

Basic

Litigation - the process of taking legal action

Tort case - civil negligence/omission that leads to harm/injury

Agency law - business law between agencies

Deductive argument structure:

Major Premise [Rule or standard]

Minor Premise [Facts]

Conclusion [Apply rule to facts]

Ethical Systems

Where do you locate the moral rule. Two forms of moral reasoning:

Formalism - an act is either right or wrong, always and in every situation Ethical systems based on absolute morality. "Act only in a way that you are willing to have everyone else act, in every situation"

Consequentialism - an act is right or wrong not based on the act itself, but on the consequences of it for everyone involved. End-result ethics (Utilitarianism)

The rightness of an action is determined by evaluating its consequences

Consider all likely consequences

Consider the happiness of everyone affected by the decision

A noble end (result) may justify use of any means.

Law - rules enforced by the state, many are based in ethics.

Ethics - a broader set of values, not always enforced by the state.

Society's values often drive legislation; legislation can drive society's values.

Sources of Law

Constitutions - supreme, short, hard to edit

Statutes - US Code. State website. figure out the main point then definitions and exceptions

Common law - cases decided by courts (judges and justices) - on the basis of precedence. Can search on Google Scholar. "Let the decision stand" - bound to follow its own precedents and those of higher court.

Regulatory law - turns statutes into execution and regulations

Treaties - agreements between countries

Local ordinances - local law (county, city)

Executive Orders - by the president. Must be constitutional

Federal law defeats state law

Constitution defeats statute or common law

Statute defeats administrative regulation

Statute defeats common law, but the courts (common law) then interpret the statute and determine whether it violates the Constitution.

Reading a case

Facts - What are the facts? Are there disagreements?

Issue - What is the question the court is trying to solve?

Rule - What rule does the court apply?

Analysis - How does the rule apply?

Conclusion - What is the result? How would it affect all involved?

Dispute Resolution

Negotiate - can do without lawyers, informal, starting is non-binding

Mediate - non-binding use of a neutral, can involve lawyers, sometimes required by the court.

Focused on settlement. Focus groups and mock juries. Private

Arbitrate - binding, by a paid third-party that decides, not focused on settlement. Can be forced through contract (and enforceable) - for more than 50%. Not part of case law. Private. Can not force arbitration for harassment claims. AAA maintains arbitrators and appoints one - can disqualify if shows partiality or lack of progress or if accepts a complaint. Often cheaper. Issues an "award", often with no explanation

Forget it - can only be done by the plaintiff

Litigate - go to court, binding, but can appeal. Requires a lawyer.

Class Action Lawsuit - plaintiff files on behalf of themselves and all people who have a similar claim against the defendant. Not allowed if arbitration is forced.

All attorneys are lawyers, but not all lawyers are attorneys. The major difference is that attorneys can represent clients in court and other legal proceedings, while lawyers cannot

Attorney-Client Privilege: Not required to disclose to the other side your conversations with your attorney, but only if it is not already public.

Types of Law

Civil cases - between people (including businesses). Breach of contract or tort cases. Pays damages, punitive damages (exemplary damages) or order to do/not do something

Criminal cases - between government and person (or business). Committed wrong against society. Pay fine or jail

Procedural law - how the cases proceed through courts (yes, just about courts)

Substantive law - how we interact with each other and the government. civil/criminal. Court may apply substantive law from outside its jurisdiction (if happened elsewhere, or federal applies state law)

Courts can only decide genuine cases or controversies, not advisory opinions, and plaintiff has to have real standing in the issue.

Court jurisdiction - Subject-matter jurisdiction (can hear this subject?). Personal jurisdiction (fare to legislate him?: “at home”, served in that state, consents, waives to object, misconduct in that state, owns property in question there, liable by contract) otherwise drops the case.

STATE court systems - broad subject-matter jurisdiction about state or federal law

FEDERAL court systems - limited. Only about questions of federal law or **all** plaintiff/defendant from different states and more than \$75K at issue. Corporation can be citizen of both Delaware and HQ

Plaintiff can file in state or federal, but the defendant can then move from state to federal

Federal. Legislature - US Congress. Executive - President. US Supreme Court, Federal Circuit Courts (Federal Courts of Appeal), Federal (United States) District Courts

State. State legislature. Executive - Governor, Kansas Supreme Court Kansas Court of Appeals, Kansas District Courts

Civil Procedure

Hire a lawyer

Complaint (parties, basis of jurisdiction, claims, prayer for relief, maybe demand jury)

Must be served to defendant with a **summons** (though sheriff, private server, certified mail - with proof of delivery)

Defendant can **answer** (paragraph to each allegation, affirmative defenses, counterclaim/cross-claim. accept/deny/deny knowledge) or “Move to **dismiss**” (“So What?”) - even if all true, still not liable.

