

Student Study Guide

for use with

BUSINESS LAW

THE ETHICAL, GLOBAL, AND E-COMMERCE ENVIRONMENT

T W E L F T H E D I T I O N

MALLOR · BARNES · BOWERS · LANGVARDT

Prepared by
Frona Powell

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for use with

Business Law

The Ethical, Global, and
E-Commerce Environment

Twelfth Edition

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Jane P. Mallor, A. James Bowers, Thomas Bowers and Arlen W. Langvardt

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TABLE OF CONTENTS

Chapter 1	The Nature of Law	1
Chapter 2	The Resolution of Private Disputes.....	7
Chapter 3	Business and the Constitution	13
Chapter 4	Business Ethics, Corporate Social Responsibility, Corporate Governance, and Critical Thinking	19
Chapter 5	Crimes	27
Chapter 6	Intentional Torts	35
Chapter 7	Negligence and Strict Liability.....	43
Chapter 8	Intellectual Property and Unfair Competition	51
Chapter 9	Introduction to Contracts.....	57
Chapter 10	The Agreement: Offer.....	65
Chapter 11	The Agreement: Acceptance	73
Chapter 12	Consideration	81
Chapter 13	Reality of Consent	89
Chapter 14	Capacity to Contract.....	97
Chapter 15	Illegality	103
Chapter 16	Writing.....	109
Chapter 17	Rights of Third Parties	117
Chapter 18	Performance and Remedies.....	123
Chapter 19	Formation and Terms of Sales Contracts	129
Chapter 20	Product Liability	135
Chapter 21	Performance of Sales Contracts	141
Chapter 22	Remedies for Breach of Sales Contracts	149
Chapter 23	Personal Property and Bailments	155
Chapter 24	Real Property	161
Chapter 25	Landlord and Tenant.....	169
Chapter 26	Estates and Trusts.....	175
Chapter 27	Insurance Law	181
Chapter 28	Introduction to Credit and Secured Transactions	187
Chapter 29	Security Interest in Personal Property.....	193
Chapter 30	Bankruptcy	199
Chapter 31	Negotiable Instruments	205
Chapter 32	Negotiation and Holder in Due Course	211

Chapter 33	Liability of Parties.....	217
Chapter 34	Checks and Electronic Transfers.....	223
Chapter 35	The Agency Relationship.....	229
Chapter 36	Third-Party Relations of the Principal and the Agent.....	235
Chapter 37	Introduction to Forms of Business and Formation of Partnerships.....	243
Chapter 38	Operation of Partnerships and Related Forms.....	249
Chapter 39	Partners' Dissociation and Partnerships' Dissolution and Winding Up.....	255
Chapter 40	Limited Liability Companies, Limited Partnerships, and Limited Liability Limited Partnerships.....	261
Chapter 41	History and Nature of Corporations.....	269
Chapter 42	Organization and Financial Structure of Corporations.....	275
Chapter 43	Management of Corporations.....	283
Chapter 44	Shareholders' Rights and Liabilities.....	291
Chapter 45	Securities Regulation.....	299
Chapter 46	Legal and Professional Responsibilities of Auditors, Consultants, and Securities Professionals.....	307
Chapter 47	Administrative Agencies.....	315
Chapter 48	The Federal Trade Commission Act and Consumer Protection Laws.....	321
Chapter 49	Antitrust: The Sherman Act.....	327
Chapter 50	The Clayton Act, the Robinson-Patman Act, and Antitrust Exemptions and Immunities.....	333
Chapter 51	Employment Law.....	339
Chapter 52	Environmental Regulation.....	345
Uniform Commercial Code Articles.....		351
Article 1	General Provisions.....	353
Article 2	Sales.....	365
Article 2A	Leases.....	399
Article 3	Negotiable Instruments.....	433
Article 4	Bank Deposits and Collections.....	467
Article 4A	Funds Transfers.....	485
Article 5	Letters of Credit.....	505
Article 6	Bulk Sales.....	513
Article 7	Documents of Title.....	525
Article 8	Investment Securities.....	542

CHAPTER 1

THE NATURE OF LAW

LEARNING HINTS

1. In the latter half of this century, there has been an explosion of federal and state administrative agencies. The powers of these agencies are established and limited by enabling statutes, which are adopted by the legislative body. Actions by an agency that exceed its power under the statute will be declared void by the courts.
2. Consider the ethical implications of the various theories of jurisprudence discussed in the chapter. What moral judgments underlie the various theories of legal philosophy?
3. A primary function of a court is to interpret the language in a statute. To what extent does this give the court discretion in applying the law to the facts of a particular case?

