

Module 1: History and Sources of American Law

1.1 Background on Formal Legal Systems

- Why do we need a formal legal system?
 - Fairness, consistency, order
- Civil Law v. Common Law
 - Code-based law v. case-based law
- Stare Decisis and Precedent
 - Need for consistency and predictability

1.2 Sources of U.S. Law

- The U.S. Constitution
 - The three branches of government
 - The idea of checks and balances
 - Judicial review
- The Bill of Rights and Other Constitutional Amendments
- Federal Statutes and the Idea of Limited Federal Power
- Federalism and the US Constitution's Supremacy Clause
- State Constitutions
- State Statutes and Local Ordinances
- Uniform Laws and the Uniform Commercial Code
- Judicial Opinions

1.3 U.S. Bill of Rights

- Negative v. Positive Liberties:
 - The Bill of Rights as a set of Limitations on Governmental Power
 - Applies to Federal Government, though the Fourteenth Amendment has been interpreted to apply most of the Bill of Rights to the States as well.

1.3 U.S. Bill of Rights

- First Amendment
 - Freedom of Religion
 - Establishment Clause
 - Free Exercise Clause
 - Freedom of Speech
 - Exceptions: incitement, defamation, intellectual property, misleading commercial speech
 - Content-based v. content-neutral regulation of speech
 - Freedom of the Press
 - Reflected in US libel law

1.3 U.S. Bill of Rights

- Fifth Amendment
 - Due Process Clause
 - Takings Clause
- Fourteenth Amendment
 - Equal Protection Clause
 - Heightened Scrutiny for Laws Limiting a Fundamental Right or Employing a Suspect Classification (e.g., race, religion, gender, national origin)
 - Rational Basis scrutiny for all other laws
 - Due Process Clause

Module 2: American Legal System and Procedures

2.1 Criminal Law and Civil Law

- Criminal Law
 - Government v. Individual
 - Penalty: Fines and Imprisonment
 - Proof Beyond a Reasonable Doubt
- Civil Law
 - Lawsuits Between Parties (which can include govts)
 - Monetary Damages or Specific Performance
 - Proof by a Preponderance of the Evidence

2.2 The Court Systems

- Federal and State Court Systems (and Tribal Courts)
- Trial, Appellate, and Supreme Courts
- Appeal of Right v. Discretionary Appeals
 - Writs of Certiorari in the US Supreme Court

2.3 Court Functions and Procedures

- Court Functions
 - Trial Courts: Adjudicating Facts
 - Appellate Review: Abuse of Discretion v. De Novo review
 - Supreme Court: Discretionary Review v. Original Jurisdiction

2.3 Court Functions and Procedures

- Commencing a Civil Suit
 - Standing (Constitutional Requirement under Article III)
 - Federal Rules of Civil Procedure
 - Plaintiff v. Defendant
 - Pleadings
 - Complaint (Rule 8)
 - Answer (Rule 8)
 - Affirmative Defense
 - Counterclaim
 - Motions to Dismiss (Rule 12(b))
 - Discovery
 - Motion for Summary Judgment (Rule 56)

2.3 Court Functions and Procedures

- The Civil Jury Trial
 - Burden of Proof
 - Motion to Dismiss
 - Motion for Directed Verdict
 - Jury Verdict
 - Judgment Notwithstanding the Verdict

2.3 Court Functions and Procedures

- Appellate Review
 - Appellant v. Appellee
 - Briefs, Oral Arguments, Decision
 - Claim Preclusion/Res Judicata

2.3 Court Functions and Procedures

- The Criminal Trial
 - Prosecution v. Defendant
 - Criminal Indictment
 - Grand Jury
 - Trial (or Petit) Jury
 - Direct Appeal
 - Writ of Habeas Corpus

