

September 10, 2018	Chapter 1	The Nature of Law
	Chapter 2	The Resolution of Private Disputes
	Chapter 3	Business and the Constitution
September 17, 2018	Chapter 37	Introduction to Forms of Business and Formation of
	Chapter 38	Partnerships
	Chapter 39	Operation of Partnerships and Related Forms Partners' Dissociation and Partnerships' Dissolution and Winding Up
September 24, 2018	Chapter 40	Limited Partnerships, Limited Liability Limited Partnerships, and Limited Liability Companies
	Chapter 41	History and Nature of Corporations
	QUIZ 1	

US Law

Constitution > Treaty > Fed Law* > Administrative Agencies
> State Constitution > State Law > Common Law (*stare decisis* - let the decision stand)

* unless the Fed Law is passed after the treaty

Constitution

- Originalists: not in constitution = federal problem
- Other stances: evolve rights in a way that's compatible with the constitution

The constitution does not apply to private entities.

Commerce

The Uniform Commercial Code governs all sales of goods within 50 states.

The UN CISG only governs B2B sales.

Due Process Violations

Substantive: a matter of criminality/legality

Procedural: technicalities, e.g. fair hearing, responding to charges

Notes

- Commerce Clause: the federal government has the sole right to regulate interstate commerce. This is the source of their power.
- Federal judges are appointed, whereas state judges are elected (voter pressure).
- Searches and seizures do not require warrants.

Where you can sue is limited by the subject matter and the amount.

State System trial, appellate (cannot retry, only y/n trial court), supreme
Federal System district (population), circuit (appeals from district), supreme

Getting to Federal Court

1. Complete diversity jurisdiction: none of the plaintiffs can be from the same state as any of the defendants AND amount \geq 75k
2. Federal law: if it involves federal law, done
3. Removal: moving from state to federal court, can be done by e.g. dropping defendant

Venue plaintiff picks initial value

Long-arm jurisdiction must have minimum contact with a state, emails count

Specific jurisdiction sue where it happened

In rem jurisdiction sue where the object is situated

Websites Passive => no specific jurisdiction, active => specific jurisdiction

Civil Law

Compensation for injury

Preponderance of the evidence (jury majority rules)

At-law: seeking equity (money damages won't make you whole)

Criminal Law

Everything that has penalties/which can result in a loss of freedom

Beyond reasonable doubt

Alternative Dispute Resolution

1. Mediation - third party asked to work towards settlement, compromise
2. Arbitration - make a decision, you're right, they're wrong, final decision, no appeal

Filing a lawsuit

Federal Court: notice plea (notice of action)

State Court: Plead facts, motion to dismiss/demurrer (so what), answer, discovery, motion for summary judgment

Trial: experts can be invited who cannot state facts, only opine

If you file a motion for directed verdict (jury), you can file later for JNOV judgment notwithstanding the verdict

Doing Business

None of these models pay tax.

Sole proprietorship

- personally liable
- bankruptcy judgments last 7 years and can be renewed

General partnership

- association of two or more people for the purpose of making a profit
- every partner personally liable for maximum extent
- no writing needed
- RUPA (revised uniform partnership act) - when in doubt, default to this
- partnership term refers to duration

LP Limited partnership

- forms must be filed
- at least 1 general partner (personally liable), 1 limited partner (liable to their contribution)
- not a fiduciary, you can compete against your LP
- profit proportional to capital invested

LLP Limited liability partnership

- only for professional (malpractice insured) work

LLLP Limited liability limited partnership

- general partner not personally liable

S-Corp

- S from section of internal revenue code
- max 100 shareholders, no aliens, partnerships, subsidiaries, trust, corporations
- not taxed at entity level
- max deduction on personal income is amount invested, this doesn't reset
- normally used for family businesses

C-Corp

- C from section of internal revenue code
- all publicly traded corps are c-corps
- taxes paid on entity level
- dividends given post-tax to shareholders, who pay capital gains (double taxation)
- shareholders cannot request dividends