CHAPTER OUTLINE

- I. Types and Classifications of Law
 - A. The Types of Law
 1. Constitutions
 2. Statutes
 3. Common Law
 4. Equity
 5. Administrative Regulations and Decisions
 6. Treaties
 7. Ordinances
 8. Executive Orders
 - B. Priority Rules
 - C. Classifications of Law
 1. Criminal and Civil Law
 2. Substantive Law and Procedural Law
 3. Public and Private Law
- II. Jurisprudence
 - A. Legal Positivism
 - B. Natural Law
 - C. American Legal Realism
 - D. Sociological Jurisprudence
 1. Different Sociological Approaches
Example: *United States v. Lynch*, 1996 U.S. App. LEXIS 32729 (2d Cir. 1996)
 2. The Implications of Sociological Jurisprudence
 - E. Other Schools of Jurisprudence

III. The Functions of Law

IV. Legal Reasoning

A. Case Law Reasoning

Example: Hagan v. Coca-Cola Bottling Co., 776 So.2d 275 (Fla. Sup. Ct. 2000)

B. Statutory Interpretation

1. Plain Meaning

Example: Department of Housing and Urban Development v. Rucker, 122 S. Ct. 1230 (U.S. Sup. Ct. 2002)

2. Legislative History

Example: United Steelworkers v. Weber, 443 U.S. 193 (U.S. Sup.Ct. 1979)

3. General Public Purpose

4. Prior Interpretations

5. Maxims

C. Limits on the Power of Courts

True-False--Circle T for True and F for False.

- | | | | |
|---|---|-----|--|
| T | F | 1. | One function of a constitution is to prevent actions by the government that restrict individual rights. |
| T | F | 2. | The common law trumps state statutory law. |
| T | F | 3. | A state statute limiting the time within which one party may sue another is both <i>criminal</i> and <i>substantive</i> . |
| T | F | 4. | In America today, courts have the power to grant equitable remedies and to award damages at law. |
| T | F | 5. | In theory, at least, there is no federal common law. |
| T | F | 6. | To a legal positivist, morality or rightness is an essential component of any valid law. |
| T | F | 7. | Because the U.S. Constitution says that the President only <i>executes</i> the laws, the President never <i>makes</i> law. |
| T | F | 8. | A treaty defeats an inconsistent state constitutional provision in case of a clash between them. |
| T | F | 9. | Courts always follow a statute's plain meaning, no matter what the statute's legislative history or the courts' prior interpretations of it. |
| T | F | 10. | Today, courts tend to take an instrumentalist attitude toward law, viewing it as a flexible tool for accomplishing various social purposes. |
| T | F | 11. | Once the <i>Restatements</i> promulgate a rule on some subject, the state courts are bound to follow that rule. |
| T | F | 12. | According to sociological jurisprudence, law is best defined as the command of a recognized political authority. |
| T | F | 13. | The doctrine of <i>stare decisis</i> says that courts should always follow the plain, accepted meaning of a statute or a prior case, and should not concern themselves with anything else. |
| T | F | 14. | In statutory interpretation cases, courts do not always follow the plain meaning rule. |

Multiple Choice--Circle the best answer.

15. John won a lawsuit for breach of contract over a painting. If the judge orders the defendant to turn over the painting to John, this is an example of
- an injunction
 - specific performance
 - damages at law
 - executive order
16. An ordinance
- takes priority over common law
 - is a local rather than state law
 - cannot be repealed except by unanimous vote of the legislative body
 - both (a) and (b) are correct.
17. The idea that "an unjust law is not a law" is a principle of
- natural law
 - legal positivism
 - sociological jurisprudence
 - utilitarianism.
18. Which of the following will defeat a federal statute in case of a clash between them?
- A state statute.
 - A federal administrative rule.
 - The common law.
 - None of the above will defeat a valid federal statute.
19. Which of the following jurisprudential schools would be *most* likely to say that judges should just follow the law as it's written, and not worry about anything else?
- Natural law.
 - Legal positivism.
 - Sociological jurisprudence.
 - Legal realism.
20. In case of a clash between them, which of the following will defeat a state administrative regulation?
- A state statute.
 - A state constitutional provision.
 - A federal statute.
 - All of the above.

21. Which of the following is both *civil* and *procedural*?
- The law of negligence.
 - A statute imposing a jail sentence for rape.
 - The rules for presenting evidence at a trial.
 - A statute imposing a fine for speeding.
22. This question lists some common statements about law. Which of those statements is most typical of *natural law*?
- "Justice is what the judge ate for breakfast."
 - "An immoral law isn't really law."
 - "The law has to keep up with changing times."
 - "You should obey the law because it's the law."
23. In general, the plaintiff must have some direct, tangible, and substantial stake in the outcome of a lawsuit in order to sue. This rule or doctrine is called:
- Stare decisis*.
 - Legal realism.
 - Standing to sue.
 - Specific performance.
24. The view that the law ought to reflect society's dominant interests and values (whatever they happen to be) is most typical of:
- Natural law.
 - Legal positivism.
 - American legal realism.
 - Sociological jurisprudence.
25. In theory, at least, which of the following types of law does not exist at the federal level?
- Administrative decisions.
 - Administrative regulations.
 - Common law.
 - Executive orders.
26. Which of the following is true about equity today?
- Most states have abolished their separate equity courts.
 - Most states have abolished equitable remedies.
 - Most states have abolished equity "law" itself, because it is too indefinite.
 - Two of the above.

