products liability (Comm. seller's duty to buyer/user"

- Breach, Causation, Damages----No Defenses Available
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Privacy Torts

*Requires a reasonable expectation of privacy

- Intrusion of Solitude
 - Appropriation of Name or Likeness
 - Public Disclosure of Private Facts
 - False Light
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Vicarious Liability

*One person may be liable for the torts of another
(Respondeat/Superior Theory)

- Exceptions: Frolic and Detour (Employee accident was not during business duties, “seriously outside scope of business”)
 - ^Intentional Torts (Unless if in furtherance of Employer’s business)
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Harms to Reputation or Economic Interests

- Defamation (Slander/Libel): False statement, Harming reputation, Communicated to another-----”Reckless Disregard”

-Private Figure: “Negligent Standard”

- Interference with Contractual/Business Relations: ex. Defendant knew of relationship and intentionally interfered



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Agency

- Creation of Relationship: By agreement, estoppel, ratification or necessity
 - Duties of Agent: Duty of care, loyalty, obedience
 - Liability of Principal: All acts of agent (As long as within authority), Actual authority, implied actual authority, apparent authority
 - Liability of Agent: Acts for which agent doesn't have authority, if principals identity is not fully disclosed to third-party
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Partnerships

*An association of two or more people entering business to make a profit

- Need not to be in writing----can be implied from behavior (ex. profit -sharing)
- Property brought to partnership or acquired is within the partnership

*Partnership by estoppel

- Relations between partners (absent contrary agreement): Equal profit-sharing and decision-making, duty of care/loyalty, "Flow-Through" Tax Treatment
- Liability: Partners are all agents----each liable for debts and/or obligations (incurred after induction into partnership---relating to assumption of debts, etc.)
- Limited Partnerships: Contributing money, but not day-to-day obligations
- Limited Liability Partnership (requires filing)

- LLC: “verging on corp.”, “all are managers”, “Company is on the hook”
- Dissolution: specific period, desire of any partner, mutual agreement, death/expulsion/bankruptcy, or court order-----terminates actual authority to act for partnership and must provide notice to third-parties----] after assets are paid to creditors/distributed to partners
official termination complete

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Corporations

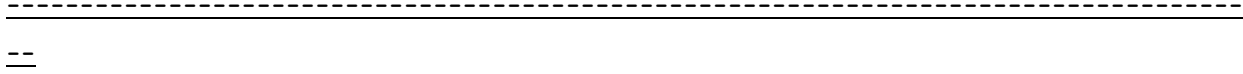
- Perpetual existence separate from owners or managers
- Must have articles of Inc./one meeting to determine directors/officers
- State of incorporation determines corporate laws to be abided by
- Business Judgement Rule: Directors/Officers cannot be fired for dismal result if working in company’s best interest

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Formation of UCC Contracts

*Uniform Commercial Code, Article 2

1. Offer: Option Contracts are written offer from merchant (cannot be revoked for time-specified or reasonable time)
 2. Acceptance: No mirror image rule, if buyer takes goods and does not reject them as non-conforming in reasonable time.
 - Perfect tender rule: no substantial performance option available
 - Installment Contracts require opportunity for seller to cure
 - Seller's Right to Cure: If buyer rejects goods as non-conforming----seller can try to cure deficiency if before delivery date by providing conforming goods (after delivery date----only possibility would be price adjustment with new delivery
- Buyer's Ability to Revoke Acceptance: Goods are non-conforming, affecting value or was difficult to discover initially or cure was not made-----But notice of revocation must be within reasonable time after discovery and condition of goods must not be altered
 - If Buyer's Acceptance Contains Additional Terms-----treated as a proposal unless both parties are merchants (in this case proposal becomes part of contract as long as it's immaterial----unless original offer limited said term acceptance or seller rejects)



Warranties

- Express Warranties: Seller backs-up manufacturer on product
- Implied Warranty of Merchantability: Product defective, flawed
- Implied Warranty of Fitness for a Particular Purpose: Action in response to product unable to live up to features stated by seller.