LLC Limited Liability Company

- members, not shareholders
- membership agreement
- parent authority to bind the LLC
- Certificate of Authority to limit who can make decisions for LLC

Purported partner: held to be a partner, even though they're not - they will still be personally liable if they enter into a transaction

Partnership property vs individual: depends on intent of partners when they founded partnership
You cannot sell your interest in a general partnership, but you can sell your right to profit

Profit splitting

- In absence of agreement to contrary, split in accordance to number of partners
- If you agree to 70/30 profit split, automatically 70/30 loss split as well, but not vice versa

Dissociation / leaving partnership

Novation (release): substituting a new contract for an old one

Usurpation of opportunity (limited partnerships)

Must offer partners the opportunity to buy first (e.g. own flats, see flat)

Injuries / Torts

- the degree of supervision makes the difference
- Independent contractor: sucks to be you
- Respondent superior: as an employee, entity liable

Joining Partnerships

- not liable for pre-existing debt

Withdrawing from partnership

Wrongful breach of contract, bankruptcy,

Non-wrongful death, per contract, if another partner left recently (within 90 days), transfer of partnership interest (requires all to consent by default)

October 1, 2018	Chapter 42	Organization and Financial Structure of Corporations
	Chapter 43	Management of Corporations Shareholders' Rights and Liabilities
	Chapter 44	
October 8, 2018	Chapter 35	The Agency Relationship Third-Party Relations of the Principal and the
	Chapter 36	Agent Legal and Professional Responsibilities of
	Chapter 46	Auditors, Consultants, and Securities Professionals

QUIZ 2

Ultra Vires "beyond the powers" an action of a corp beyond its powers are a nullity

- Shareholder who wants to stop a corp from doing something

- Corp suing management
- State attorney general

$$X = [S * R / (D + 1)] + 1$$

October 15, 2018 Chapter 8 Intellectual Property and Unfair Competition
 Chapter 51 Employment Law

October 22, 2018 Chapter 6 Intentional Torts
 Chapter 25 Landlord and Tenant
 Chapter 49 Antitrust: The Sherman Act
QUIZ 3

Patents

- Exclusively federal, agreement between inventor and feds
- Exclusive right to exclude others from making, selling, using invention in exch for making public the details
- Requirements: novel, useful, non-obvious to a skilled person
- Types:
 - Design patent: design of material object, 14 years from issue
 - Plant patent: living organism that doesn't exist, 20 years from filing
 - Utility patent: manufacturing process/method of doing business/composition, 20 years from filing
- 2011: US from first-to-invent to first-to-file
- Shop right: employee has nonexclusive royalty-free license to use inventions created on company time with company facilities
- Otherwise depends on the reason for which employee was hired

Notes:

Intellectual Property

- Shopright: hired to do it, employer owns it
- Otherwise: independent contractors own their thing, by default only license given

Patents

- Prosecuted in the name of the inventor, not the owner
- No one else can have that exact type of thing
- Three kinds
 - Design patent: the design of some material object, valid 14 years from issue
 - Plant patent: when you create some living organism that doesn't exist in nature, valid 20 years from filing
 - Utility patent: manufacturing process, method of doing business, composition of material, valid 20 years from filing
- Granting patents: novel, useful, non-obvious to someone skilled in the art

- 2011: US went from first-to-invent to first-to-file
- Can copyright programs, cannot patent algorithms
- Patent issuance != patent validity, people can challenge

Copyright

- tangible expression of an idea - singing a song is not tangible, writing it down is
- rights to reproduce, take parts of, etc. all given with copyright
- used to be 50 years
- changed to 70 years after death of author (because of Mickey Mouse)
- The 1998 Act extended these terms to life of the author plus 70 years and for works of corporate authorship to 120 years after creation or 95 years after publication, whichever end is earlier. Copyright protection for works published before January 1, 1978, was increased by 20 years to a total of 95 years from their publication date. - wiki
- Fair use: look at how much of the copyrighted material was used, the purpose for which it was used, did the use affect the fair market value of the item
- DMCA: digital millenium copyright act - illegal to attempt to break digital encryption
- Royalty paid on first sale