If not answered, lose by default. Cross claim parties would have to **reply** too.

Disclosures (list people who know facts about the case, relevant documents, applicable insurances). Important not to destroy documents (talk to IT. legal hold). Work with counsel to gather&organize documents

Discovery (each party is required to oblige requests). Types:

Interrogatories - written questions that must be answered under oath

Requests for Admission - give facts and ask to admit or deny

Requests for Production of Documents

Requests for Inspection of property or for mental or physical exam

Depositions - like interrogatories, but live, usually not in the courtroom, attorneys ask questions. Used to discover the facts. (tell truth, answer only what asked, everything is taped, be polite, breathe, think, speak, not a conversation)

Motion for summary judgment (courts can decide without trial if facts not disputed, just apply the law)

Trial is needed only when disputed.

Jury decides evidence only. Jury can be **struck** by cause or often 3 peremptory strikes
Opening Statements

Plaintiff's case (direct examinations, cross-examinations, re-direct)

Defendant's case (same thing, but for Defense side)

Closing Statements

Jury Instructions

Jury and/or judge **deliberates**

Verdict and Judgment

Witnesses could be Fact or Expert

Appeal to Court of Appeals (first appeal as of right) – briefing, argument, uphold/reverse/remand

Must appeal in same system. Deals with law, not facts. Arguments on paper, not live

Petition for Certiorari - escalate. Likely on circuit split

Contract

Offer - present intent (meant offer), specificity (not broad audience), communicated offer, limited (rewards)

Open for specified/reasonable/revoked/rejected/**accepted** on same terms (and communicated/started exec)

Voidable:

Fraud - misrepresentation, deceiving (if intentional - liable for damages), no reason to suspect lie, harmed

Mistake - misunderstanding of **core** fact, not of value and not lapse of judgment, **by both parties**

Duress - coercion - improper threat, victim has no alternative OR **undue influence** - vulnerable person, need trust/confidence relationship, unfair, lack of access to outside info/rushed/bad terms

Unconscious - absence of choice and shockingly unfair,
Consideration - both parties at least something (act/promise). Past deeds/obligations are not considered

Can be Bilateral or Unilateral

Capacity - Minors (can disaffirm), Mental Incapacity, big Intoxication

Legality - non-compete, antitrust

Executed Contract / Executory contract

Non-compete must serve purpose, reasonable in scope, and not impose hardship

Discharged - completed, or excused

Material breach /non - cancelable/remedied

+Remedy - in response to breach, enough to get back to where supposed to be

Tort

A civil wrong that is not a breach of contract. Plaintiff bears the burden of proof

Plaintiff gets compensatory (to compensate) damages. If bad “willful and wanton” gets punitive damages

Intentional Torts - intended, harm, foreseeable (not negligence)

Battery - intentional (even if transferred intent), harmful, offensive touching without consent (boxing)

Assault - placing another in apprehension of imminent harmful or offensive contact

False Imprisonment - intentional unjustified (shoplifting) confinement of a nonconsenting person

Defamation - Publication of untrue about another that hold character in contempt or ridicule

Slander - oral defamation

Libel - written/radio/tv defamation

Defense: Truth (defendant must prove)

news can print untruths about public figure, unless malice or reckless disregard for the truth.

Injurious Falsehood - publication of untrue statements that disparage the plaintiff's business/product/quality. Plaintiff must prove falsity

Invasion of Privacy -

Public disclosure of (offensive) private facts, unless in public interest or related to public person's life. The truth is no defense

Intrusion upon solitude - searches, wiretapping, telephoning, social media, unless public record

Commercial use of someone's name/likeness, no consent, to imply endorsement of smth

Fraud - intentional misrepresentation that is relied on and plaintiff is damaged

Intentional Interference with Contractual Relations - intentionally Interferes with existing contract (trying to steal contract employees)

Conversion - stealing/withholding/destroying

Trespass - unauthorized intentional intrusion upon another's real property (entering, causing smth/smb to enter/airspace/underground, remaining after right ceased, failing to remove stuff) - even if min intent (mistaken)

Computer Fraud and Abuse Act - knowingly, intent to defraud, accesses protected computer without authorization and obtains smth of value

Nuisance - substantial+unreasonable interference with use+enjoyment of land (smoke/odors/light/vibration/non-physical)

Negligence - breached act with care/do duty (lawyers/doctors), actual harm, foreseeable. no duty to rescue. "unreasonable risk of foreseeable harm". Personal injury, Property damage, Emotional harms

(unless assumed(consented) risk or exculpatory clauses in contract)

Actual cause (if not for breach) + Proximate cause (probable consequence)

Not liable to harm from **Intervening cause** (later act was not foreseeable)

