# Business Law Final Exam Review

## Introductory Material

1. Sources of Law
   1. Constitutional Law
      1. Gives the state or U.S. the authority to act
      2. Supremacy Law – Any federal or state statute that violates the constitution is null and void. Article VI of the U.S. Constitution.
      3. Commerce Clause – Article I Section 8. Gives the federal government the right to regulate interstate commerce and activities that effect interstate commerce. Activities that do not affect interstate commerce are passed onto the state.
   2. Statutory Law
      1. Commonly referred to as statutes. They’re created from congress at either a state or federal level. State statutory law varies state to state. Anybody can propose legislation, the bill can then be introduced into the House of Representatives or Senate or both simultaneously.
   3. Administrative Law
      1. Laws that comes from administrative agencies at the state or federal level.
      2. An Agency can do:
         1. Promulgates rules and regulations within its limitations.
         2. Enforce those rules and regulations. They may require periodic reporting. If they believe you are in violation they can impose fines or penalties. If you dispute the administrative agency you can go to an administrative law judge.
   4. Case Law and Common Law
      1. Comes from the judicial branch. You can only have state common law. In order to interpret common law you have to find the degree of control to see if they could have controlled the outcome in the case.
2. **The Court System**
   1. **Tiered Court System**
   2. **Bifurcated Court System**

## Torts

1. **Intentional Torts – Required intent.**
   1. Battery
      1. The completion of the act that caused apprehension, if it results in harm to the plaintiff, is battery. An unexcused and harmful or offensive physical contact intentionally performed.
      2. Reasonable Person Standard – Whether the contact is offensive.
   2. **Trespass to Land**
   3. **Conversion**
   4. False Imprisonment
      1. An intentional detention without the consent of the person detained. There does not have to be a physical detention. It must be stopping someone from going on their own business.
      2. Shopkeepers Privilege
         1. Retailer has to establish he detained the plaintiff based upon a reasonable suspicion of shoplifting.
         2. The detention has to occur in a reasonable manner.
         3. The duration must be only for a reasonable time.
         4. These are called affirmative defenses, the burden of establishing them are on the defendant.
   5. Defamation
      1. A false statement of fact, communication to a 3rd party, harm, and malice for a public figure.
      2. The plaintiff is required to prove *at least one* of the above, called prima facie case.
      3. Libel – A defamatory statement that has a characteristic of permanence. Harm is presumed if libel.
      4. Slander – Harm must be established.
      5. Defenses against defamation
         1. Truth, qualified privilege, or consent.
      6. False Statement of Fact
         1. The statement has to be false, if it’s true it is not defamation.
      7. Is it fact or opinion? Look at Webster v. Wilkins & Schueller v. Swan

## Negligence

1. Negligence
   1. Requirements
      1. Duty of Care
      2. Breaching of Duty
      3. Must cause injury / harm to plaintiff
      4. Causation – There has to be a link between the defendants failure to use reasonable care and injury.
         1. Actual case (Fact) v. Probable Cause (Theory)
   2. When does duty exist?
      1. A duty to use reasonable care is going to exist when two things happen
         1. When there is a foreseeable risk
         2. When the defendant has control over that risk
   3. What constitutes reasonable care?
      1. Trespasser – Someone who comes onto your premise without authorization. You have an obligation to not hurt the trespasser, but you can use reasonable force to protect your family or others on the property. If the trespasser is a child (under 18), then the trespasser is treated as a business invitee.
      2. Business Invitee – Someone who comes onto your business premise for the mutual benefit of you and him or her. The benefit has an obligation to mitigate the risk of any unreasonably dangerous conditions. You have to have actual knowledge or constructive knowledge
         1. Constructive Knowledge – What you should have known. There is a premise defect, the exercise of reasonable care, you should of found it.
      3. Licensee – Someone who has come onto your business premise, with your permission, but is not there for the mutual benefit of you and them. Primarily they are there for their own purpose, such as to have lunch with your employees. Warn the licensee of latent (non-obvious) defects of which you have actual knowledge.
      4. Note: If the plaintiff assumes a known risk, then the defendant isn’t responsible for harm as a result of risk.
   4. Comparative Negligence
      1. Sues for negligence, defendant is comparatively negligent. They share the damage award.
   5. Strict Liability
      1. One should be liable for the damages of ones conduct, for the conduct is unreasonable dangerous. No culpability whatsoever.
   6. Vicarious Liability
      1. When can an employer be held liable for conduct of their employee?
      2. Theory of Second Liability – The plaintiff didn’t do anything wrong, but the liability arises because of the relationship with the employee.
         1. Two parts to this rule:
            1. Tortfeasor must technically be an employee.
            2. The employee must be acting within the scope of their employee?
         2. What does it mean that the employee is acting within the scope of their employment?
            1. Get the list from the book
   7. Negligent Supervision
      1. Failure to use reasonable care and supervising employees. Negligent hiring or retention practices.

