

Final Exam Study Guide: Modules 1-7

Directions to Generate a Quiz: Apply concepts to fact patterns, as many quiz questions are scenario-based. Can you generate a (20) question quiz on this without answers?

Module 1



Sources of American Law

- Constitutional Law: Supreme law of the land; all other laws must comply.
- Statutory Law: Laws passed by legislative bodies (e.g., Congress, state legislatures).
- Administrative Law: Created by federal and state agencies (e.g., EPA, FDA). Includes:
 - Rules & Regulations
 - Agency Decisions
 - Executive Orders
- Case Law / Common Law:
 - Judge-made law developed from court decisions.
 - Based on precedents and the principle of stare decisis (stand by things decided).



Common Law vs. Civil Law

- Common Law (used in the U.S.): Developed from English legal tradition; heavily based on precedent.
- Civil Law (e.g., France, Latin America): Based on comprehensive codes; less reliance on precedent.



Legal Terms & Procedures

FIRST: Jurisdiction

- Subject Matter Jurisdiction: Authority to hear a particular type of case (e.g., bankruptcy, civil, criminal).
- Personal Jurisdiction: Authority over the parties involved; determines whether court has authority to hear case & enter a judgment.
- Federal Court Jurisdiction: Limited to federal questions or diversity cases (parties from different states + >\$75,000).

SECOND: Venue

- Refers to the geographic location where a case should be heard.
- Usually based on where the defendant resides or where the dispute occurred.

THIRD: Standing to Sue

- The party must have a concrete stake in the outcome (e.g., suffered actual harm).
- Hypothetical or general interest is not enough.
 - If never used product before, it's not standing to sue.



Court System Basics

1. Trial Process Stages:

- Opening Statements
- Presentation of Evidence & Witnesses
- Closing Arguments
- Jury Instructions (if applicable)
- Verdict

2. Pretrial Motions:

- Motion to Dismiss: Filed by defendant to challenge the legal sufficiency of the complaint.

3. Pleadings:

- Complaint: Filed by plaintiff; must include facts showing jurisdiction and legal claims.
- Answer: Filed by defendant; may admit, deny, or raise defenses.

4. Parties:

- Plaintiff: Brings the lawsuit.
- Defendant: Responds to the claim.



Constitutional Concepts

- First Amendment: Protects corporate political speech as well as individual speech.
- Right to Privacy: Implied through constitutional protections.
- Equal Protection: The government must treat individuals in similar situations equally.



Alternative Dispute Resolution (ADR)

Method	Description	Binding?	Neutral Third Party?
Negotiation	Informal discussion between parties to resolve dispute	No	No
Mediation	Neutral party helps facilitate compromise; parties decide outcome	No	Yes
Arbitration	Neutral third party hears case and makes decision	Often Yes (Binding)	Yes

1. Benefits of ADR:

- Faster, cheaper, less formal than litigation.
- Often confidential.
- Preserves business/personal relationships.

2. When Is ADR Best?

- Business contracts, employment disputes, small claims, and ongoing relationships where cooperation is preferred.

3. Mandatory Arbitration Clauses:

- May be struck down if unconscionable, overly one-sided, or procedurally unfair.



Appellate Courts

- Review legal errors, not factual disputes.
- Do not hear witnesses or retry cases.
- May affirm, reverse, or remand cases.



Common Mistakes to Avoid

- Thinking administrative law only includes state regulations (it includes federal too).
- Confusing standing with jurisdiction or venue—they are separate but all required.
 - Standing to Sue-Party's legal right to bring lawsuit (sufficient stake in matter to seek relief).
 - Jurisdiction / Venue-Court's authority to hear & decide a case.
- Believing criminal law governs duties between people—it governs duties to society.

- Congress (legislative branch) enacts law, judicial interprets law, executive (administrative agency under the president) administers law.
- Right to privacy=violation of person's rights via online
- Before trial, defendant can file motion to dismiss.
- Answer to Complaint=Defendant admit or deny allegations of plaintiff's complaint.
- Defendant ignores plaintiff summons=judgment in the favor of the plaintiff
- The first step in filing a complaint is to establish that the court has authority.
- Types of Courts
 - Federal (order of hierarchy)
 - Supreme Court-Reviews constitutional issues.
 - Circuit Court of Appeal-Review appeals from lower court (not new cases).
 - District Court-Reviews criminal & civil cases.
 - State
 - General Jurisdiction / Trial Courts-Civil & criminal.
 - Intermediate Courts of Appeals-Review appeals from lower courts.
 - State Supreme / Highest Court-Review appeals from lower courts & state law.
 - Civil
 - Small Claims Court-Small amount of money.
 - Family-Divorce, custody
 - Probate-Wills & estates.