Marks

- Mark lasts for 10 years, file with federal govt, can renew for 10-years
- Types
 - Arbitrary/fanciful mark - no relation
 - Suggestive marks - only through imagination
 - Descriptive marks - directly describe
 - Marks not inherently descriptive - secondary meaning, e.g. product color
 - Generic terms - cannot be trademarked, common name
- Trademark
 - The good is trademarked
 - Whopper, McRib
- Service mark
 - The provider of the service is servicemarked
 - Burger King, McDonald
- Cannot mark generic words
- If your brand becomes a generic word, you lose protection of the mark
- Test: likelihood of confusion

Trade secrets

Employment

- Whole of USA is at-will employment
- Disparate treatment, bona fide occupational qualification
- Impact
- ADA

Tort civil wrong that is not a breach of contract

1. Intent : desire to cause certain consequences
2. Recklessness : conscious indifference, often treated as intentional wrongdoing
3. Negligence : failure to use reasonable care
4. Strict liability : liability irrespective of fault

Compensatory damages vs punitive damages

Respondeat superior employers liable for employee's torts within scope of employment

Modern view: emotional damage can be a tort

Battery intentional and harmful/offensive touching of another without consent

Assault intentional attempt or offer to cause harm/offensive contact, such that fear of battery

False imprisonment intentional complete confinement for an appreciable time without consent

Defamation 1. unprivileged 2. publication of 3. false and 4. defamatory statements

Libel: written or printed defamation, special damages could be awarded

Slander: all other, primarily oral, actual damages must be shown to recover

Antitrust created by congress, section 1 and 2 of the Sherman Act

A private individual can sue under antitrust provided they were directly injured, if successful, they get 3x damages + fees

Fed can sue criminal or civil

Relevant product market - must be able to measure how much % of the market is controlled

Via cross-elasticity of demand - what can be substituted?

Section 1 of Sherman Act

- Every contract in (unreasonable) restraint of trade is illegal
- Essence of violation: conscious parallelism is NOT a violation, making an agreement is
- Some activities created by agreement are so anticompetitive that they are per se violations, e.g. group boycott, price fixing
- Unilateral refusal to deal: order from above saying "you have to sell it at X" legal
- Rule of reason test: competitive vs anticompetitive effects
- Market extension: if as Coke you buy minimaid, for example

Section 3 of the Clayton act

- Cannot tie the use of one monopoly product to another

Landlord Tenant Act

- Tenancy at term - fixed term contract
- Tenancy at will - usually no payment, but state laws protect
- Tenancy from period to period
- Tenancy at sufferance - either evict, or keep accepting rent
- Landlord has duty to maintain common areas, sidewalks
- Abandonment, landlord has obligant to find new tenant
- Implied warranty of habitability
- Quiet enjoyment
- Implied warranty of possession

- Constructive eviction
- Subleasing vs assignment

October 29, 2018	Chapter 9	Introduction to Contracts
	Chapter 10	The Agreement: Offer
	Chapter 11	The Agreement: Acceptance
November 5, 2018	Chapter 12	Consideration
	Chapter 13	Reality of Consent
	Chapter 14	Capacity to Contract
November 12, 2018	Chapter 15	Illegality
	Chapter 16	Writing
	Chapter 17	Rights of Third Parties
	QUIZ 4	

Contracts

Uniform Commercial Code (UCC): same in all 50 states, governs the sale of goods

Goods: anything tangible and movable

Common law: hodge-podge of judge-made law and state statutes to govern services

Hybrid contracts: part goods, part services

Which law applies? The one that costs the most.

United Nations Charter for the International Sale of Goods (CISG): a treaty governing the sale of goods between the united states and any country that is a signatory to the treaty. Does NOT govern the sale of consumer goods, governs the sale of b2b goods.