2.4 Jurisdiction

- Subject Matter Jurisdiction
 - Constitutional Requirement under Article III (non-waivable)
 - Which Court System: Federal or State
 - Federal Courts are Courts of Limited Subject Matter Jurisdiction
 - State Courts are Courts of General Subject Matter Jurisdiction
 - Federal Court Jurisdiction
 - Diversity Jurisdiction
 - Federal Question Jurisdiction

2.4 Jurisdiction

- Personal Jurisdiction
 - Constitutional Due Process Right (waivable)
 - In which state may suit be brought
 - Traditional Bases of General Jurisdiction
 - Physical Presence, Domicile, Consent, Waiver (*Pennoyer v. Neff*)
 - Specific Jurisdiction
 - Long-arm statutes
 - Constitutional due process test: minimum contacts (*International Shoe v. Washington*)
- Venue (statutory/waivable)

Module 3: Contracts

3.1: Meaning of Contract Law Terms

- Sources of Contract Law
 - Common Law (codified in The Restatement (Second) of Contracts)
 - The Uniform Commercial Code for goods (anything moveable at the time of contract, as opposed to services), as adopted into state law

3.1 Meaning of Contract Law Terms

- What is a Contract: A legally enforceable promise
 - Must be in the future, not an immediately executed exchange
 - Can be Oral or Written, Express or Implied
- Quasi-Contract (or Implied-in-law Contract)
 - Claim for Unjust Enrichment and Restitution in the absence of a contract
- Unilateral Contract
 - Act of acceptance is also act of performance (e.g., \$100 to clean the house)

3.1 Meaning of Contract Law Terms

- Promisor: Person who makes the promise
- Promisee: Person to whom promise is made
- Beneficiary: Sometimes a third party who benefits from the promise
- Corporations are “persons” for contract law purposes
- Most (though not all) contracts involve reciprocal promises

3.2 Formation of Contracts

- Mutual Assent: Both parties must exhibit intent to be bound (meeting of minds)
- Intent to be bound is determined by objective criteria

3.2 Formation of Contracts

- Offer
- Acceptance
- Consideration (or Detrimental Reliance)

3.2 Formation of Contracts: Offers

- Offeror must communicate a specific offer to the offeree
 - an advertisement is not a contractual offer unless it invites acceptance through a specific action
 - A preliminary invitation to negotiate is not an offer

3.2 Formation of Contracts: Termination of Offers

- Offer can be revoked prior to acceptance
 - Implicit revocation is possible, but risky because it depends on the offeree knowing about actions taken by offeror
- Offer can be terminated if not accepted within specified time (or reasonable time period)
- Offer is terminated if offeror dies or is adjudged mentally incompetent before acceptance

3.2 Formation of Contracts: Termination of Offers

- No termination if
 - offeree has paid to keep offer open or
 - offeree has relied on a promise to keep offer open or
 - offeree has already begun performance of a unilateral contract

3.2 Formation of Contracts: Termination of Offers

- Offer can be rejected (objective standard)
- Counter-offer is both a rejection of original offer and a new offer
- A mere request for information or clarification is not a counter-offer

3.2 Formation of Contracts: Acceptances

- Only the person to whom offer is made can accept
- At common law, mirror image rule required acceptance in precisely the same formulation; now not so rigid so long as variations in acceptance are minor
- “Mailbox Rule”: offer deemed accepted when sent (not when received)

3.2 Formation of Contracts: Consideration

- Bargained-for Exchange
 - Not a gift
 - The promise induces the other party's action
 - Past consideration is insufficient
- Legal Detriment (Pre-existing Duty Rule)
 - The act or forbearance must not be something the promisor is already under a legal duty to do or refrain from doing
 - Note: UCC has no pre-existing duty rule

3.2 Formation of Contracts: Detrimental Reliance

- The doctrine of Promissory Estoppel
- In absence of consideration, a promise may still be enforced if the promisor knows it will be relied upon by the promisee, it is in fact relied upon, and enforcement is necessary to prevent injustice

