# Business Law

## Book Notes

* **Principal-Agent Relationship**
  + **The Agent Owes the Principal – Performance, notification, loyalty, obedience, and accounting.**
    - **Performance**
      * Use reasonable diligence and skill in performing the work.
      * **Liability of Breach of Contract** may result.
      * A gratuitous agency (no monetary unit exchanged) cannot be held liable for breach of contract. A gratuitous agent can be held liable for tort liability.
    - **Notification**
      * Notify the principal of all matters that concern the subject matter of the agency.
    - **Loyalty**
      * Act solely for the benefit of his or her principal and not in the interest of the agent or a third party.
      * Any information or knowledge acquired through the agency relationship is confidential.
      * Breach of loyalty is to disclose such information during or after the agency relationship.
    - **Obedience**
      * Follow all lawful & clearly stated instructions of the principal.
      * During emergency situations, when the principal cannot be contacted, the agent may deviate without violating duty.
      * Act in good faith & in a manner reasonable.
    - **Accounting**
      * 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.
  + **The Principal Owes the Agent –Compensation, reimbursement & indemnification, cooperation, & safe working environments.**
    - **Compensation**
      * Pay for services rendered & timely
      * Owe customary compensation unless otherwise specified
    - **Reimbursement & Indemnification**
      * 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.
    - **Cooperation**
      * Duty to cooperate with the agent & to assist the agent in performing their duties.
    - **Safe Working Conditions**
      * Provide safe working premises, equipment, and conditions for all agents and employees.
* **Trade Secrets**
  + The laws 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 to their expression.
  + **State & Federal Law on Trade Secrets**
    - **Section 757 of the Restatement of Torts**
      * Those who disclose or use another’s trade secret, without authorization, are liable to that other party if:
        + They discover the secret by improper means, or;
        + Their disclose or use constitutes a breach of a duty owed to the other party.
* **Business Torts**
  + Business torts apply only to wrongful interferences with the business rights of others.
  + They fall into two categories: Interference with a contractual relationship & Interference with a business relationship
    - Wrongful Interference With a Contractual Relationship
      * Three Elements Are Necessary
        + A valid, enforceable contract must exist between two parties;
        + A third party must know that this contract exists;
        + This third party must *intentionally induce* a party to the contract to breach the contract.
    - Wrongful Interference With a Business Relationship
      * Predatory Behavior
        + Actions undertaken with the intention of unlawfully driving competitors completely out of the market.
  + Defenses to Wrongful Interference
    - Prove the interference was justifiable, or permissible.
    - Bona fide competitive behavior is a permissible interference even if it results in the breaking of a contract.
* **Employment Discrimination**
  + **Title VII Of the Civil Rights Act of 1964**
    - Prohibits job discrimination against employees, applicants, and union members on the basis of race, color, national origin, religion, and gender.
    - Applies to employers with fifteen (15) or more members, labor unions that operate hiring halls (to which members go regularly to be assigned jobs as they become available), employment agencies, and state and local governing units and agencies.
    - A special section of the act prohibits discrimination in most federal employment.
  + The Equal Employment Opportunity Commission (EEOC)
    - The EEOC monitors compliance with Title VII.
    - A victim of alleged discrimination must first file a claim with the EEOC before a lawsuit can be brought against the employer. The EEOC may investigate the dispute and attempt to obtain the parties’ voluntary consent to an out-of-court settlement. If a voluntary agreement cannot be reached, the EEOC may file a suit against the employer on the employee’s behalf.
    - If the EEOC does not investigate a claim, the victim may bring their own lawsuit against the employer.
  + Intentional and Unintentional Discrimination
    - Intentional Discrimination (Disparate Treatment)
      * Must show that:
        + S/he is a member of a protected class
        + S/he applied and was qualified for the job in question
        + S/he was rejected by the employer, and;
        + The employer continued to seek applicants for the position or filled the position with a person not in a protected class.
      * If they meet the requirements, you have made a ***prima facie case***.
        + Making a prima facie case of discrimination means that the plaintiff has met the initial burden of proof and will win unless the employer can present a legally acceptable defense.
        + From there the employer (defendant) can articulate a legal reason for not hiring the plaintiff.
        + To prevail, the plaintiff must then show that the employer’s reason is a pretext (not the true reason) and that discriminatory intent actually motivated the employer’s decision.
    - Unintentional Discrimination (Disparate-Impact Discrimination)
      * Occurs when a protected group of people is adversely affected by an employer’s practices, procedures, or tests, even though they do not appear to be discriminatory.
      * To have a disparate-impact discrimination case, the complaining party must first use one of the two statistical methods to show that the employer’s practices, procedures, or tests are discriminatory in effect.
        + Under a *pool of applicants* test, a plaintiff can prove a disparate impact by showing that the percentage of the protected class in the employer’s workforce does not reflect the percentage of that group in the pool of qualified individuals available in the local labor market.
        + Comparing the *selection rates* of membersof a protected class with the selection of non-members, regardless of the relative percentages of the two groups in the employer’s workforce. Under the EEOC guidelines, a selection rate for a protected class that is less than 80% of the rate for the group with the highest rate of hiring generally will be regarded as evidence of disparate impact.

