

BLAW 301/302 –Semester Term Sheet

Note: This is a list of the terms/topics we covered in a prior semester in this course. I certainly do NOT expect that you know this material when the course begins. Instead, I am providing this now -- at the beginning of our semester--to give you an overview of the course topics, and some sense of the level of detail in which you will need to learn the material in order to do well on the exams. It is possible our coverage will shift a bit and we will cover some slightly different topics or that I will cover a bit more or less on any topic than is reflected on this list. (Where your experiences in class or our class slides have different coverage, it is of course our actual experience in class/class slides that control what is covered on exams. This list of terms is just a guide based on prior semesters.) Nonetheless, our coverage for this semester is likely to be reasonably similar to prior terms. So, by the time of the final exam, you should be able to define, explain, and *apply* these legal concepts to factual scenarios.

How to beat the exam...three study tips from Jen:

1. **Outline:** Organize the covered terms into an outline that includes explanations and details from our class sessions. One good way to do this is to create your own outline document using the term sheet together with the course slides.
2. **Explain it to someone else:** If you can teach it to someone else, you know it. There is a reason most law students study in groups. It helps to discuss these concepts together, explaining the ideas to each other. You can do this with a friend from class or with anyone willing to listen and learn, regardless of whether they know anything about law. Convert *anyone* into your student for a study session -- your roommate, your sweetheart, your parent, or if necessary even your dog (though it helps to have someone who can talk back!).
3. **Make your own examples:** Create an example that shows how the terms work. This is what I do in class to help you learn the ideas, and it is what I do when I write the exam. If you can create a made-up scenario illustrating one of these terms on your own, you are quite likely to recognize my made-up example of the same term on the exam. Combine this with tip 2 by making up an example explaining it to a classmate, and seeing if they can identify the term you were trying to illustrate.

A. Moral and Legal Reasoning

- Formalism
- Consequentialism
- Deductive Argument Structure:
 - Major Premise
 - Minor Premise
 - Conclusion
- Relationship between law and ethics
- Civil Case / Criminal Case
- Substantive law / Procedural law

B. Sources of Law

- Constitutions (state and federal)
- Treaties
- Statutes (state and federal)
- Ordinances (city/county)
- Executive Orders (state and federal)
- Regulations
- Common law
 - Precedent
 - Stare Decisis

- o IRAC method of briefing a case
- Conflicts among sources of law and how those are resolved

C. Dispute Resolution

Alternative Dispute Resolution

- Negotiation
- Mediation
- Arbitration
 - o Arbitrator
 - o Federal Arbitration Act
 - o Arbitral award
 - o Contractual agreements to arbitrate (pre-dispute arbitration clauses)
- Differences among mediation, arbitration, and litigation

D. Litigation

Limits on court's power

- Standing to sue
- Genuine case or controversy (No advisory opinions)
- Jurisdiction (see below)

Jurisdiction

- Subject matter jurisdiction
 - o For federal courts:
 - Federal question jurisdiction
 - Diversity of citizenship jurisdiction (requires diversity +\$75,000)
 - Citizenship of corporation
 - o Concurrent jurisdiction
 - o Removal of case to federal court
- Personal (in personam) jurisdiction
 - o Minimum contacts
 - o Bases for personal jurisdiction

Civil Procedure (how a case proceeds through court)

- Hiring a Lawyer
 - o Attorney-client privilege (and limits on that privilege)
- Legal hold
- Plaintiff
- Defendant
- Clerk of Court
- Jury
- Judge
- Litigation Process:
 - o Summons
 - o Complaint

