# Business Law Exam 1 Review Sheet

## Sources Of Law

* **Constitutional Law**
  + Definition - The laws as expressed in these constitutions.
  + Article VI of the U.S. Constitution, the Constitution is the supreme law of the land.
  + Unless a state constitution conflicts with the U.S. Constitution or federal law, a state constitution is supreme within the state’s borders.
  + **Two Clauses to Know**
    - Supremacy Law – Any federal or state statute that violates the constitution is null and void as per Article VI of the U.S. Constitution.
    - Commerce Clause – Article I Section 8. Gives the federal government the right to regulate interstate commerce and activities that effect interstate commerce.
* **Statutory Law**
  + Laws enacted by legislative bodies at any level of the government, such as statues passed by Congress or by state legislatures, make up the body of law referred to as statutory law.
  + Statutory law also includes local ordinances, which are statutes passed by municipal or county governing units to govern matters not covered by federal or state law.
* **Administrative Law**
  + Definition – Consists of the rules, orders, and decisions of administrative agencies.
  + An administrative agency is a federal, state, or local government agency established to perform a specific function.
  + An Agency can do:
    - Promulgates rules and regulations within it’s limitations
    - Enforce those rules and regulations. 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.
* **Case Law and Common Law Doctrines**
  + The rules of law announced in court decisions constitute another basic source of American law. This includes interpretations of constitutional provisions, of statues enacted by legislatures, and of regulations created by administrative agencies.

## The Tiered Court System

* **Court of Original Jurisdiction (Trial Court)**
  + Party Names: Plaintiff / Defendant
  + One judge
  + In civil cases there may be a jury
  + Evidence is admitted and witnesses’ testimony is heard
  + The facts of the dispute are determined and the appropriate law is applied
* **Intermediate Appellate Court (Either party has an absolute right to appeal)**
  + Party Names: Appellant / Appellee
  + 3 judge panel
  + There is no jury
  + No new evidence or testimony
  + The judge reviews the trial court’s application of the law to the facts found in the trial court
* **Highest Appellate Court (Appeal is discretionary)**
  + Party names: Petitioner / Respondent
  + 9 judge panel
  + No jury
  + No new evidence or testimony
  + The judge reviews the intermediate appellate court’s application of the law to the facts found in the trial court
  + All decisions are final.
* **An appellate court may affirm, modify, reverse or reserve and remand the decision of a lower court.**

## Intentional Torts

* The tortfeasor (the one committing the tort) must intend to commit an act, the consequences of which interfere with the personal or business interests of another in a way not permitted by law.
* The intent required establishing an intentional tort, not the intent to do the harm but the intent to do the action, which results in the harm.
* All of these crimes are statutory violations.
  + **Compensatory Damages**
    - Intended to compensate or reimburse a plaintiff for actual losses – that is, to make the plaintiff whole and put her or him in the same position that she or he would have been in had the tort not occurred.
      * Broken down into *special damages* and *general damages*.
      * **Special Damages**
        + Compensate the plaintiff for quantifiable monetary losses, such as medical expenses, lost wages, and benefits, extra costs, the loss of irreplaceable items, and the costs of repairing or replacing damaged property.
      * **General Damages**
        + Compensate individuals (not companies) for the nonmonetary aspects of the harm suffered, such as pain and suffering.
  + **Punitive Damages**
    - Punish the wrongdoer and deter others from similar wrongdoing.

## Assault and Battery (Intentional Tort)

* **Assault –** Any intentional or unexcused threat of immediate harmful or offensive contact, including words or acts that create in another person a reasonable apprehension of harmful contact.
* **Battery –** The completion of the act that caused apprehension, if it results in harm to the plaintiff, is a battery. An unexcused and harmful or offensive physical contact intentionally performed. Requires touching, non-consensual, and reasonably offensive.
* **Reasonable Person Standard –** Whether the contact is offensive.

## Trespass to Land (Intentional Tort)

* Intentional toward against real property (not personal).
* Requires:
  + A physical entry, without consent, and without justification.
* Protecting someone on the property, to protect the property, etc is considered “with justification” and thus not trespassing to land.

## False Imprisonment (Intentional Tort)

* Definition – The intentional confinement or restraint of another person’s activities without justification. False imprisonment interferes with the freedom to move without restraint. Moral pressure does **not** constitute false imprisonment. It is essentially that the person being restrained not agree to the restraint.
* Under the **“privilege to detain”** granted to merchants in most states, a merchant can use *reasonable force* to detain or delay persons suspected of shoplifting and hold them for the police. It must be conducted in a *reasonable* manner and for only a *reasonable* length of time.
* **Shopkeepers Privilege**
  + Retailer has to establish he detained the plaintiff based upon a reasonable suspicion of shoplifting.
  + The detention has to of occurred in a reasonable manner
  + The duration must be only for a reasonably time.
  + The justifications above are called affirmative defenses, the burden of establishing them are on the defendant.