## Liability for an Agent’s Torts

1. **Liability for an Agent’s Torts**

## Sources of Contract Law

1. **Introduction – Sources of contract law**

## Agreement

1. **Agreement**
   1. **Manifestation of an objective intent to be contractually obligated**
      1. **Preliminary Agreements**
      2. **Agreements to Negotiate in Good Faith**
   2. **Reasonably certain and definite terms**
   3. **Offer**
      1. **Termination of the offer**
         1. **Revocation**
            1. **Option contracts**
            2. **Merchants’ Firm Offers**
         2. **Rejection**
   4. **Acceptance**
      1. **Modification of the offer and counter offers**
   5. **Communication of the offer and acceptance**

## Statute of Frauds

1. **Contract Form: Statute of Frauds**

## Types of Contracts

1. **Types of Contracts**
   1. **Actual Contracts**
      1. **Express Contracts**
      2. **Implied Contracts**
   2. **Quasi Contracts (An Equitable Theory)**

## Consideration

1. **Consideration**
   1. **Adequacy of Consideration**
   2. **Illusory Consideration**
   3. **Promissory Estoppel (An Equitable Theory)**

## Minors

1. **Capacity: Minors**

## Exculpation Clauses

1. **Legality: Exculpation Clauses**

## Fraud

1. **Fraud**

## Performance & Discharge

1. **Performance and Discharge**
   1. **Agreement: Rescission v. Novation**
   2. **Performance: Material Breach v. Substantial Performance**
   3. **Operation of Law: Impossibility**
   4. **Operation of Contract: Conditions**

## Agency

1. Agency Formation
   1. Agreement – Express or implied that the agent will act for the principal
   2. Ratification – Non-agent makes a contract on behalf of another and principal approves or affirms.
   3. Estoppel – Principal causes 3rd party to believe that another principal is his agent, and the third party acts in detriment.
   4. Operation of Law – Based on social or legal duty or formed in emergency situations when unable to contact principal.
2. The “Inside Relationship”
   * 1. Agent’s General Duties to the Principal
        1. Performance
           1. Use reasonable diligence and skill in performing the work.
           2. Liability of Breach of Contract may result
           3. A gratuitious agent (no monetary unit exchanged) cannot be held liable for breach of contract. A gratuitious agent can be held liable for tort liability.
        2. Notification
           1. Notify the principal of all matters that concern the subject matter of the agency.
        3. Loyalty
           1. Act solely for the benefit of his or her principal and not in the interest of the agent or a third party.
           2. Any information or knowledge acquired through the agency relationship is confidential.
           3. Breach of loyalty is to disclose such information during or after the agency relationship.
        4. Obedience
           1. Follow all lawful & clearly stated instructions of the principal.
           2. During emergency situations, when the principal cannot be contacted, the agent may deviate without violating duty.
           3. Act in good faith & in a manner reasonable.
        5. Accounting
           1. Agent has the duty to keep and make available to the principal an account of all property and funds received and paid out on behalf of the principal. This includes gifts from 3rd parties in connection with the agency.
     2. Agent’s Duty of Loyalty
        1. Outside Benefits or Secret Benefits
           1. An agent is not entitled to receive benefits from outside the agency relationship unless the principal knows about and agrees to the agents’ receipt of benefits.
        2. Representation of More Than One Principal
           1. An agent may not act on behalf of two or more principals whose interest conflict.
        3. Confidential Information
           1. An agent can neither disclose nor use for their own benefit confidential information acquired during the course to the agency. This duty survives termination of the agency relationship. Thus, an agent who discloses or uses such confidential information after the agency relationship has terminated may still be held liable for breach of duty of loyalty.
        4. Competing with the Principal
           1. An agent may not compete with the principal in any manner within the scope of the agency business during the course of the agency relationship.
     3. Principal’s General Duties to the Agent
        1. Compensation
           1. Pay for services rendered and timely.
           2. Owe customary compensation unless otherwise specified.
        2. Reimbursement & Indemnification
           1. When an agent disburses funds to fulfill the request of the principal or expenses in the course of reasonable performance the principal must reimburse the agent.
        3. Cooperation
           1. Duty to cooperate with the agent & to assist the agent in performing their duties.
        4. Safe Working Environment
           1. Provide safe working premises, equipment, and conditions for all agents and employees.