3.3 Legal Incapacity to Enter Contracts

- Minors (except for life necessities or in cases of deception)
- Mental Incompetency (but other party must be returned to original position)
- Intoxication (but requires proof of true incompetency)

3.4 Third-Party Beneficiary Contracts

- A contract between two people to benefit a third party.
- Third party beneficiary has rights under such contracts and may sue for performance if the parties to the contract intended to benefit the third party.
- Rights must vest: third party assents, sues, or relies on contract

3.5 Assignment and Delegation of Contract Rights and Duties

- Assignment: A transaction that transfers contract rights from one party to another
 - Assignor must demonstrate intent to assign
 - Assignment must be effective immediately and assignor cannot retain any rights
 - However, assignor may condition the assignment on some act
 - Obligor need not consent to assignment, but must receive notice

3.5 Assignment and Delegation of Contract Rights and Duties

- Revocability of Assignments
 - Irrevocable if supported by consideration
 - A gratuitous assignment is revocable until
 - It is delivered to assignee in writing (or tangible object)
 - Assignee detrimentally relies on assignment
 - Obligor performs contractual duties for assignee

3.5 Assignment and Delegation of Contract Rights and Duties

- Whereas obligee can *assign* contractual *rights*, obligor can *delegate* contract duties
- When an obligor delegates duties, she becomes the delegator and the person who now owes duty is the delegate
- Obligee must accept performance from delegate, but delegator still remains the party who owes the duty
- Delegate may not be compelled to perform unless delegate promises with consideration.
- Duties that specifically rely on obligor's talent/skill cannot be delegated without consent of obligee.

3.6 Statute of Frauds

- Most oral contracts are valid and enforceable, but some types of contracts must be made in writing under the Statute of Frauds:
- MY LEGS

3.6 Statute of Frauds

- **Marriage**
- **Year**
- **Land**
- **Executor**
- **Goods (worth more than \$500)**
- **Surety**

3.6 Statute of Frauds

- Exceptions
 - If obligee admits in a pleading, testimony, or in court that contract was made;
 - If obligor performs and obligee accepts
- Note that promissory estoppel can be used when obligee detrimentally relies on an oral promise that would otherwise fall under the Statute of Frauds

3.7 Interpreting Contractual Terms

- Core terms must be definite and certain
- In interpreting contracts, courts will look to express terms, course of conduct of the parties, course of dealing of the parties, and trade usage.

3.7 Interpreting Contractual Terms

- Principles of interpretation of contracts
 - Interpret terms to make contract valid and enforceable
 - Interpret contract as a whole
 - Give specific provisions more weight than general ones
 - Prefer negotiated terms to boilerplate terms
 - Construe ambiguities against the drafter

3.7 Interpreting Contractual Terms

- If a written contract is deemed to be an integrated whole, then the Parol Evidence Rule generally excludes written or oral testimony designed to explain the contract because such testimony is inherently unreliable.
- Exception for testimony designed to show existence of additional agreement or condition

3.7 Interpreting Contractual Terms

- Contracts can be made subject to conditions (an event not certain to occur)
 - Condition precedent
 - Condition concurrent
 - Condition subsequent
- A condition is “excused by hindrance” triggering a duty to perform if party prevents condition from occurring or fails to cooperate to ensure condition happening

3.8 Breach of Contract and Remedies

- Failure to perform a contract is a breach, but extent of failure determines extent of damages
 - Partial/trivial breach (promisee can sue but must perform in the meantime)
 - Material breach (promisee can sue and suspend performance, but may not terminate the contract)
 - Total breach (promisee can sue, suspend performance, terminate contract & seek alternative arrangements)

3.8 Breach of Contract and Remedies

- Anticipatory Repudiation: Party indicates by words or action that she will not perform in advance of the time of performance
- Demand for assurances can be issued if party has reasonable grounds for worrying about whether other party will perform. If assurance not given, can be treated as anticipatory repudiation