Merchant: someone who holds themselves out to be skilled in the art of selling the goods, extra rules under UCC (consumer still has rules, just fewer)

Bilateral contract / by agreement / promise for a promise / an express contract: "I'll sell you this marker for \$2" "ok"

Unilateral contract / by performance / nobody obligated to buy: "first person to come up with \$2 gets this marker"

Implied contracts / by action: you get a haircut expecting to pay something

Quasi contract / knowingly accepting the benefit under circumstances you'd expect to pay, e.g. landscaper putting bushes wrong house

Void: against public policy

- Minors can get out of contracts without even returning object e.g. car
- Fraud
- Contracts for the sale of land must be in writing
- Marriage-related must be in writing, e.g. dowry
- Promise to pay for debt of another, must be in writing
- (UCC) Anything > \$500 must be in writing
- (Common law) Anything > 1 year must be in writing

Promissory estoppel: when someone changes their position because of your promises, and you know it

Components of a contract

1. Offer
2. Acceptance
3. Capacity (to make the contract)
4. Legal (contract must be)
5. Consideration

Offer: intent to enter into a contract

UCC: the only term that must be present is quantity, everything else can be inferred

Common law: every term of the contract must be present in the offer, cannot imply any

Must be explicitly communicated to the intended accepting party

Advertisements are not contracts generally, they could maybe be unilateral

Rewards are unilateral contracts

Auctions: with reserve, without reserve. Reserve means bid must reach certain number.

Offer validity: for a "reasonable" time, but an offer can be withdrawn at any time for any reason without notice

UCC: by default b2b is 3 months, can also put time in contract

Common law: pay money to keep contract open for a period of time

Acceptance

UCC: as long as the merchants know what they want, additional terms can be tacked on

e.g. if you want COD and I want 30 day, it cancels out, we get UCC instead

Contracts can be accepted by shipment of goods - but quantity cannot be implied! We only have a contract for the quantity given.

Common law: mirror-image acceptance, anything else is counteroffer and rejection

Mailbox rule: suppose A extends an offer. To get A to commit, B should send by mail. If B changes mind, B must withdraw BEFORE mail received by A. tl;dr: if the revocation arrives before the acceptance, the deal is off. Does NOT work under CISG though, first arrival happens.

Parol evidence rule: when can you offer oral testimony to vary the terms of the contract?

Integration clause: this agreement has the entire terms and conditions of the parties to this contract, and there are no other terms

Consideration

“A present, mutual, benefit/detriment”

Exculpatory contract *

Against public policy to waive your own negligence

Licensing

Cannot charge for being lawyer unless you have a law license, dentist with dentist license, etc. Cannot accept money for cutting hair unless cosmetology board licensed. Selling house. Building house. Etc

Non-compete clauses are shaped

Unconscionable - procedural (so bad, whole contract gg) or substantive (just some terms gone)

Statute of frauds *

Some contracts must be in writing

UCC: between merchants, >500, oral deals confirmed if 10 day of silence

CISG has no statute of frauds

Parol evidence can be offered if contract has ambiguity, e.g. contradiction in contract

Right to assign payment granted by default

English rule, first person to notify wins

American rule, first person to be assigned wins

Delegation of duties

Generally can, unless it is expected of you as an expert

November 20, 2018	Chapter 18	Performance and Remedies
	Chapter 19	Formation and Terms of Sales Contracts
	Chapter 21	Performance of Sales Contracts
November 26, 2018	Chapter 7	Negligence and Strict Liability
	Chapter 20	Product Liability
	Chapter 22	Remedies for Breach of Sales Contracts
	QUIZ 5	

December 3, 2018 FINAL

Free on Board (FOB) seller under UCC - seller only needs to package goods in certain way, risk on buyer to transport

FOB buyer - risk on seller to transport

Under UCC, whether or not there's loss has nothing to do with title rights to the good. The key point: who's responsible for delivering them.

