# Business Law

## Exam 1 Review

## Book Notes

* **State Courts may include**
  + Local trial courts of limited jurisdiction
  + State trial courts of general jurisdiction
  + State courts of appeals (intermediate appellate courts)
  + The state’s highest court (state supreme court)
* **Trial Courts**
  + Definition – Courts in which trials are held and testimony is taken
  + State courts generally have either general or limited jurisdiction
  + Trial courts that have general jurisdiction as to subject matter may be called county, district, superior, or circuit courts.
  + Courts of limited jurisdiction are subject matters such as special inferior trial courts or minor judiciary courts
* **Federal Court System**
  + Three-tiered model consisting of
    - U.S. District Courts (Trial courts of general jurisdiction) and various courts of limited jurisdiction
    - U.S. Court of Appeals (Intermediate courts of appeals)
    - The United States Supreme Court
    - Judges are appointed by the president of the United States, subject to confirmation by the U.S. senate. All judges have lifetime appointments under Article III of the Constitution.
* **U.S. District Courts**
  + At the federal level, the equivalent of a state trial court of general jurisdiction.
  + There is at least one federal district court in every state
* **U.S. Court of Appeals**
  + 13 U.S. Courts of appeals
  + Referred to as U.S. Circuit courts of appeals
* **United States Supreme Court**
  + Consists of 9 justices
  + The Supreme Court has final arbiter of the Constitution and federal law
* **How do you appeal to the Supreme Court?**
  + A party requests the Court to issue a *writ of certiorari*

## Sources of Law

* **Primary sources of law**
  + The U.S. Constitution and the constitutions of the various states
  + Statutory law – including laws passed by Congress, state legislatures, or local governing bodies
  + Regulations created by administrative agencies, such as the Food and Drug Administration
  + Case law and common law doctrine
* **Secondary sources of law**
  + Books and articles that summarize and clarify the primary sources of law. E.g. Legal encyclopedias, treatises, articles of law reviews, and complications 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.
* **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.
* **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.

## Forms of Legal Reasoning

* **Deductive Reasoning (Syllogistic Reasoning)**
  + A logical relationship involving a major premise, minor premise, and a conclusion.
  + Example
    - Under the common law of torts, an individual must be aware of a threat of danger for the threat to constitute assault
    - The plaintiff in this case was unaware of the threat at the time it occurred
    - Therefore, the circumstances do not amount to an assault.
* **Linear Reasoning**
  + Proceeds from one point to another, with the final point being the conclusion.
  + Example:
    - The landlord, who was on the premises the evening of the injury occurred, testifies that none of the other nine tenants who used the stairway that night complained about the lights.
    - The fact that none of the tenants complained is the same as if they had said the lighting was sufficient
    - That there were no complaints does not prove that the lighting was sufficient but does prove that the landlord had no reason to believe that it was not.
    - The landlord’s belief was reasonable because no one complained.
    - Therefore, the landlord acted reasonably and was not negligent with respect to the lighting in the stairway.
* **Reasoning by Analogy**
  + To reason by analogy is to compare the facts in the case at hands to the facts in previous cases and, to the extent that the patterns are similar, to apply the same rule of law to the present case.

## Torts

* Two notions serve as the basis of all torts – Wrongs and compensation.
* Tort law is designed to compensate those who have suffered a loss or injury due to another person’s wrongful act.
* The basic purpose of tort law is to provide remedies for the invasion of various *protected interests*
* **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.
* **Tort Reform** 
  + Some believe that tort laws encourage trivial and unfounded lawsuits, which clog the courts, and is an unnecessary cost. Physicians for example, order more tests than necessary, adding to the nation’s healthcare costs.
* **Intentional Tort**
  + 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.
  + In tort law, intent means only that the actor intended the consequences of his or her act or knew with substantial certainty that specific consequences would result from the act.
* **Assault and battery**
  + **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.
  + **Reasonable Person Standard –** Whether the contact is offensive.
* **False Imprisonment**
  + 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.
* **Intentional Inflect of Emotional Distress**
  + An intentional act that amounts to extreme and outrageous conduct resulting in severe emotional distress to another. To be **actionable** (capable of serving as the grounds for a lawsuit), the act must be extreme and outrageous to the point that it exceeds the bounds of decency accepted by society.
* **Defamation**
  + 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.
  + **Statement of Fact v. Statement of Opinion**
    - Statements of opinion normally are not actionable because they are protected under the FIrstAmendment.

## Definitions

* **Judicial Review –** The process for making a determinationThe power of judicial review enables the judicial branch to act as a check on the other two branches of government, in line with the system of checks and balances established by the U.S. Constitution.
* **Unpublished Opinion** – A decision made by an appellate court that is not intended for publication in a reporter (the bound books that contain court opinions). These traditionally are not often allowed to be referred towards decisions in their argument.
* **Rule 32.1** – Established a uniform rule for all the federal courts that allows attorneys to cite – and judges to consider as persuasive precedent – unpublished decisions.
* **Small Claims Courts –** Inferior trial courts that hear only civil cases involving claims less than a certain amount (usually $5,000)
* **Question of fact** – Deals with what really happened in regard to the dispute being tried – such as whether a party actually burned a flag.
* **Question of law** – Concerns the application or interpretation of the law – such as whether flag burning is a form of speech protected by the first amendment or not. Only a judge, not a jury, can rule on questions of law. Usually, appellate courts focus on questions of law, not questions of facts.
* **Court of Appeals for the Thirteenth Circuit** – Called the Federal Circuit, has national appellate jurisdiction over certain types of cases, such as those involving patent law and those in which the U.S. government is a defendant.
* **Writ of certiorari** – An ordered issued by the Supreme Court to a lower court requiring the latter to send it the record of the case for review. The court will not issue a writ unless at least four of the nine justices approve of it.
* **Rule of four** – The required four justices to get a writ of certiorari.
* **Law –** Enforceable rules governing relationships among individuals and between individuals and their society. Establish rights, duties, and privileges that are consistent with the values and beliefs.
* **Uniform Law –** Also known as model laws, are laws that states consider adopting. Each state has the option of adopting or rejecting a uniform law. Only if a state legislature adopts a uniform law does that law become part of the statutory law of that state.
* **Administrative Agency** - A federal, state, or local government agency established to perform a specific function
* **Executive Agencies** – The cabinet departments of the executive branch
* **Independent Regulatory Agencies** – At the federal level, examples are the FTC, SEC, and FCC
* **Remedies** – The legal means to enforce a right or redress a wrong.
* **Defense** – An argument raised by the defendant indicating why the plaintiff should not obtain the remedy sought.
* **Statutes of Limitations** – Time periods for different types of cases are usually fixed in time.
* **Precedent** – A decision that furnished an example or authority for deciding subsequent cases involving identical or similar legal principles or facts.
* **Binding Authority** – Any source of law that a court must follow when deciding a case. E.g. Constitution, statutes, and regulations.
* **Cases of First Impression** – Cases for which no precedents exist.
* **Persuasive Authorities** – Precedents from other jurisdiction.
* **Legal Reasoning** – The reasoning process used by judges in deciding what law applies to a given dispute and then applying that law to the specific facts or circumstances of the case.
* **Cases on Point –** Previously decided cases that are as similar as possible to the one under consideration.