✓ Tips for Review

- Laws passed by Congress-statutory.
- Personal jurisdiction=defendant needs to tie to state
- General jurisdiction=state trials can hear criminal & civil cases.

Module 2

♦ **Ethics vs. Law**

- Ethics = what is *right or wrong* based on moral principles
- Law = what is *legally required*; sets the moral minimum
- An act can be legal but still unethical

♦ **Ethical Theories**

- Duty-Based Ethics (Deontology):
 - Based on moral obligations
 - Kantian ethics: categorical imperative — what if everyone did this?
- Outcome-Based Ethics (Utilitarianism):
 - Based on consequences
 - Uses cost-benefit analysis to maximize benefit, minimize harm

♦ **Corporate Social Responsibility (CSR)**

- A company's duty to act ethically and contribute to society
- Involves the triple bottom line= profit, people, & planet.

♦ **Business Codes of Ethics**

- Internal business guidelines — not state law
- Should be applied consistently to all employees and management

♦ **Foreign Corrupt Practices Act (FCPA)**

- Prohibits U.S. companies from bribing foreign government officials

- Allows small facilitation (“grease”) payments *only* for routine services to speed them up.
- Applies regardless of local customs or the official's nationality

♦ **Elements of Negligence**

1. Duty — defendant owed a legal duty
2. Breach — failure to act as a reasonable person
3. Causation — Cause in fact / (“but for” test) in which asks if injury would have occurred (factual link) & Proximate cause (foreseeability) in which asks if injury was foressable (legal link).
4. Damages — plaintiff suffered actual harm

♦ **2. Defenses to Negligence**

- Assumption of Risk — plaintiff knowingly accepted a known risk
- Comparative Negligence — damages reduced by plaintiff's fault
- Contributory Negligence — (less common) bars recovery if plaintiff was even slightly negligent
- Superseding Cause — an unforeseeable event breaks the chain of causation

♦ **3. Strict Liability**

- No need to prove fault or intent
- Applies to: Abnormally dangerous activities (e.g., using explosives), Product liability (defective products), & Wild animals

♦ **4. Intentional Torts**

- Battery: harmful/offensive contact (physical harm)
- Assault: reasonable fear of imminent harm
- Defamation: false statement of fact that harms reputation and is published to a third party
- Invasion of Privacy
- Fraudulent Misrepresentation

Concept	Appeared in Quiz As...
Defamation (statement to injury reputation)	Must be communicated to a 3rd party
Strict liability	No fault required
Cause in fact	“But for” test (motorcycle crash example)
Reasonable care	Duty to warn of foreseeable, not obvious, risks
Battery	Offensive contact, even without injury
Negligence	Elements: Duty, Breach, Causation, Damages
Ethics vs. Law	Legal ≠ always ethical

Utilitarianism	Focuses on consequences
Deontology	Based on duty, not outcome
Assumption of Risk	Best defense in foul ball injury case
FCPA	Bribery is illegal regardless of foreign customs
Business ethics	Ethical code ≠ state law
CSR	Acting beyond profit to serve society
Product liability	Based on negligence, strict liability, or fraud

✓ Tips for Review

- Slander-oral & libel (written)
- Strict liability-Company liable for defective / dangerous product
- Puffery-exaggerated subjective statement
- Fraud-intention to deceive
- Negligence-person's careless actions caused harm.
 - Negligence duty-Legal obligation to act to avoid harm.
 - Negligence causation-direct link between actions & hurt
 - Negligence breach-Fail to meet duty
- Strict liability-Abnormal dangerous activity & defective products
- Misrepresentation-False statement of fact.
- Battery-Actual physical contact
- Obvious risk-clearly marked thing
- Duty to warn of known hazards

Module 3 Study Guide

♦ Contract Formation: Core Elements

To form a valid contract, four elements must be present:

1. Agreement – offer and acceptance
2. Consideration – something of legal value exchanged
3. Capacity – parties must be competent (e.g., adults, sober, sane)
4. Legality – subject matter must be lawful

♦ Types of Contracts

- Bilateral contract: promise for a promise (e.g., "I'll pay you if you teach me.")
- Unilateral contract: promise for performance (e.g., "I'll pay you if you deliver this.")
- Express contract: written or spoken terms
- Implied contract: based on conduct, not words
- Executory: contract not yet fully performed
- Executed: contract fully completed

♦ Offer & Acceptance

- An offer must be communicated to be effective.