3.8 Breach of Contract and Remedies

- Remedies
 - Expectation Damages: what the party would have received under the contract
 - Direct Damages + Consequential Damages – Costs Avoided – Loss Avoided
 - Duty to mitigate
 - If substantial performance, expectation damages may only be diminution in value between what was contracted and what was performed (particularly if replacement/completion would result in economic waste)

3.8 Breach of Contract and Remedies

- Remedies
 - Reliance Damages (if Expectation Damages are too speculative or hard to calculate): money damages to reward innocent party for losses incurred in reasonable reliance on the promise. Restores original position if no contract.
 - Duty to mitigate
 - If contract would have produced a loss for non-breaching party, reliance damages reduced by that amount

3.8 Breach of Contract and Remedies

Remedies

- Restitution: awarded to repay a party providing a benefit for the reasonable value of the benefit she provided.
 - Prevents unjust enrichment by breaching party
 - No duty to mitigate or reduction for loss to non-breaching party

3.8 Breach of Contract and Remedies

- Remedies
 - Specific Performance: order to perform contract
 - Injunction to refrain from conduct
 - Liquidated damages; if contract specifies damages, damages were difficult to determine when contract was formed, and the amount specified is reasonable
 - No punitive damages, emotional distress damages, or attorneys' fees awarded

3.9 Affirmative Defenses to Breach

- Lack of Capacity
- Violation of Statute of Frauds
- Duress
- Undue Influence
- Mutual Mistake
- Unilateral Mistake
- Misrepresentation
- Fraud
- Unconscionability
- Statute of Limitations

3.10 Discharge of Contracts

- Discharge by Performance
- Discharge by Impossibility
- Discharge by Impracticability
- Discharge by Frustration of Purpose
- Discharge by Rescission
- Discharge by Novation
- Discharge by Accord and Satisfaction

3.11 Illegal Contracts & Public Policy Concerns

- A contract that violates the law is void and unenforceable
 - Even if performance has begun, partial damages generally not available unless party seeking damages is significantly less culpable for illegality than breaching party
- A contract that is legal but violates a public policy expressed in a statute is not necessarily unenforceable, and courts may order restitution

Module 4: Legal Environment

4.1 Ethics

- Theories of Ethics
 - Deontological: ethical obligations regardless of consequences
 - Natural Rights—John Locke
 - Rights to life, health, and liberty
 - Natural (intrinsic to humanity), universal, inalienable
 - Declaration of Independence
 - Categorical Imperative—Immanuel Kant
 - Ethical obligations regardless of preferences or consequences
 - Treat others as ends, not means
 - Consequentialist: focus on impact rather than motives
 - Utilitarianism—Jeremy Bentham, John Stuart Mill
 - An action is justified if it does the greatest good for the greatest number of people

4.1 Ethics

- Legal Ethics
 - Rules governing the conduct of lawyers
 - Each state has legal ethics rules (based on American Bar Association's Model Rules of Professional Conduct)
 - Lawyers have duty to act in best interest of clients
- Malpractice
 - Action for negligence against lawyers for improper or unethical conduct or for violating ethics rules
- Attorney/Client Privilege
 - Prevents attorney/client communications from being revealed in court or elsewhere absent consent of client
 - Must be attorney/client relationship and must be communications intended to be confidential
- Conflicts of Interest
 - Concurrent Conflict: attorney cannot simultaneously represent two clients if the representation of one will be adverse to or significantly impair ability to represent the interests of the other client
 - Can be waived if disclosed to clients and they agree
 - Former conflict: attorney cannot represent a client in the same or substantially similar matter if client's interests are materially adverse to former client unless former client consents in writing. Attorney also cannot use information from former representation in a way that is adverse to interests of former client.
 - No business dealings with client unless terms are reasonable, client has opportunity to seek independent advice, and client agrees in writing
 - All consents must be informed consents

4.2 Social Responsibility of Corporations

Shareholder Primacy Theory (*Dodge v. Ford Motor Co.*)

Stakeholder or Social Entity Theory: Corporations have obligations not only to shareholders but to other stakeholders (workers, community, environment, etc.)