Once proven the employer has to show a causal link between the employer’s practice and the discriminatory effect.

* + **Discrimination Based on Race, Color, and National Origin**
    - **Race** – Applies to the ancestry or ethnic characteristics of a group of persons, such as Native Americans.
    - **National Origins** – Based on their birth in another country.
    - To avoid liability, the employer must then show its standards or policies have a substantial, demonstrable relationship to realistic qualifications for the job in question.
    - An employer can engage in intentional discrimination to remedy unintentional discrimination only if the employer has “a strong basis in evidence” to believe that it will be successfully sued for disparate-impact discrimination. Mere fear of litigation was not a sufficient reason for the city to discard the test results. The city subsequently promoted all the firefighters involved in the lawsuit.
  + Potential Section 1981 Claims
    - Victims of racial or ethnic discrimination may also have a cause of action under 42 U.S.C Section 1981.
    - Prohibits discrimination on the basis of race or ethnicity in the formation or enforcement of contracts.
    - Because employment is often a contractual relationship, Section 1981 can provide an alternative basis for a plaintiff’s action and is potentially advantageous because it does not place a cap on damages.
  + **Discrimination Based on Religion**
    - The employer must take a reasonable attempt to accommodate these religious requirements. Employers must reasonably accommodate an employee’s sincerely held religious belief even if the belief is not based on the doctrines of a traditionally recognized religion, such as Christianity.
  + **Discrimination Based on Gender**
    - Employers are forbidden to discriminate based on gender unless the gender of the applicant is essential to the job.
    - Employers cannot have separate male and female seniority lists or refuse to promote employees based on gender.
  + **Equal Pay Act of 1963**
    - Prohibits the employers from engaging in gender-based wage discrimination.
  + 2009 Equal Pay Legislation
    - pg 684 IDK
  + **Constructive Discharge**
    - Constructive Discharge occurs when the employer causes the employee’s working conditions to be so intolerable that a reasonable person in the employee’s position would feel compelled to quit.
    - **Proving Constructive Discharge**
      * The plaintiff must present objective proof of intolerable working conditions, which the employer knew or had reason to know about yet failed to correct within a reasonable time period.
      * Generally also require the employee to show causation, that the employer’s unlawful discrimination caused the working conditions to be intolerable. In other words, the employee’s resignation must be a foreseeable result of the employer’s discriminatory action.
      * This applies to all types of discrimination. It can also be applied to age or disability.
  + **Sexual Harassment**
    - **Sexual Harassment can take two forms**
      * ***Quid Pro Quo* (‘Something in exchange for something else’)**
        + *Quid pro quo* harassment occurs when sexual favors are demanded in return for job opportunities, promotions, salary increases, or other benefits.
      * **Hostile-Environment Harassment**
        + The workplace is permeated with discriminatory intimidation, ridicule, and insult, that is sufficiently severe or pervasive to alter the conditions of the victim’s employment and create an abusive working environment.
    - The courts determine whether the sexually offensive conduct was sufficiently severe or pervasive to create a hostile environment on a case-by-case basis. Typically, a single incident of sexually offensive conduct is not enough to permeate the work environment (although there have been exceptions when the conduct was particularly objectionable).
      * If the employee who is alleging sexual harassment has signed an employment contract containing an arbitration clause, she or he will most likely be required to arbitrate the claim.
  + Harassment by Supervisors
    - For an employer to be held liable for a supervisor’s sexual harassment, the supervisor normally must have taken a tangible employment action against the employee.
    - Tangible Employment Action – A significant change in employment status or benefits, such as when an employee is fired, refused a promotion, demoted, or reassigned to a position with significantly different responsibilities.