- Counteroffers terminate original offers.
- Click-on agreements (clickwrap) are valid acceptances.
- Offers can be accepted only by those to whom they are made.

♦ **Consideration**

- Must be something of value exchanged by both sides.
- Preexisting duty rule: a promise to do what one is already legally obligated to do is not valid consideration.
- Promissory estoppel: allows enforcement without consideration if:
 1. A clear promise is made
 2. The promisee relies on it
 3. Injustice would result without enforcement

♦ **Intellectual Property**

Copyright:

- Protects original works (books, art, music, software).
 - Includes typeface design (characters & symbols).
- Exists automatically upon fixation in a tangible medium.
- Fair use is a defense (for criticism, teaching, etc.).

Trademark:

- Protects names, logos, slogans that identify goods or services.
- Infringement occurs when unauthorized use causes likelihood of confusion.
- Dilution protects famous marks from:
 - Blurring: weakens distinctiveness
 - Tarnishment: harms reputation

Patent:

- Protects inventions and processes.
- Must be registered through USPTO.
- Unauthorized use = patent infringement.

Trade Secrets:

- Includes formulas, designs, business strategies.
- Protected by law if kept confidential and misappropriation occurs.

♦ **Other Key Concepts**

- License: legal permission to use intellectual property
- Release of liability: a settlement agreement bars future claims
- Illusory promise: not a real commitment / one party's discretion of promise, unenforceable
- Clickwrap agreement: valid electronic contract if terms are clearly accepted

✓ **Tips for Review**

- Objective Theory of Contracts-Court determines what a reasonable person would believe not party's intentions.
- Trade Dress-Decorated restaurants & menu protection.
- Mailbox Rule-Contract formed when it's mailed.

Module 4

1. Contractual Capacity

Minors

- Contracts with minors are **voidable by the minor**, not the adult.

- Can disaffirm **during minority or shortly after reaching majority**.
- Must return the consideration if possible, but **not liable for damage or use**.
- **Necessaries** (food, shelter, health care): Minor can disaffirm but may be liable for the reasonable value.
- **Ratification** occurs when:
 - The minor continues performance after turning 18.
 - Fails to disaffirm in a reasonable time.
 - Ratification may be **express or implied through conduct**.



Intoxicated Persons

- Contract is voidable if person was too impaired to understand and other party knew or had reason to know.
- Contract is valid if person understood consequences.
- Difficult to prove and rarely accepted as a defense.



Mentally Incompetent Persons

- Void: If court declared the person incompetent and a guardian was appointed.
- Voidable: If person was incompetent when the contract was made, but no court ruling existed.
- Valid: If the person understood the nature of the contract at the time of agreement.

2. Legality



Illegal Contracts

- Void and unenforceable when involving:
 - Crimes (e.g., drug deals, fraud)
 - Usury (charging interest above legal rate)
 - Gambling (if prohibited)
 - Contracts with unlicensed professionals (e.g., builders without license in regulated states)



In Pari Delicto ("Equal Fault")

- Neither party can enforce the contract if both were knowingly involved in illegality.



Exceptions Allowing Enforcement

- Justifiable ignorance of illegality
- Withdrawal before the illegal part is performed
- Protected parties (e.g., an employee in a labor violation)
- Severable contracts: Legal parts may still be enforced

3. Contracts Contrary to Public Policy



Unreasonable Restraint of Trade

- Contracts that restrict free competition (e.g., noncompete clauses) may be void unless:
 - They protect a legitimate business interest
 - They are reasonable in time and geographic scope
 - They do not unduly burden the worker
- California prohibits employment noncompetes.

4. Unconscionability



Procedural Unconscionability

- Unfairness in how contract was made (e.g., fine print, legalese, take-it-or-leave-it).

Substantive Unconscionability

- Unfairness in what the contract says (e.g., one-sided or oppressive terms).

5. Exculpatory Clauses

- Release a party from liability for wrongdoing.
- Enforceable in recreational activities if:
 - Clearly written and voluntarily agreed to
 - Do not involve gross negligence or public policy violation
- Not enforceable in essential services (e.g., landlords, hospitals).

1. Assignments and Delegations

Assignments (of rights)

- Assignor transfers rights to an assignee.
- Rights to receive funds or payments are freely assignable.
- Assignor's rights are extinguished once assigned.
- Assignee takes the contract subject to defenses available to the obligor.