Permitted (not required) under corporate law (and 30 states have Other Constituency statutes)

Charitable contributions permitted if reasonable

4.3 Government Regulation and Administrative Agencies

- Administrative Agencies carry out specific governmental functions delegated by the legislature through enabling acts
- Some agencies are part of the executive branch, but some are independent
- Agencies are required to hold public meetings and Federal Information Act requires disclosure of information about agency functions and decision-making, unless the information is exempted by statute
- Administrative Law Judges(ALJs) adjudicate claims related to the agency
- Administrative Procedure Act sets procedures for agency rule-making and adjudication
- ALJ proceedings have relaxed evidentiary standards
- ALJ proceedings are usually reviewed by internal appeal boards
- Agency decisions are subject to court review as to whether decision is arbitrary and capricious.

4.4 Environmental Law

- 1969: National Environmental Policy Act
- 1970: Environmental Protection Agency
- Clean Air Act: authorizes EPA to create national air quality standards that states must obey or face sanctions
- Clean Water Act: authorizes EPA to set maximum levels of contaminants in the water; companies must receive permits to discharge pollutants and must monitor for compliance
- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) : establishes a fund to clean up and remediate hazardous waste sites and allows states to recover from current or past owners of the site
- Resource Conservation and Recovery Act: rules for handling of toxic wastes at current sites
- Toxic Substances Control Act
- Federal Environmental Pesticide Control Act

4.5 Securities and Antitrust Law

- Securities Regulation
 - Securities Act of 1933 (Securities Act)
 - Securities Act of 1934 (Exchange Act)
 - Securities and Exchange Commission
 - State “Blue Sky” Laws
 - Registration and Disclosure Requirements Under the Securities Act
 - Section 12(a)(1): strict liability penalties for failure to register
 - Section 11: civil penalties for material misrepresentations or omissions in registration statement (subject to negative causation and due diligence defenses)
 - Section 12(a)(2): civil penalties for material misrepresentations related to prospectuses (subject to negative causation and reasonable knowledge defenses)

4.5 Securities and Antitrust Law

- Securities and transactions exempt from regulation under federal securities laws
 - federal, state, municipal govts
 - Charitable institutions
 - Banks
 - Bankruptcy trustee
 - Maturity date under 9 months
 - Insurance/annuity contracts
 - Conversions or exchanges with existing shareholders or employees
 - Transactions occurring outside US or in one state
 - Securities regulated by other federal laws

4.5 Securities and Antitrust Law

- Section 4 of the Securities Act exempts from registration
 - Transactions not by an issuer or underwriter
 - Private placement transactions to sophisticated investors
 - Regulation D
 - Rule 504: aggregate offer price under one million dollars (no ads)
 - Rule 505: fewer than 35 non-accredited investors; aggregate price under 5 million dollars (ad restrictions; disclosure to non-accredited)
 - Rule 506: fewer than 35 non-accredited investors, so long as the non-accredited investors are sophisticated (ad restrictions; disclosure to non-accredited)
 - Accredited investors: over a million dollars net worth; venture capital firms; trusts with assets over \$5 million; directors/officers of issuing company

4.5 Securities and Antitrust Law

- Resale of Securities
 - Securities Act (Rule 144)
 - “Control persons” reselling securities purchased through private offerings must:
 - Have held securities for at least a year;
 - Sell through a broker;
 - Sell through a transaction involving a limited percentage of the firm’s securities

4.5 Securities and Antitrust Law

- Exchange Act regulates
 - Public Companies
 - Companies offering securities on a national exchange
 - Companies with assets over \$5 million and over 500 shareholders
 - Companies that voluntarily register