- o Motion to Dismiss
- o Answer
- o Counter-claim
- o Cross-claim
- o Disclosures
- o Discovery
 - Interrogatories
 - Requests for Admission
 - Requests for Production of Documents
 - Requests for inspection of property or for physical or mental exam
 - Deposition
- o Motion for Summary Judgment
 - Standard on which MSJ is decided
- o Trial
 - Voir Dire
 - Witnesses
 - Fact witness
 - o Potential shortcomings of eyewitness testimony (confabulation; cross-race identification)
 - Expert witness
- o Appeal
 - Generally must appeal within the system (state or federal) where the trial occurred
 - Appeal from state trial court to state appellate court to state supreme court
 - Appeal from federal trial court (e.g. Federal District of Kansas) to federal circuit court (e.g. 10th Circuit Court of Appeals) to US Supreme Court
 - Appeal to Court of Appeal
 - Appeal as of right
 - Petition for Certiorari to Supreme Court
 - State supreme courts and US Supreme Court have **discretion** to determine which cases to take
 - Circuit split
- o Res judicata

E. Contracts

- Contract
- Freedom of contract
- Categories
 - o Bilateral/Unilateral
 - o Void/Voidable
 - o Express/Implied-in-fact
- **Formation** -- 5 Elements: Offer, Acceptance, Consideration, Capacity, Legality
 - o Offer
 - Requirements:
 - Present intent to contract (objective “reasonable person” test);
 - Specificity/definiteness
 - Communicated to offeree
 - Ads

- Rewards
 - Termination of offer – 4 ways
- o Acceptance
 - Requirements
 - Present intent to contract (objective “reasonable person” test);
 - On the terms proposed by offeror
 - Communicated to offeror
 - Silence as acceptance – rule and exceptions
 - When acceptance occurs
 - Offeror may say how/when acceptance must occur
 - If not, reasonable time and reasonable place
- o Consideration
 - Act OR promise to do something you had no prior obligation to do OR promise not do something you had the right to do
 - Rule: court won’t consider *adequacy* of consideration
 - Past consideration
 - Preexisting obligation
 - Illusory promises
 - Promises to make gift (gratuitous promise)
 - Promissory Estoppel
- o Capacity
 - Infancy
 - Ratify
 - Insanity
 - Intoxication
 - Disaffirm
 - Return of consideration
- o Legality
 - Agreement to Restrain trade
 - Non-compete agreement – when enforceable
 - Unconscionable
 - No meaningful choice
 - o Contract of Adhesion
 - “Shock the conscience”
- Reality of Consent (Defenses to Contract suits based on lack of meeting of the minds)
 - o Misrepresentation
 - o Fraud
 - o Mistake
 - o Duress
 - o Undue Influence
 - o Unconscionability
 - Contract of adhesion
- **Performance and Remedies**
 - o Perform
 - o Interpretation of ambiguous terms
 - Usual meaning within industry
 - Construe against the drafter
 - Handwritten terms > Typed terms > Pre-printed form terms

- o Breach
 - Material breach
 - Substantial Performance
 - Preponderance of the evidence (standard of proof in civil case)
- o Remedy
 - Compensatory damages – “benefit of the bargain”
 - Specific performance
- o Excuse
 - Impossibility
 - Waiver/Release

F. Intentional Torts

- Standard of Proof/Burden of proof in tort case
- Same conduct may give rise to BOTH a tort suit and a separate criminal proceeding.
- Doctrine of Transferred intent
- Battery
 - o Consent defense
- Assault
- False Imprisonment
- Intentional Interference with Contractual Relations
- Fraud
- Conversion
- Trespass
- Nuisance
- Defamation
 - o Libel
 - o Slander
 - o Defenses
- Injurious Falsehood (Trade Disparagement)
- Invasion of privacy
 - o Public disclosure of private facts
 - o Intrusion upon solitude
 - o Appropriation of name or likeness
- Remedies available in tort case
 - o Compensatory damages
 - Compensable harms
 - o Punitive damages
 - Willful and wanton
 - o Duty to Mitigate

G. Negligence and Strict Liability

- Elements of Negligence:
 - o Duty of care
 - For professional person
 - Related to conduct generally
 - o Breach of duty of care (unreasonable behavior)
 - o Actual cause
 - o Proximate cause

- Foreseeability
 - o Injury to plaintiff
- Defenses
 - o Intervening cause
 - o Contributory/comparative Negligence regimes
 - o Assumption of Risk
- Products Liability
 - o Elements of products liability claim
 - Strict liability: know the differences from regular negligence claim, the defenses excluded, etc.
 - o Business of selling
 - o Defective condition
 - o Unreasonably dangerous
 - o Consumer's duty to use ordinary care
 - o Damages