## Unfair Competition

1. **Competition from Current and Former Employees**
   1. **Agent’s Duty of Loyalty**
   2. Covenants Not to Compete
      1. An employee promises that after termination of the employment relationship s/he will not compete with their former principal/employer.
      2. An employee may have an interest in eliminating competition from a former employee because the former employee has access to trade secrets and you agree to not go out and compete with you.
      3. The employer must have a legitimate interest to protect (good will, trade secrets, etc.)
      4. You must not compete in the same geographic region of your employer.
2. **Theft of Trade Secrets**
   1. The law of trade secrets protects some business processes and information that are not, or cannot be, patented, copyrighted, or trademarked against appropriation by competitors. Protection of trade secrets extends both to ideas and their expression.
   2. **Agent’s Duty of Loyalty**
   3. Misappropriation
      1. Information is a trade secret
         1. The extent to which the information is known outside the claimant’s business.
         2. The extent to which it is known by employees and others involved in the business.
         3. The extent of measures taken by the claimant to guard the secrecy of the information.
         4. The value of the information to the business and its competitors.
         5. The amount of effort or money expended by the business in developing the information.
         6. The ease of difficulty with which the information could be properly acquired or duplicated by others.
      2. Information was obtained by the culprit either thru a confidential relationship or improper means (anything tortious).
      3. Information was used or disclosed by the culprit without permission.
      4. The recipient must know that the information is either wrongfully obtained or wrongfully disclosed (Constructive knowledge – knows or should have known)
      5. **Or**
      6. If the information is mistakenly disclosed, recipient knows that the information is a trade secret.
3. Tortious Interference with Contract or Business Relationship
   1. Wrongful Interference With a Contractual Relationship
      1. A valid, enforceable contract must exist between two parties;
      2. A third party must know that this contract exists;
      3. This third party must *intentionally induce* a party to the contract to breach the contract.
   2. Wrongful Interference With a Business Relationship
      1. Predatory Behavior – Actions undertaken with the intention of unlawfully driving competitors out of the market.

## Employment Law

1. Discrimination
   1. Theories of Discrimination
      1. Disparate Treatment (Intent to Discriminate)
         1. Evidence of Employer Intent
            1. McDonnell Douglas Analysis

S/he is a member of a protect class;

S/he was qualified for the position at issue;

S/he suffered an adverse employment decision, and;

Others not in the same protected class did not suffer adverse employment decisions.