    - A constructive discharge also qualifies as a tangible employment action.
  + Ellerth/Faragher Affirmative Defense
    - The employer must have taken reasonable care to prevent and promptly correct any sexually harassing behavior (by establishing effective harassment policies and complaint procedures, for example)
    - The plaintiff-employee must have unreasonably failed to take advantage of preventive or corrective opportunities provided by the employer to avoid harm.
    - An employer that can prove both elements will not be liable for a supervisor’s harassment.
  + **Retaliation by Employers**
    - In a retaliation claim, an individual asserts that she or he has suffered harm as a result of making a charge, testifying, or participating in a Title VII investigation or proceeding.
  + **Harassment by Co-Workers and Others**
    - The employer will only be held liable if it knew or should have known about the harassment and failed to take immediate remedial action.
    - A court may hold an employer liable for harassment by nonemployees if the employer knew about the harassment and failed to take corrective action.
  + **Remedies Under Title VII**
    - **Unlawful Discrimination** – Reinstatement, back pay, retroactive promotions, and damages
    - **Intentional Discrimination** – Compensatory damages
    - Punitive damages may be recovered against a private employer only if the employer acted with malice or reckless indifference to an individual’s rights.
* **Discrimination Based on Age**
  + **Age Discrimination in Employment Act (ADEA) of 1967**
    - Prohibits employment discrimination on the basis of age against individuals 40 years or older.
    - Prohibits mandatory retirement for nonmanagerial workers.
    - For the act to apply the employer must have 20 or more employers or affect interstate commerce.
  + **Procedures under ADEA**
    - Plaintiff must show that, at least in part the employer was motivated by unlawful discrimination.
    - The employer must then articulate a legitimate nondiscriminatory reason for the action.
    - Note: The plaintiff must show that the unlawful discrimination was not just **a** reason but rather **the** reason for the adverse employment action.
    - To establish a prima facie case
      * Plaintiff must show that she or he was a member of the protected age group
      * Was qualified for the position from which she or he was discharged
      * Was discharged because of age discrimination
      * The employer then can offer a legitimate reason for its actions
      * Then the plaintiff must show that the reason stated is only a pretext for the employer’s actions.
* Discrimination Based on Disability
  + Americans with Disabilities Act (ADA) of 1990
    - Designed to eliminate discriminatory employment practices that prevent otherwise qualified workers with disabilities from fully participating in the national labor force.
    - The ADA prohibits disability-based discrimination in all workplaces with 15 or more workers (with the exception of state government employers, who are immune under the 11th amendment)
    - The ADA requires that employers “reasonably accommodate” the needs of persons with disabilities unless to do so would cause the employer to suffer an “undue hardship.”
    - **Procedures under the ADA**
      * The plaintiff must show that he or she has a disability
      * Is otherwise qualified for the employment in question
      * Was excluded from the employment solely because of the disability
      * MUST FILE WITH EEOC before filing an action for the violation of ADA
      * The EEOC can bring a suit on behalf of the employee under the ADA even if the employee signed an arbitration agreement with the employer.
  + **What is a disability?**
    - Persons with disabilities are persons with a physical or mental impairment that “substantially limit” their everyday activities.
    - The ADA defines a disability as:
      * A physical or mental impairment that substantially limits one or more of the major life activities of such individuals;
      * A record of such impairment or;
      * Being regarded as having such an impairment
    - Examples of disabilities: blindness, alcoholism, heart disease, cancer, muscle dystrophy, cerebral palsy, paraplegia, diabetes, AIDS, HIV, and morbid obesity. Exclusion examples: Kleptomania (the obsessive desire to steal)
  + Reasonable Accommodation
    - The ADA does not require that employers accommodate the needs of job applicants or employees with disabilities who are not otherwise qualified for the work.