## Defamation (Intentional Tort)

* Freedom of speech guaranteed by the First Amendment is not absolute.
* **Definition** – Involves wrongfully hurting a person’s good reputation. The law imposes a general duty on all persons to refrain from making false, defamatory statements of fact about others.
* **Libel** – Breaching this duty in writing or other permanent forms (such as a digital recording)
* **Slander** – Breaching this duty orally.
* **Actual Malice** – A statement made with either knowledge of its falsity or a reckless disregard for the truth.
* **Statement of Fact v. Statement of Opinion**
  + Statements of opinion normally are not actionable because they are protected under the First Amendment.
* **Defenses against Defamation**
  + Truth
  + Qualified Privilege (Absolute v. Qualified)
    - Absolute v. Qualified
      * Absolute – Only in judicial proceedings and certain government proceedings is absolute privilege granted. I.e. comments made by attorneys and judges in the courtroom and absolutely privileged.
      * Qualified – An employer’s statement in written evaluations of employees. If the statements are made in good faith and is limited to those who have a legitimate interest in the communication.
  + Consent

## Conversion (Intentional Tort)

* **Definition** – Whenever a person wrongfully possesses or uses the personal property of another without permission. The act deprives the owner of the personal property or of the use of that property without the owners permission and without just cause.
* **Requirements:**
  + Tortious Taking (Wrongful taking)
  + Misappropriation of use, prohibits the rightful owner from using it
  + Refusal to return or to forward

## Negligence (Failure to be reasonable)

* **Requirements:**
  + Duty of care
  + Breaching of duty
  + Must cause injury / harm to the plaintiff
  + Causation – There has to be a link between the defendants failure to use reasonable care and injury
    - Actual cause (fact)
    - Proximate cause (theory)
* **When does a duty exist?**
  + A duty to use reasonable care is going to exist when two things happen
    - When there is a foreseeable risk
    - When the defendant has control over that risk
* **What then constitutes reasonable care?**
  + **Trespasser** – Someone who comes onto your premise without authority. What duty do you owe for the reasonable safety of that trespasser? Essentially none. You have an obligation to not hurt the trespasser, but you can use reasonable force to protect your property or others on your property. If the trespasser is a child (under 18), then the trespasser is treated as a business invitee.
  + **Business Invitee** – Someone who comes onto your business premise for the mutual benefit of you and him or her. Customer. The business has an obligation to mitigate the risk of any unreasonably dangerous conditions. You have to have actual knowledge or constructive knowledge.
    - **Constructive Knowledge** – What you should have known. There is a premise defect, the exercise of reasonable care, you should of found it.
  + **Licensee** – Someone who comes onto your business premise, with your permission, but is not there for the mutual benefit of you and them. Primarily there for their own purpose. Examples: Someone who comes into your office to have lunch with one of your employees, someone who drives an employee home. Warn the licensee of latent (non-obvious) defects of which you have actual knowledge.
* **Factors for what constitutes a reasonable standard of care**
  + Industry standard, negligence per se, duty of professionals, duty to rescue, and premises liability.
* **Defenses to negligence**
  + Assumption of the risk
  + Comparative negligence
  + Superseding cause

## Liability for An Agent’s Tort

* **Vicarious Liability**
  + When can an employer be liable for conduct of his employee?
  + What does vicarious mean? Through someone else (employee)
  + Theory of secondary liability, the plaintiff didn’t do anything wrong but the liability arises because of the relationship with the employee
  + **Two parts of the rule**
    - Tortfeasor must technically be an employee
    - The employee must be acting within the scope of his employment
  + **If you have both of the above, the employer is likely to be liable for the negligent conduct of the employee.**
  + **There must be more evidence than not, that the tortfeasor was acting in the scope of his employment.** 
    - Whether the employee’s act was authorized by the employer
    - The time, place, and purpose of the act
    - Whether the act was one commonly performed by employees on behalf of their employers
    - The extent to which the employer’s interest was advanced by the act
    - The extent to which private interests of the employee were involved
    - Whether the employer furnished the means or instrumentality (for example, a truck or a machine) by which an injury was inflicted
    - Whether the employer had a reason to know that the employee would perform the act in question and whether the employee had done it before
    - Whether the act involved the commission of a serious crime.