* + - * 1. The defendant can then offer a legitimate business reason for why the decision was made.
        2. The plaintiff can rebut it and say it was a pretext to the decision but it really was because of SCORR.
    1. Disparate Impact
       1. Policies or employment procedure that is implied on everyone. The test has a negative impact on a protected class but there was no discriminatory intent, rather an effect.
       2. Prima Facie Case
          1. Whatever at issue has a disproportionate adverse effect on a basis.
          2. The defendant can then provide a business justification.
          3. The plaintiff can then prove how they can do what they’re doing in a less discriminatory way.
  1. Major EEO Federal Legislation
     1. Americans with Disabilities Act
        1. Designed to eliminate discriminatory employment practices that prevent otherwise qualified workers with disabilities from fully participating in the national labor force.
        2. The ADA prohibits disability-based discrimination in all workplaces with 15 or more workers. With the exception of the state government who are immune under the 11th amendment.
        3. The ADA requires that the employers “reasonably accommodate” the needs of a person with disabilities unless to do so would cause the employer to suffer an “undue hardship.”
        4. Procedures under the ADA
           1. The plaintiff must show that s/he has a disability;
           2. Otherwise qualified from the employment in question, and;
           3. Was excluded from the employment solely because of the disability.
           4. Must file with the EEOC before filing an action for the violation of ADA.
     2. Age Discrimination in Employment Act
        1. Prohibits employment discrimination on the basis of age against individuals 40 or older.
        2. Prohibits mandatory retirement for non-managerial workers.
        3. For the act to apply the employer must have 20 or more employees or affect interstate commerce.
     3. Title VII of the Civil Rights Act of 1964
        1. Applies to employers or labor unions who have 15 or more employees (independent contracts do not count).
        2. Protects applicants and employees on:
           1. Sex, color, national origin, race, or religion.
           2. No decision should be made with the above considered in mind.

## Business Organizations

1. **Sole Proprietorships**
   1. **Advantages**
   2. **Disadvantages**
   3. **Liability**
   4. **Control**
   5. **Profit & Taxes**
2. **Partnerships**
   1. **Advantages**
   2. **Disadvantages**
   3. Liability
      1. A partner may be personally liable for the debts for the partnership. Generally, partners are jointly and severally liable which means that any one partner may be liable to a creditor for the full amount of the partnership’s debt. A new partner is not liable for debts incurred by the partnership prior to his becoming a partner.
   4. Management & Control
      1. Unless the partners agree otherwise, each partner has one vote in management decisions.
   5. Profits & Taxes
      1. Profits are divided equally among the partners unless the partners agree to some other distribution scheme.
      2. A partnership is a flow through entity for tax purposes. This means that the entity does not pay income taxes. Rather, each partner pays tax on his share of the profits whether the profits are actually distributed or not
3. LLC’s
   1. Advantages
      1. Members have limited liability.
   2. Management & Control
      1. Member Managed -> Each member is entitled to vote on business decisions based on capital distribution.
      2. Manager Managed -> Elect a committee to make fiduciary decisions.
   3. Profits & Taxes
      1. By default, an LLC is taxed like a partnership. However, the members may choose to have the entity taxed like a corporation.
      2. Profits are divided according to each member’s contribution to the entity unless the members agree to a different distribution scheme.
   4. Duration
      1. Not perpetual, have dissolution process.
4. Corporations
   1. How to form a corporation
      1. Promotional Activity -> Raise capital & form a contract
      2. Incorporation Phase -> Select State of Incorporation, Secure a corporate name, articles of incorporation, directors are elected or ratified, corporation bylaws are elected, and shares are then issued.
   2. Liability
      1. Limited to the amount the investor ponies up.
      2. Exceptions
         1. If the shareholder signs to be a guarantor for a loan.
         2. A shareholder can also be liable if any of the following four exist
            1. Corporation is found to be undercapitalized.
            2. Corporate assets are used for personal use.
            3. Corporate records are not maintained.
            4. Personal assets are comingled.
   3. Management
      1. Must have an annual shareholders meeting to elect new board of directors.
      2. Preemptive rights is a contractual right to acquire certain property newly coming into existence before it can be offered to any other person or entity.
   4. Profit
      1. Shareholders have no right to profit, rather to the corporations equity.
   5. Tax
      1. Taxable income is taxed at the corporate level. Dividends can then be distributed and re-taxed at the shareholder level.
      2. S Election -> Taxed like a partnership and treated as a flow through entity.
   6. Duration
      1. Indefinite.