Delegations (of duties)

- Delegator assigns contract duties to delegatee.
- Delegator is still liable unless there is a novation.
- Cannot delegate duties involving:
 - Personal skill or trust
 - Varying expectations
 - Express contract prohibition


2. Third Party Beneficiaries


- Intended beneficiaries can enforce contract (e.g., a patient benefiting from a hired nurse).
- Incidental beneficiaries cannot enforce.

3. Conditions of Performance

- Condition precedent: Must occur before a party is obligated to perform.
 - e.g., *Buyer must get financing before closing*
- Condition subsequent: Terminates a duty after it begins.
 - e.g., *Employee must maintain license or lose job*
- Concurrent conditions: Both parties perform simultaneously.
 - e.g., *Payment upon delivery*

4. Performance and Breach

 Complete performance: All contract terms fully met

 Substantial performance:

- Performed in good faith with minor deviations
- Opposing party must still perform and can claim damages
 - e.g., *Using a different brand of paint*

 Material breach:

- Serious failure; excuses performance of non-breaching party

 Anticipatory repudiation:

- One party refuses to perform before performance is due

5. Discharge of Contract

By Performance

- Full or substantial performance discharges duty

By Agreement

- Mutual rescission: Both parties agree to cancel; must return benefits
- Novation: Substitutes a new party
- Settlement or accord and satisfaction: Resolves dispute by agreeing to different performance

By Operation of Law

- Statute of limitations, bankruptcy, or court order (e.g., zoning laws make project illegal)
- Impossibility: Death, destruction, illegality
- Impracticability: Unexpected costs make performance unreasonable
- Frustration of purpose: Core value of contract destroyed

6. Remedies for Breach



Legal Remedies (Damages)

- Compensatory: Direct losses (e.g., price difference)
- Consequential: Foreseeable indirect losses (e.g., lost profits)
- Punitive: Only for fraud or torts
- Nominal: No loss, but legal wrong



Equitable Remedies

- Specific performance: Court forces completion (e.g., real estate sale)
- Rescission: Cancels contract, returns parties to original state
- Reformation: Court rewrites contract due to fraud or mutual mistake
- Injunction: Stops a party from acting (e.g., violating a noncompete)

7. Liquidated Damages vs. Penalty Clauses

- **Enforceable** if:
 - Damages were hard to estimate when contract was formed
 - The amount is reasonable
- **Unenforceable** if:
 - The amount is excessive (penalty)

8. Statute of Frauds (Writing Requirement)

Contracts must be in writing if they involve:

- Land
- Performance exceeding 1 year
- Sale of goods \geq \$500 (UCC)
- Promises made in consideration of marriage
- Secondary (collateral) promises

Memo must include essential terms, not full detail.

Multiple separate purchases (e.g., \$200 GPS + \$100 tunes + \$500 tablet) are not combined for the \$500 rule.

9. Quasi-Contract & Recovery

- Used to prevent **unjust enrichment** when no valid contract exists.
- Plaintiff must show:

1. A benefit was conferred
 2. Payment was expected
 3. Not a volunteer
 4. Defendant would be unjustly enriched
- Recovery: Based on fair market value (quantum meruit)

Module 5

Creditor's Rights

- Secured Transactions (gives legal right to security interest of debtor property / collateral) & Attachment (legal right to collateral is enforceable)
- Valid security interest, all 3 must be present.
 - Security Agreement must be signed & clearly stated
 - Or creditor possession
 - Value given by the creditor
 - Debtor has rights / control in the collateral

Perfection of Security Interest

Makes the interest effective against third parties.

- Perfection by Filing: UCC-1 financing statement
- Automatic Perfection / No Filing: Purchase-Money security interest (PMSIs) in consumer goods
- Priority Rules: First to perfect usually wins; PMSIs may have priority

Liens

- Mechanic's Lien: Real estate as security for unpaid improvements
- Artisan's Lien: Personal property held until cash payment made
- Judicial Lien: Created via court judgment

Garnishment

- Seizes debtor's property held by a third party (e.g., wages, tax refunds)
- Governed by state and federal law
- Limitations protect exempt income

Suretyship & Guaranty

- Definitions
 - Surety: Primarily liable
 - Guarantor: Secondarily liable
- Released by: Material modifications (loan terms changed w/out consent), property surrender (creditor gives up collateral), or payment by debtor.
- Defenses: Fraud, incapacity, bankruptcy, time-barred claims



Bankruptcy Law Overview

- Goals: Fresh start for debtors & Fair treatment for creditors

Bankruptcy Court

- Federal jurisdiction
- Appeals go to the U.S. District Court



Types of Bankruptcy

Chapter	Purpose	Who Uses It
7	Liquidation	Individuals & Businesses
11	Reorganization	Mostly Businesses
13	Repayment Plan	Individuals
12	Special Plan	Family farmers & fishermen