    - If a job applicant or an employee with a disability, with reasonable accommodation, can perform essential job functions, however, the employer must make the accommodation.
    - Examples: Installing ramps for wheelchairs, establishing flexible working hours, creating or modifying job assignments, and designing or improving training materials and procedures.
  + Job Applications and Physical Exams
    - Employers must modify their job-application and selection process so that those with disabilities can compete for jobs with those who do not have disabilities. Ie allowing email or letter, as well as by telephone, so those who are deaf can apply.
    - You cannot require persons with disabilities to submit to preemployment physicals unless all applicants are required.
    - An employer can offer a condition to offer employment on the applicant’s successfully passing of a physical exam, but only can disqualify the applicant if they discover it would make them impossible to perform the job.
  + Substance Abuse
    - Using illegal drugs are not protected by the act.
    - The ADA protects persons with former drug addictions – those who have completed or are now in supervised drug-rehabilitation programs.
    - Individuals who have used drugs casually in the past are not protected.
  + Health-Insurance Plans
    - Workers with disabilities must be given equal access to any health insurance provided to other employees.
    - An employer can put a limit, or cap, on health-care payments under its group health policy as long as the cap is applied equally to all employees.
  + Associated Discrimination
    - Protects qualified individuals from employment discrimination based on an identified disability of a person with whom the qualified individual is known to have a relationship or an association.
    - An employer cannot refuse to hire a parent of a child with a disability based on the assumption that the person will miss work too often or be unreliable.
    - Prima Facie Case
      * Show that she or he was qualified for the job;
      * Was subjected to an adverse employment action, and;
      * Was known by her or his employer to have a relationship or an associate with a disability.
* **Defenses to Employment Discrimination**
  + Assert that the plaintiff has failed to meet his or her initial burden of proof that discrimination occurred.
  + If the initial burden of proof is given the employer must justify the discriminatory practice. Often they say it’s done out of business necessity, a bona fide occupational qualification, or a seniority system. They may also assert that employee misconduct should limit their liability.
  + **Business Necessity**
    - A high school education is necessary for workers to perform the job at a required level of competence.
  + **Bona Fide Occupational Qualification**
    - Race, color, and national origin can NEVER be BFOQs
    - A women’s clothing store might legitimately hire only female salespersons if part of a salesperson’s job involves assisting clients in the store’s dressing rooms.
  + Seniority Systems
  + After-Acquired Evidence of Employee Misconduct
    - Evidence that the employer discovers after a lawsuit is filed – of an employees misconduct.
      * Misrepresentations on employment applications, that would of served as grounds to fire the individual.
      * It cannot be used to shield an employer entirely but it may limit the damages of which the employer is liable.

## Definitions

**Predatory Lending** - Borrowers are victims of loan terms or lending procedures that are excessive, deceptive, or not properly disclosed.

**Steering & Targeting** - The lender manipulating a borrower into accepting a loan product that benefits the lender but is not the best loan for a borrower.

**Loan Flipping** – A lender convinces a homeowner to refinance soon after obtaining a mortgage.

**Truth in Lending Act (TILA) of 1968** – Requires lender to disclose the terms of a loan in clear, readily understandable language so that the borrow can make a rational choice.

**Right to Rescind** – Can rescind a mortgage after 3 days.

**Written Representations** – Cannot call it fraud if it is written in truth but the oral statements are misrepresented.

**Fiduciary** – Based on truth.

**Fiduciary Relationship** – Each party owes the other the duty to act with the utmost good faith.

**Trade Secret** – Information of commercial value.

**Race** – Applies to the ancestry or ethnic characteristics of a group of persons, such as Native Americans.

**National Origins** – Based on their birth in another country.