4.5 Securities and Antitrust Law

- Exchange Act Requires
 - Requires regular reporting (10-K, 10-Q, 8-K)
 - Regulates announcements of shareholder votes and proxy statements
 - Regulates tender offers
 - Prohibits Control Persons from acquiring short swing profits
 - Prohibits Securities Fraud
 - Prohibits Insider Trading

4.5 Securities and Antitrust Law

- Securities Fraud (section 10(b) & Rule 10b-5)
 - Misstatement or omission
 - Materiality
 - Securities Transaction
 - Scierter (intent to deceive)
 - Reliance
 - Causation
 - Damages
- Insider Trading
 - Insider is any company employee or one who misappropriates information of the company through position of trust (e.g., fiduciary, family member, confidant)

4.5 Securities and Antitrust Law

– Antitrust Law (Sherman Act)

- Trust is a group of companies that combine together to enhance their market power
- Monopoly is a trust that dominates an industry
- Sherman Act regulates trusts or monopolies that hurt consumers by unreasonably restraining trade
 - Rule of reason
- Federal Trade Commission

4.5 Securities and Antitrust Law

Horizontal Agreements (Per Se Violations)

- Price Fixing
- Production Quotas
- Group Boycotts
- Market Division

– Vertical Agreements

- Price-related agreements (per se violation)
- Tie-in Agreements
- Exclusive Distributor Agreements
- Exclusive Dealing Agreements
- Price Discrimination (Robinson-Patman Act)

4.5 Securities and Antitrust Law

- Clayton Act
 - Prohibits mergers and acquisitions that reduce competition or create monopolies
 - Hart-Scott-Rodino Act (Section 7(a) of the Clayton Act) requires companies planning to merge to notify FTC and Justice Department

4.6 Employment and Labor Law

- Fair Labor Standards Act
 - Minimum wage
 - Overtime
 - Child Labor
- Family and Medical Leave Act
 - 12 weeks unpaid leave for serious health condition, birth of a child, spousal care
- Workers' Compensation
 - Specifies benefits for various workplace injuries
- Unemployment Compensation
 - Provides compensation for specified periods after person becomes unemployed
- Social Security Act
 - Retirement and disability benefits to retired employees
 - Funded through Federal Insurance Contributions Act
- Employee Retirement Income Security Act (ERISA)
 - Regulates defined benefit (as opposed to defined contribution) pension plans
 - Pension Benefit Guarantee Corporation
- Occupational Safety and Health Act
 - Occupational Safety and Health Administration (OSHA)
- National Labor Relations Act
 - Protects collective bargaining rights
 - National Labor Relations Board

4.6 Employment and Labor Law

- Employment Discrimination
 - Title VII of the Civil Rights Act of 1964 prohibits discrimination based on race, color, religion, sex, national origin except for bona fide occupational qualifications
 - Applies to hiring, firing, promotion, and compensation decisions as well as retaliation for filing a discrimination complaint
 - Title VII also prohibits workplace sexual harassment
 - Quid pro quo
 - Hostile environment
 - Equal Pay Act
 - Age Discrimination in Employment Act
 - Americans with Disabilities Act
 - Pregnancy Discrimination Act
 - Equal Employment Opportunity Commission

4.7 Creditors' Rights

- Creditor
- Debtor
- Debt
- Collateral
- Security Interest/Liens

4.7 Creditors' Rights

- Uniform Commercial Code Article 9 governs secured transactions
- Security interest established via attachment
 - Security agreement (or collateral owned by debtor)
 - Consideration
- Creditor can perfect security interest to protect against third parties

4.7 Creditors' Rights

- US Bankruptcy Code creates procedures for debtors to obtain protection from creditors
 - Can be voluntary or involuntary
 - Automatic stay of collection proceedings
 - Chapter 7: liquidates all assets and discharges most debt (once every eight years)
 - Chapter 11: allows a corporation to submit a plan of reorganization, but creditors have 120 days to submit a competing plan to the Bankruptcy Court
 - Chapter 13: debtor retains assets but creates a new set of repayment plans for debts