Chapter 7: Liquidation

- **General Information**

- Trustee sells nonexempt assets
- Remaining debts discharged
- Must pass Means Test
- Requires credit counseling
- Schedules include debts, assets, income, tax returns

- **Involuntary Bankruptcy:**

- 12+ creditors → 3 needed with \$16,750+
- <12 creditors → 1 needed with \$16,750+

- **Automatic Stay**

- Stops collection activities against debtor

- ✓ **Exceptions:**

- Domestic support obligations
 - Divorce/custody matters
 - Tax liens
 - Securities investigations

- **Bankruptcy Trustee's Powers**

- Review for abuse of Chapter 7.
- Voidable rights: Preferential or fraudulent transfers

- **Exempt Property**

- Homestead
- Clothing, tools of trade
- Public benefits (Social Security, welfare)
- Personal injury awards (limited)

- **Creditors' Meeting (341 Meeting)**

- Held within 40 days
- Debtor must attend
- Creditors file claims within 90 days (unless "no-asset" case)

- **Property Distribution**

- Secured creditors paid first (collateral value)
- Unsecured creditors paid in priority order (pro rata)

- **Debts Not Dischargeable**

- Recent taxes
- Fraud, theft, or false pretenses
- Unnotified creditors
- Domestic support
- Retirement account loans
- DUI-related damages
- Government fines

- Luxury debts > \$725 (incurred within 90 days)
- Securities violations
- Student loans (unless undue hardship)
- **Discharge Denied If:**
 - Fraud or concealment of assets/records
 - Prior discharge in past 8 years
 - Failure to complete education course
 - Felony conviction
- **Reaffirmation of Debt**
 - Voluntary, signed before discharge
 - Disclosures required
 - Lien remains in effect



Chapter 11: Reorganization

- General Information
 1. Business continues operating
 2. Plan must
 - Classify claims
 - Specify treatment
 - Provide execution method
 - Pay taxes over 5 years
- Debtor in Possession (DIP)
 1. The debtor has control without a trustee.
- Creditors' Committee
 1. Group of unsecured creditors review & negotiate plan.



Chapter 13: Individual Repayment Plan

- Individual with regular income.
- Voluntary or conversion from Ch. 7
- Plan length: 3–5 years
- Debtor submits future income to pay creditors
- Must treat creditors in the same class equally
- Ends with discharge (except for certain debts)



Chapter 12: Farmers and Fishermen

- Must be 50% dependent on farming/fishing
- File within 90 days
- Plan must be confirmed in 45 days
- Secured debts paid at collateral value
- Unsecured debts matched by property value or income



Tips for Review

- Preferential-Payment made by debtor before filing favoring (1) creditor over others.
- Fraudulent Transfer-Intent to hinder, delay, or defraud creditors.
- Reaffirmation-After filing.

Define Principal and Agent

- Principal: The person or entity who authorizes someone else to act on their behalf.
- Agent: The person who agrees to act for or represent the principal.



Core Feature: Consent + Control

Both parties agree, and the principal controls the agent's actions within the scope of their duties.

Role and Function of an Agency Relationship

- An agency relationship allows one person (the agent) to legally bind another (the principal).
- Used extensively in business (e.g., employees, brokers, managers).
- A principal can be held liable for acts done by their agent within the scope of authority.
- Agency is based on trust (fiduciary duty), and enables businesses to operate through others.

Principal's Control Over the Agent

- The principal has the legal right to control the agent's:
 - Tasks
 - Methods
 - Business dealings
- The more control a principal has, the more likely a legal agency relationship exists.



Even if unpaid or informal, control = agency.

Employee vs. Independent Contractor

Factor	Employee	Independent Contractor
Control by employer	High	Low
Work structure	Ongoing, supervised	Project-based, unsupervised
Tools provided?	Yes	Usually no
Payment	Hourly/salary	Per project or lump sum
Liability of principal?	Yes (vicarious liability applies)	Usually not liable
Can be an agent?	Yes	Yes (if authorized)



IRS and courts focus on control as the main factor in classification.