Plaintiff caused part of harm. Depends:

Contributory Negligence if plaintiff has any fault, defendant not liable

Comparative Negligence - jury assigns % and liable for that only (in Kansas 50% cutoff)

Products liability - manufacturer/seller, sells in a defective condition (or instructions/warnings and defect existed when product left seller hands) which is unreasonably dangerous (used ordinary, more risky than contemplated ordinary consumer) to the user, liable to harm if product reaches user without substantial change in condition in which sold. "strict liability" - even if good intentions. Not garage sale

Consumer has due for own care: exercise ordinary care, check for defects+dangerous conditions, use in accordance with adequate instructions+warnings, use in normal manner. Else comparative/contributory

Compensatory Damages - medical expenses, economic loss (+future income) noneconomic (pain/suffering/disabilities/disfigurement/mental anguish+future), damage to property, wrongful death

Property

Liberty to use, Right to exclude, Power to transfer, Power to devise or bequeath, Immunity from damage, Immunity from expropriation

Real (connected to earth)/Personal, Tangible/Intangible (gives rights, stocks, right to sue), **Public/Private**. Get to own by production or exchange, or:

Possession of Unowned Property: Abandoned (finder,owner), Lost (owner,finder,may be required to return/report), Mislaid (intentional placed, accidentally left) (owner,property owner,-finder)

Gift - Donor (intent+deliver)->Donee(accept). Testamentary gift - though will

Bailment - temp take care of it. Bailee must return to bailor. "Reasonable care", unless unfair benefit

Real property: buy, inherit, gifted, adverse possession (10-20y of open continuous trespassing)

Fixture - attachment, adaptation (no value without), intent

Easement - right to use other's property (natural - must, by grant - allows, by reservation - sell all except, prescription - long unstopped continuous use)

Concurrent Ownership - undivided. Joint tenants (equal shares, absorb on death, not default). Tenants in common (unequal shares, no absorption, default). "Action to partition" - lawsuit to divide

Intellectual Property

Patents - published government monopoly for 20y, not nonfunctional (abstract/physics) (useful, novel, nonobvious) first to file with 1y grace for public disclosure. Patent infringement: "cases and desist", (injunction+damages)/(negotiate+license->royalty)

Trade Secrets - business secret that offers advantage with secrecy measures (nda). Trade secret misappropriation (disclosures/uses) via improper means (damages, injunction) not reverse engineering

Copyright - exclude others from using work. Automatic upon creation and fixing (in video/book/audio). Need to register before suing. © is optional but better. (1978->life+70; for hire (employment duty): 95 from first use or 120 from creation).

Reproduce/derivative/distribute/transfer/license. C. infringement: not coincidental substantial resemblance. "Fair Use" (critic/news/teach/research)

Trademark - distinctive name/logo, optional register. +distinct

™-anyone,®-register. Genericide. Infringement/Dilution (blur,tarnish)

Secured Transactions

Secured(pledge/collateral(security interest), surety)

Unsecured(notice/sue->attachment,garnishmet(job)) credit.

Artisan's lien - fixed,unpaid,possession

Mechanics' lien - real estate, within 60d

Perfection - every 5y online filed with state (or on car's title)

Mortgage (real) - foreclose, sell, rightOfRedemption - can ret

Bankruptcy - voluntary(automatic stay-FREEZE)/involuntary petition. **11**: reorg business

7: b.estate, claims/distribution, discharge(if honest,8y)

Order: Secured,priority unsecured,unsecured,debtor

Agency law

principal(honor agreement,reimburse,indemnify (pay for tort),inform

OfRisks)->agent(loyal-noConflicts, confidential,obey reasonable,skill,keep records,keep informed)

ActualExpress/Implied(expected,goals,not stoped/emergency) /Aparent(not real)

Authority/Ratification(post agreed)

Terminate once: finished/agreed/dead/illegal/terminated

Employee/**Independent** contractor- degree of control, integration,training,set work hrs,equipment)

Tort principal - Respondeat Superior(employee tort within employment)/Direct Liability(if authorized,less if negligent hiring/supervision). Can sue both, but recover once

Forms of Business

Sole Proprietorship (virtual). **LLCmp**

Partnership (2+ parties with common interest and profit share. legal entity) (/LLP/Joint Venture - short term)

Corporation - board of directors (s corp no double tax small)

Employment Law

Employment at will (except:publ.policy, promises,protective statutes) "wrongfull discharge".

Workers compensation - for employees, no proof, can't sue

FMLA 12w unpaid. After 1y, 1250h, not top 10%

Civil Rights 1964: 15+empl, race/color/religion/sex/origin

File with EEOC. 6m>right to sue letter.

Discrimination: disparate treatment/impact (show, counter, show). BFOQ: necessary for work