4.8 Product Liability

- Types of Product Liability
 - Manufacturing Defect
 - Design Defect
 - Inadequate Warning Defect
- Theories of Liability
 - Intentional Tort
 - Negligence
 - Strict Liability (for commercial suppliers providing unreasonably dangerous products)

4.9 Consumer Protection

- Federal Trade Commission, Department of Consumer Protection
- Consumer Financial Protection Bureau
- Fair Credit Reporting Act
- Equal Credit Opportunity Act
- Fair Debt Collection Act
- Truth in Lending Act
- Gramm-Leach-Bliley Act
- Lanham Act
- Trade Secret Laws

4.10 International Business Law

- Treaties (Bi-Lateral and Multi-Lateral)
- No Foreign Sovereign Immunity for suits involving commercial activities in the US or with a direct impact in the US.
- Trade Regulation
 - Export Trading Company Act
 - Export Administration Act and regulations
 - Bureau of Customs and Border Protection regulates imports and tariffs
 - Free trade agreements
 - World Trade Organization and the General Agreement on Tariffs and Trade (GATT)
 - WTO principles: no discrimination against foreign goods; no favored nations; preference for goods from less developed countries; more transparency
- Foreign Corrupt Practices Act
- Economic Growth and Development
 - World Bank
 - International Monetary Fund
 - Organization for Economic Cooperation and Development (OECD)

Module 5: Torts

5.1 Meaning of Terms

- Tort
- Intentional Tort
- Negligence
- Strict Liability
- Prima Facie

5.2 Intentional Torts

- Battery
 - Harmful contact; intent; causation
 - Specific or general intent sufficient
 - No need to show harm
- Assault
 - Reasonable apprehension of imminent contact; intent; causation
- Transferred intent for assault and battery
- Intentional infliction of emotional distress
 - Extreme conduct; intent or reckless disregard; causation; damages
- Defenses: consent, self-defense, defense of others

5.3 Negligence

- Duty
 - Standard of care
- Breach
 - Res ipsa loquitur
- Causation
 - Proximate and but for causation
- Damages
- Defenses
 - Contributory/comparative negligence
 - Assumption of risk

5.4 Strict Liability

- Absolute duty of care
 - Imposed by statute or by a court for ultra-hazardous activity or products liability
- Breach
- Causation
- Damages
- No defenses available

5.5 Harms to Reputation or Economic Interests

- Defamation (Slander or Libel)
 - False statement
 - Harming reputation
 - Communicated to another
 - With either negligent (private figure) or reckless (public figure) disregard for its truth or falsity
 - Damages (presumed for libel and certain slanders)
- Interference with Business Relations
 - Valid business relationship
 - Defendant knew of relationship and intentionally interfered
 - Damages

5.6 Vicarious Liability

- One person liable for torts of another
 - Respondeat Superior
 - Exceptions
 - Frolic and Detour
 - Intentional Torts (unless in furtherance of employer's business)

Module 6: Agency, Partnerships, and Corporations

6.1 Agency

- Creation of the agency relationship
 - By agreement, estoppel, ratification or necessity
- Duties of Agents
 - Duty of care
 - Duty of loyalty
 - Duty of obedience

6.1 Agency

- Liability of Principal
 - All acts of agent as long as agent is acting with authority
 - Actual authority
 - Implied actual authority
 - Apparent authority
- Liability of Agent
 - Acts for which agent does not have authority
 - If principal's identity is not fully disclosed to third party

6.2 Partnerships

- An association of two or more people entering business together to make a profit (as opposed to sole proprietorship)
- Need not be in writing and can be implied from behavior (particularly profit sharing)
- Partnership by estoppel
- Property brought to partnership or acquired by the partnership remains partnership property (absent other agreement)