Termination of an Agency-at-Will Agreement

- At-will agency: Either party may end the relationship at any time, unless doing so:
 - Violates a contract, or
 - Breaches fiduciary duty

Ways to Terminate by Act of the Parties:

- Mutual agreement
- Revocation (by principal) or renunciation (by agent)
- Expiration (lapse of time)

Wrongful Termination:

- You may have the power to terminate, but not the right (breach of contract = damages)

Legal Effects of Termination

- **By Act of Parties:**
 - May require notice to third parties:
 - Actual notice to those who dealt with the agent
 - Constructive notice (e.g., public announcement) to others
- **By Operation of Law:**
 - Agency ends **automatically** in cases such as:
 - Death or insanity of either party
 - Bankruptcy
 - Impossibility of performance (e.g., property destroyed)
 - War between agent's and principal's nations
 - Changed circumstances (that undermine the purpose of agency)
- **Effect:**
 - Once terminated:
 - The agent loses authority to bind the principal
 - The principal is no longer liable for the agent's actions—unless third parties were not properly notified

Bonus: Agent's Duties & Principal's Duties

- **Agent's Duties:**
 - Performance
 - Notification
 - Loyalty-Act solely in principal's interest
 - Obedience
 - Accounting
- **Principal's Duties:**
 - Compensation
 - Reimbursement / Indemnification
 - Cooperation
 - Safe working conditions

Tips for Review

- Principal-Person who authorizes another to act on their behalf.
- Agency by Estoppel-Principal (words or conduct) in which leads to believe impression of authority is given to agent.
- "Equal Dignity Rule"-If contract in writing, the agent's authority must be in writing.
- Ratification (agent acts outside of duty & principal ratifies / accepts).
- "Respondeat superior"-Holds principal liable for negligent acts of agent.
- "Power of Attorney"-Written authorization to act as someone's agent
- Detour-Minor deviation of agency's duty, in which principal liable
- Principal dies during agency-at-will: Agency is terminated

- Impossibility-Destruction
- Agent Authorized
 - Liability
 - Principal liable
 - Example
 - Agent violates written instructions from the principal under apparent authority-Principal liable
 - Agent makes misrepresentation within the scope of their actual or apparent authority-principal is liable
 - Agent misrepresents fact while in scope-Principal liable
 - Agent liable if partially or undisclosed principal.
 - Example :Undisclosed principal formed by agent- 3rd party can hold agent liable.
- Agent Not Authorized
 - Liability
 - Principal not liable.
 - Agent generally liable, not liable if 3rd party knew agent lacked authority.

Module 6

Employee vs. Independent Contractor

Employee	Independent Contractor
Controlled by employer (hours, tools, process)	Controls how the work is done
Eligible for benefits (FMLA, overtime)	Not entitled to benefits or protections
Covered by most employment laws	Generally excluded from employee protections
Tax withholding by employer	Responsible for own taxes

 *Key distinction:* The degree of control the employer has over the worker.

Defenses to Employment Discrimination

Employers can defend against discrimination claims using:

- Failure to establish prima facie case (e.g., unqualified plaintiff)
 - Prima facie-at first sight
- Business Necessity – The practice is job-related (e.g., safety test)
- Bona Fide Occupational Qualification (BFOQ) – Trait is essential for the job (e.g., gender in some limited roles)
 - Race isn't valid to exclude someone from a job.
- Seniority Systems – Neutral policies based on tenure
- After-Acquired Evidence – Employee misconduct discovered post-termination limits remedies

Laws Pertaining to Discrimination

Law	Protected Characteristics	Key Concepts
Title VII of the Civil Rights Act (1964)	Race, color, religion, sex, national origin	Intentional (disparate treatment) & unintentional (disparate impact) discrimination
Equal Pay Act (1963)	Gender	Equal pay for equal work
ADEA (Age Discrimination in Employment Act)	Age (40+)	No bias in hiring/firing due to age
ADA (Americans with Disabilities Act)	Disabilities	Reasonable accommodation required
Lilly Ledbetter Fair Pay Act	Pay discrimination	Resets claim window with each paycheck

Bostock v. Clayton County (2020): Extended Title VII protections to LGBTQ+ employees

Impact of the Civil Rights Act on Business

- Prohibits workplace discrimination at every stage of employment
- Requires equal opportunity policies and practices
- Employers must:
 - Maintain inclusive hiring practices
 - Train management to avoid harassment and bias
 - Respond quickly to complaints of discrimination

Immigration Law & Business Compliance

- Under the Immigration Reform and Control Act (IRCA):
 - Employers must complete Form I-9 to verify each worker's:
 - Identity
 - Authorization to work in the U.S.
 - Must keep records and allow ICE inspections

Visa Types:

Visa	Purpose
H-1B	Skilled professionals in specialty occupations
H-2	Temporary agricultural workers
O	Individuals with extraordinary ability
L	Intra-company transfers
E	Investors and entrepreneurs

✗ Penalties for violations include fines and criminal charges.