FAS: free alongside ship

CF/CI/CIF

Disputes : risk of loss has nothing to do with who has title

Boils down to FOB

Buyer ordinary course

Car dealer sells car on credit from manufacturer

If entrust and broken, e.g. car dealer sells your car, sold to legit purchaser = gg car, but can sue

Unlike theft, where you can still claim back car

Time is of essence

Revocation vs rejection

Revocation - revoke acceptance for deficiency in delivery which substantially affects value of goods

Rejection - not to spec maybe, but doesn't substantially affect (green vs blue pencil)

Compensatory: damages that put you in the same position as if the original contract had been performed

Incidental expenses: cost of getting substitute performance

Liquidated damages - must be reasonable

Performance and remedies

Condition precedent: creates duty to perform

Concurrent condition: both perform

Condition subsequent: discharges duty to perform

Types of conditions: express, implied-in-fact, constructive/implied-in-law

Excusing conditions: preventing condition from occurring, waiver, estoppel

Performance: strict, substantial, good faith

Breach: material, nonmaterial

Excusing nonperformance: impossibility, illegality, destruction of subject matter

Discharge: commercial impracticality, discharge by mutual agreement, accord and satisfaction, waiver, alteration, statute of limitations

Remedies: legal, equitable, restitution

Protecting the interests: expectation, reliance, restitution

LAST CLASS

FOB buyer: risk on seller until delivered

FOB seller: risk on buyer

CIF: cost, insurance, freight

Risk of loss: the title has nothing to do with who bears risk of loss

Different rule depending on whether the sale is made by a merchant or a non-merchant

For a non-merchant, the risk of loss transfers to the buyer upon "the goods are ready to be picked up"

For a merchant, the risk of loss transfers to the buyer only when the buyer actually picks the goods up

If the seller is dealing with a buyer who breached contract, seller can:

1. resell the goods and sue the buyer for the profits the seller would have made on the original sale; OR
2. seller can get from buyer the difference in sale proceeds when sold on open market.

Key idea: same position as if transaction had proceeded

If the buyer is dealing with a seller who breached contract, buyer can:

1. cover: get substitute goods from the market, sue seller for incidental costs and difference between market rate and original seller rate
2. if goods specifically made for contract, can seek specific performance

Personal satisfaction: gives buyer huge leeway, way out. Must be done in good faith.

Implied warranty of title: can sue for stolen bought items

Implied warranty of merchantability

Implied warranty of fitness of purpose

Express warranties of sale of goods

Product liability

Negligence: injury is actual proximate cause of the breach

Negligent to fail to warn someone of the consequences of using a product

Negligent design: something wrong with the design of the product

Strict liability

Using the product in the way it is intended to be used,
Without modification,
And I'm injured

Final

Exculpatory clauses

Merchant exception to the statute of frauds under UCC

Statute of frauds under common law, and how you decide how long the agreement has to be
Fraud

Complaints under UCC - warranties too

Consideration

Tennis bubble - consequential, incidental, compensatory damages

Time is of the essence, how long to accept an offer

7 essay, 44 mcq

Exculpatory clause: provision to relieve one of the parties from tort liability.

1. Cannot protect from wrongdoing greater than negligence, e.g. fraud or other willful tort.
2. Cannot protect parties who owe duty to public e.g. airline.
3. Statute and common law impose certain obligations, e.g. worker comp, rental habitability.
4. Cannot be unconscionable, contract of adhesion (take it or leave it)

Statute of Frauds, UCC

1. Sale of goods \geq \$500 must be in writing
Also: prenups, takes longer than 1 year, conveyancing, debt transfer
2. Exception: between merchants, OK unless written objection within 10 days of receipt
3. Exception: special manufacture

Warranties under UCC

1. Express warranties
2. Implied warranty of merchantability : "at least average quality"
3. Implied warranty of fitness : seller knows what buyer is using good for

Consideration

1. legal value, bargained for and given in exchange for an act or a promise
- 2.

Damages

Compensatory - making whole, "as if a breach had not occurred"

Incidental - very limited category, e.g. storage shipping rejection costs

Consequential - seller must know buyer would suffer special damages, and buyer must show no substitute goods, e.g. too late for Christmas
consequential, incidental, compensatory damages

Statute of limitations

1. Sales contract 4 years from expected discovery time, can be shortened to 1

Time is of the essence

1. Failure to act within time specified constitutes breach of contract