6.2 Partnerships

- Relations Between Partners (absent contrary agreement)
 - Equal profit sharing
 - Equality in decision-making
 - Duties of care and loyalty to other partners
 - “Flow-through” tax treatment
- Liability
 - Partners are all agents
 - Each partner is personally liable for debts and obligations of the partnership (incurred after joining partnership)
- Limited Partnerships
- Limited Liability Partnerships (requires filing)
- Limited Liability Company

6.2 Partnerships

- Dissolution
 - Specified period
 - Desire of any partner
 - Mutual agreement
 - Death, expulsion, or bankruptcy of a partner
 - Court order
- Terminates actual authority to act for partnership except to wind up the partnership
- Must provide notice to third parties
- After partnership assets are paid to creditors and then distributed to partners, partnership is terminated

6.3 Corporations

- Perpetual existence separate from owners or managers
- Must have articles of incorporation, bylaws, and at least one meeting to determine directors and officers
- Law of the corporation is state of incorporation

6.3 Corporations

- Shareholders own corporation, but do not make management decisions
 - Right to vote for Board of Directors and key corporate matters and to bring suit against the corporation
- Directors
 - Directors elect or appoint officers and form committees to oversee management
 - Officers run day-to-day operation
 - Directors and officers owe duties of care and loyalty to corporation and shareholders
 - Business judgment rule

6.3 Corporations

- Stocks and Dividends
 - Common and preferred shares of stock
- Corporations are subject to taxation, as do shareholders when they receive dividends
- Corporations are liable for their own debts and obligations
 - Unlike partnerships, those within the corporation enjoy limited liability
 - Exception to limited liability: piercing the corporate veil
- Termination: dissolution and liquidation by board and shareholders (or by court order)
 - File certificate or article of dissolution
 - Liquidate and pay creditors and shareholders

Module 7: Sales

7.1 Meaning of Terms

- Uniform Commercial Code, Article 2
- Buyer
- Seller
- Merchants
- Goods
- Sale

7.2 Formation of UCC Contracts

- Offers
 - Option Contracts: written offer from merchant cannot be revoked for time specified or reasonable time
- Acceptance
 - No mirror image rule
 - If buyer takes goods and does not reject them as non-conforming within a reasonable time
 - Perfect tender rule: no substantial performance
 - Installment contracts require opportunity for seller to cure

7.2 Formation of UCC Contracts

- Seller's Right to Cure
 - If buyer rejects goods as non-conforming, seller can try to cure deficiency if before delivery date by providing conforming goods
 - If after delivery date cure only possible if seller reasonably believes buyer would accept goods with price adjustment

7.2 Formation of UCC Contracts

- Buyer's Ability to Revoke Acceptance
 - Goods are non-conforming, affecting value and
 - Non-conformity was difficult to discover initially or cure was not made
 - Notice of revocation must be within reasonable time after discovery and condition of goods must not be altered

7.2 Formation of UCC Contracts

- If buyer's acceptance contains *additional* terms
 - Treated as a proposal unless both parties are merchants
 - If merchants, then proposal becomes part of the contract so long as change is immaterial, unless original offer limited acceptance to its terms or seller rejects proposal
- If buyer's acceptance contains *new* terms
 - Some courts treat it as a proposal
 - Some courts disregard new terms
 - Some courts apply knockout rule

7.2 Formation of UCC Contracts

- Modification
 - UCC contracts can be modified in good faith without consideration
- Statute of Frauds
 - Even though contracts for sale of goods over \$500 must be in writing, UCC enforces oral agreements if goods have been delivered and accepted

7.3 Warranties

- Express warranties
- Implied warranty of merchantability
- Implied warranty of fitness for a particular purpose

7.4 Remedies

- Buyer's damages
 - Expectation damages
 - Right to cover by purchasing substitute goods
 - Right to reduction in price for non-conforming goods
 - Right to reduction in price for breach of warranty

7.4 Remedies

- Seller's Withhold Right
- Seller's Damages from Wrongful Rejection
 - Seller can re-sell and recover difference in price plus incidental costs (or market price if re-sell fails)