Wrongful Termination

- Employment at Will
 - Employees can be fired for any reason, except if it:
 - Violates a contract
 - Violates public policy
 - Is discriminatory under the law
- Wrongful Discharge Exceptions
 - Contract theory: implied or express employment contracts
 - Tort theory: fraud, emotional distress
 - Public policy: whistleblower protection, refusal to do illegal acts

Constructive discharge: Employer makes conditions so unbearable that quitting is legally treated as being fired.

✓ Tips for Review

- Quid Pro Quo-This for that

Sole Proprietorships: Definition & Comparison

- Sole Proprietorship = business owned and operated by one person
- No legal distinction between owner and business

Compared to Other Entities:

Entity	Legal Status	Liability	Taxation
Sole Proprietorship	Not a separate entity	Personal liability	Pass-through
Partnership	Separate only in some states	General partners = full liability	Pass-through
LLC	Separate legal entity	Limited liability	Pass-through or corporate
Corporation	Separate legal entity	Limited liability	Double taxation unless S-corp

Advantages & Disadvantages of Sole Proprietorships

✓ Advantages:

- Simple to form
- Total control
- Keeps all profits
- Personal income tax only

✗ Disadvantages:

- Personal liability
- Harder to raise capital
- Lack of business continuity

Wrongful Termination (in Franchising)

- Occurs when a franchisor ends the agreement without good cause
- Legal protections often require:
 - Notice (30-90 days)
 - Reasonable opportunity to cure / fix problem.
- Statutes and case law aim to prevent abuse

Good-Faith Requirement for Contracts

- Both franchisors and franchisees (or partners) must act with honesty and fairness
- Good faith includes:
 - Fair enforcement of contract terms
 - No arbitrary termination or hidden motives

Forming a Partnership – Basic Requirements

Partnership is presumed when there is:

1. Sharing of profits/losses
2. Joint ownership of business
3. Equal management rights

 Courts look at intent, not just labels.

Duties, Rights & Liabilities of Partners

- ◆ Duties:
 - Fiduciary (loyalty, care)
 - Obedience to agreement
 - Disclosure of relevant info
- ◆ Rights:
 - Equal management
 - Share of profits
 - Inspection of books
- ◆ Liabilities:
 - General partners have joint and several liability
 - Personally liable for partnership.
 - Liable for debts and torts committed in the scope of partnership

Effects of Partner's Dissociation / Owner Leaves

Occurs when a partner:

- Withdraws voluntarily
- Dies, becomes incompetent, bankrupt
- Is expelled
- ◆ Effects:
 - May trigger dissolution (depending on agreement/state law) in which ending of business or partnership.
 - Remaining partners may buy out dissociating partner
 - Dissociated partner no longer has management authority, but may be liable for pre-dissociation obligations

Dissolution: Authority & Liability Afterward

- Dissolution begins the winding-up process
- Partners may still act on behalf of the partnership for:

- Completing unfinished business
 - Paying debts
 - Liquidating assets
- New obligations after dissolution may not bind all partners

General Partnership vs. Limited Partnership (LP)

Feature	General Partnership	Limited Partnership
Liability	All partners have unlimited liability	Only general partners do; limited partners have limited liability
Management	All partners manage	Only general partners manage
Formation	Informal or written agreement	Requires formal filing & Certificate of LP
Investors	Not structured for passive investors	Allows passive investment via limited partners

Forming a Limited Liability Company (LLC)

◆ Requirements:

- File Articles of Organization with the state
- Include:
 - LLC name
 - Registered agent
 - Principal business address
 - Management structure
- May adopt an Operating Agreement (not always required by law but strongly recommended)
- ✓ LLCs combine: liability protection of corporations + tax flexibility of partnerships

✓ Tips

- After dissolution, partners may bind partnership to complete unfinished business to include finish contract, pay off debts, collect payments.
- Wind-Up (Closing of LLC)
 - Final Distribution
 - Creditors / Debts -> Capital -> Profits
- LLC Duties
 - Duty of Loyalty-Integrity
 - Don't betray company.
 - Duty of Care-Competence
 - Don't be reckless or lazy.
 - Business Judgment Rule-Manger makes bad decision but protected because they acted in good faith & reasonable diligence.