H. Property

- **Property – general concepts:**
 - Bundle of rights
 - Personal/Real property
 - Tangible/Intangible property
 - Public/Private property
- **Personal Property:**
 - Abandoned property
 - Lost property
 - Mislaid property
 - Gift
 - Elements to transfer title by gift
 - Donor
 - Donee
 - Testamentary gift
 - Bailment
 - Bailor
 - Bailee
 - Bailee's duty of care
 - o For benefit of bailor
 - o For benefit of bailee
 - o For mutual benefit
- **Real Property:**
 - Real property
 - Airspace
 - Minerals – rule of capture
 - Adverse possession
 - Fixture – what is it (how does court evaluate when there is a fixture) and why does it matter
 - Easement
 - o By Necessity
 - o By Grant
 - o By Reservation

- By Prescription
- Concurrent ownership
 - Joint tenants
 - Tenants in common
 - Action to partition
- Writing required
- Deeds – recording
- Redlining
- **Secured Transactions and Bankruptcy**
 - Credit
 - Secured credit
 - Unsecured credit
 - Security interest
 - Surety/Guarantor
 - Lien
 - Mortgage
 - Writ of Garnishment
 - Writ of Attachment
 - Artisan's lien (possessory lien)
 - Collateral
 - Creating a security interest in property
 - Attachment
 - Perfection
 - Mechanics' or Materialmen's Liens
 - Real estate Mortgage
 - Foreclosure
 - Right of Redemption
 - Bankruptcy
 - Rationales for bankruptcy system
 - Chapter 7
 - Chapter 11
 - Petition
 - Automatic Stay
 - Bankruptcy estate
 - Proof of Claim
 - Order in which claims are paid from bankruptcy estate
 - Discharge from bankruptcy
 - Chapter 7 bankruptcy (liquidation) vs Chapter 11 bankruptcy (reorganization)
 - Redlining
 - Racially restrictive covenant
 - Shelley v Kraemer

Intellectual Property:

- 4 kinds
- Patent
 - How obtained - Application
 - Monopoly
 - Requirements

- Useful
 - Novel
 - Nonobvious
- Abstract idea/rule of nature
- First to File Rule
- Infringement
- License/Royalty
- Trade Secret
 - Definition of trade secret
 - How obtained - Reasonable measures
 - Misappropriation
 - Reverse Engineering
 - Remedies for Misappropriation
- Copyright
 - How obtained
 - Registration
 - ©
 - Work for hire
 - License
 - Infringement
 - Fair Use Exception
- Trademark
 - Purpose
 - How obtained
 - Registration
 - Distinctive
 - Abandonment
 - Genericide
 - Infringement

K. Agency

- Agency
 - Agent
 - Principal
- Fiduciary
- 2 ways agency issues arise
 - Problem in the relationship between the principal and the agent
 - Problem in the relationship between the agency and some third party (person who was harmed by the agency or entered into a contract with the agency)
- Formation of agency relationship
 - Objective test for formation of agency relationship
 - No need for consideration
- Termination of agency relationship
 - Power vs right to terminate agency relationship
 - Notice of termination to cut off apparent authority
- Agent's Duties to Principal
 - Duty of loyalty
 - Conflict of interest rules ...
 - Maintain confidentiality of information

- Survives termination of agency relationship
 - Obey reasonable instructions
 - Act with Care and skill
 - Duty to Account
 - Duty to Keep Principal Informed
- Principal's Duties to Agent
 - Abide by agreement
 - Compensate?
 - Reimbursement
 - Indemnity
 - Inform Agent of Known Risks
- Contract Liability of Principal for Contract Entered Into by Agent
 - Authority of Agent to Act on Behalf of principal
 - Actual Express Authority
 - Actual Implied Authority
 - Implied from parties' conduct
 - Implied from position of authority granted to agent by principal (or implied in task principal asks agent to perform)
 - Implied by principal's acquiescence
 - Apparent authority
 - Must trace back to some conduct by principal
 - Principal bound to pay on contract, but can seek reimbursement from agent who exceeded scope of authority
 - Ratification of Agent's Act by Principal
- Contract liability of agent
 - Disclosed principal
 - Undisclosed or unidentified principal
- Employee / Non-employee agents (independent contractor)
 - Employees are agents
 - Not all agents are employees (some are independent contractors)
 - Factors to distinguish employee from non-employee agent (independent contractor)
 - Principal's right to control manner and means of agent's performance
 - Skill required of agent
 - Source of tools used by agent
 - Location of the work
 - Duration of the relationship
 - Principal's right to assign additional projects to the agent
 - Agent's discretion over when/how long to work
 - Integration (whether work performed by agent is part of regular business of principal)
 - Compensation arrangements
- Tort Liability of Principal
 - Respondeat Superior
 - Only applies when agent is an employee
 - Within the scope of employment (time, place, motivation)
 - Direct Liability
 - Applies for both employees and non-employee agents
 - Principal's direct authorization of tortious act
 - Principal's Negligent hiring

- Agent's liability for her own torts
- Joint and several liability and indemnification
- NOTE: see decision tree slides at end of the agency slides for determination of agent/principal liability for torts and contracts

L. Forms of Business

- Know the forms of business, how they are created, pros/cons of each
- Sole proprietorship
- Partnership
 - o General Partnership
 - o Objective test for partnership
 - o Consequences of General Partnership
 - o Tax consequences of partnership
- Limited Liability Partnership (LLP)
 - o Partnership agreement
- Limited Liability Company (LLC)
 - o Members of LLC
 - o Operating agreement for LLC
 - o Tax consequences of LLC - flexibility
- Corporation
 - o Shareholders
 - o Board of Directors
 - o Officers
 - o Separation of ownership and management
 - o Legal status of corporation as distinct person
 - o Tax consequences of corporation
 - Different for S Corp
 - Limitations on S Corp
 - o How formed
 - o Duties of officers/board members
 - o Business Judgment Rule

M. Employment

- Employment at Will Doctrine
- Term employment
- Modern Exceptions to Employment at Will Doctrine [NOTE: Even though not all states use all of the exceptions, on the exam you should assume that the state where the question takes place is one that uses all the exceptions we discussed in class]
 - o Public Policy Exceptions to EAW Doctrine
 - o Promises by Employers as exception to EAW Doctrine
 - o Protective Statutes as exception to EAW Doctrine (do not need to know all of the statutes, just the ones we discussed in class)
- Workers Compensation
 - o Limited to employees
 - o Strict Liability

- Eliminated employer defenses (3 of them)
 - o Injury arising out of employment and occurring in scope of employment
 - o Exclusive remedy
 - o Remedies for injured worker in workers comp
- Family Medical Leave Act (FMLA)
 - o Applicable employers
 - o Unpaid leave
 - o Events for which leave may be taken
 - o Employee Eligibility Requirements
- Fair Labor Standards Act (FLSA)
 - o Federal minimum wage
 - o Reduction for equivalent rewards
 - o Tipped employee rule
 - o Enforcement
 - o Nursing Mother provisions
- Title VII of the Civil Rights Act of 1964
 - o Employers prohibited from discriminating because of race, color, religion, gender, or national origin
 - Protected classes (5 of them)
 - Protection under Title VII for discrimination based on sexual orientation and gender identity is discrimination based on sex under Title VII
 - o Employment decisions
 - o EEOC claim
 - o Right to sue letter
 - o Disparate Treatment
 - Burden-shifting test
 - BFOQ defense
 - Bona Fide Seniority or Merit System defense
 - o Disparate Impact
 - Burden-shifting test
 - Unintentional discrimination may still cause liability
 - o Remedies
 - o Voluntary race-based preference programs
 - o Discrimination based on religion
 - Sincerely held beliefs
 - Undue burden
 - o Sexual Harassment
 - Quid Pro Quo
 - Hostile Work Environment
 - Proof requirements
 - Employer defenses