✓ Tips for Review

- Wrongful dissociation-One person leaves partnership.
- Quality control-Franchisor requires franchisee to go through approved vendors.
- FTC Franchise Rule-Provide actual data
- Silent Partner / Limited Partner-Makes investments but not liable.
- If partnership deadlocks (doesn't agree) to dissolve partnership / company, then the judicial dissolution occurs.

Module 7

1. Classifications of Corporations

- **By Location:**
 - *Domestic* → Incorporated in the state where it operates.
 - *Foreign* → Incorporated in another state.
 - *Alien* → Incorporated in another country.
- **By Purpose:**
 - *Public* (government-formed)
 - *Publicly Held* (shares traded on markets)
 - *Private* (not publicly traded)
 - *Nonprofit* (no profit motive; e.g., hospitals, charities)
- **Special Types:**
 - *Close Corporation* → Few owners, often family, informal management.
 - *S Corporation* → Pass-through taxation, ownership restrictions.
 - *Professional Corporation* → For licensed professions.
 - *Benefit Corporation* → For-profit + social/environmental mission.

2. Forming a Corporation

- **Promoters:** Personally liable for *preincorporation contracts* until novation.
- **Steps:**
 - Choose state.
 - Name corporation.
 - Prepare *articles of incorporation* (name, stock info, agent, incorporators).
 - File with state.
 - Hold first meeting to adopt bylaws.
- **Improper Incorporation:**
 - *De Jure* → Full compliance.
 - *De Facto* → Good faith + operating as a corporation.
 - *Corporation by Estoppel* → Treated as a corporation by others.

3. Board of Directors

- **Role:** Oversee management, set policy, hire/remove officers.
- **Rights:** Participation, inspection, indemnification (not personally liable)
- **Committees:** Specialized work groups (audit, compensation, etc.).

4. Duties of Directors & Officers

- **Duty of Care:** Make informed, reasonable decisions; supervise. Protected by the *Business Judgment Rule* if in good faith and without conflicts.
- **Duty of Loyalty:** Put corporation's interests first. No corporate opportunity usurpation, conflicts, insider trading, or harmful transactions.
- **Liability:** Personally liable for own and supervised employees' misconduct.

5. Liability Protections

- **Shareholder Liability:** Limited to investment.
- **Piercing the Corporate Veil:** Courts may remove liability protection if:
 - Fraud/deception.
 - Undercapitalization.
 - Ignoring corporate formalities.
 - Mixing personal & corporate assets (commingling)

- **Close Corporations:** Higher veil-piercing risk due to informality.

6. Rights of Shareholders

- **Powers:** Approve major changes; elect/remove directors.
- **Voting:** Quorum required; can vote by proxy; cumulative voting possible.
- **Economic Rights:**
 - *Preemptive Rights* → First option to buy new shares.
 - *Dividends* → If declared from lawful funds.
 - *Transfer Shares* → Unless restricted.
- **Inspection Rights:** Review corporate records for proper purpose.
- **Legal Actions:**
 - *Derivative Suit* → On behalf of corporation; recovery goes to corporate funds.
- **Majority Shareholder Duties:** Must not oppress minority shareholders.

7. Financing & Powers

- **Financing:** Venture capital (outside investment), private equity (firm invests & reorganizes), crowdfunding (SEC allow securities to be sold).
- **Corporate Powers:**
 - *Express* → Granted by law, articles, bylaws.
 - *Implied* → Necessary to carry out corporate purpose.
 - *Ultra Vires* → Beyond authority; may be stopped by court.

✓ Tips for Review

- Shareholder wants to see corporations financial statements their must be request in advance & purpose.
- Shareholder liability-Limited
- State statue law override / trump corporation bylaws
- Ultra Vires Act-Action outside corporation's express & implied powers.
- Piercing Corporate Veil-corp fails to adopt bylaws or hold meetings (ignores formalities or commingling funds), in which the stockholders sue corporation
- Preemptive Right-Existing shareholder can buy stock before publicly available
- Derivative Suit-Shareholder sues 3rd party on behalf of corporation
- CLOSE CORPORATIONS LIMIT SHARE TRANSFERS TO KEEP OWNERSHIP AND PREVENT MANAGEMENT DISRUPTIONS
- Duty of loyalty-Conflict of interest
- Duty of care-How decisions made (informed, reasonable, well-supervised)
- Benefit Corporation / For-Profit-Shareholder profits & society / environmental impact
- S Corporation adds nonresident alien-they lose S corporation taxes
- Foreign corporation that does business in a state without obtaining a certificate of authority cannot sue the state's courts
- Direct suit-brought by shareholder to enforce their own rights
- Derivative suit enforces corporation's rights against 3rd party