Short Essay

27. After carefully reading the U.S. Constitution, your friend Joe becomes convinced that democracy is a sham and that we're really living in a kind of tyranny. "There's nothing in the Constitution about administrative agencies," says Joe, "and yet they're bossing my business around all the time." "And what about executive orders?," he continues. Where in the Constitution does it say that the President has the power to make law?" How should you respond to Joe? That is, why do administrative agencies and chief executives have the power to make law?
28. Assume that there is an ordinance that prohibits a person from letting "a horse, a cow, a goat, or any other animal" to wander about. The law was passed years ago when most of the area was rural. John is charged with violating the ordinance for letting his cat wander about his yard. Using principles of statutory interpretation discussed in this chapter, give one reason why John is guilty of violating the ordinance. What is one argument against his guilt?
29. Laura Landowner visits Fred Halfbright, an attorney, with a problem. "My neighbor is intentionally letting his geese run over my property," she says. "What can I do about it?" "Maybe you've got a suit for trespass to land," Fred replies, "but let me do some research." One week later, Fred tells Laura that there's nothing he can do. "The doctrine of *stare decisis* says that like cases should be decided alike," he says, "but I can't find a real precedent for your case. I've been able to find intentional trespass cases involving sheep, goats, and even chickens, but I can't find a goose case." Has Fred intelligently applied the doctrine of *stare decisis*? Why or why not?
30. The U.S. Supreme Court is about to decide yet another important abortion case. Three of the Court's justices are preparing to decide the case in quite different ways. Justice Marvin Keen is carefully reading all the applicable precedents so that he can get the existing law right and apply it in this new case. Justice Emily Earnest is reading books on moral philosophy in order to make sure that her decision is ethically correct. Justice Sam Mellow is checking out the latest public opinion polls on the subject of abortion, so that his decision will be up-to-date and will give the people what they want. Which schools of jurisprudence are most clearly exemplified by the decision-making of Marvin, Emily, and Sam?

CHAPTER 2

THE RESOLUTION OF PRIVATE DISPUTES

LEARNING HINTS

1. Although in personam jurisdiction in Internet jurisdiction disputes presents some unique problems. Courts have continued to use the traditional tests discussed in your chapter in such cases to determine jurisdiction in such cases.
2. Legal procedures required for notice of a law suit (service of services) may differ from state to state; however, all such procedures are subject to the minimum requirements of the due process clause of the U.S. Constitution.
3. Many cases are appealed on the basis of a summary judgment granted by the trial court. If the case is reversed or remanded on appeal, the case must then go to trial.

CHAPTER OUTLINE

- I. State Courts and Their Jurisdiction
 - A. Courts of Limited Jurisdiction
 - B. Trial Courts
 - C. Appeals Courts
 - D. Jurisdiction and Venue
 1. Subject-Matter Jurisdiction
 2. In Personam Jurisdiction
Example: *Butler v. Beer Across America*, 83 F. Supp.2d 1261 (N.D. Ala. 2000)
 3. In Rem Jurisdiction
 4. Venue
- II. Federal Courts and Their Jurisdiction
 - A. Federal District Courts
 1. District Court Jurisdiction
 2. Concurrent Jurisdiction and Removal
 - B. Specialized Federal Courts
 - C. Federal Courts of Appeals
 1. Role of Forum Selection Clauses
Example: *Lewis v. Abbot laboratories*, 189 F. Supp.2d 590 (S.D.Miss. 2001)
 - D. The U.S. Supreme Court

III. Civil Procedure

A. Service of the Summons

B. The Pleadings

1. The Complaint
2. The Answer
3. The Reply

C. Motion to Dismiss

D. Discovery

Example: *Blumenthal v. Drudge*, 1999 U.S. Dist. LEXIS 7045 (D.D.C. 1999)

E. Summary Judgement

F. The Pretrial Conference

G. The Trial

1. Trial Procedure
2. Jury Trials
3. Directed Verdict
4. Judgment Notwithstanding the Verdict
5. Motion for a New Trial

H. Appeal

I. Enforcing a Judgement

J. Class Actions

IV. Alternative Dispute Resolution

A. Common Forms of ADR

1. Settlement
2. Arbitration
Example: *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105 (U.S. Sup. Ct. 2001)
3. Court-Annexed Arbitration
4. Mediation
5. Summary Jury Trial
6. Minitrial

B. Other ADR Devices

True-False--Circle T for True and F for False.

- T F 1. A long-arm statute gives a state court jurisdiction over any out of state defendant.
- T F 2. Federal jurisdiction for diversity of citizenship also requires proof that the amount in controversy meets statutory requirements.
- T F 3. The Supreme Court has the power to choose which cases it hears under writ of certiorari.
- T F 4. As a general rule, trial courts do not decide the facts but only matters of law.
- T F 5. X and Y are residents of State A. X wants to sue Y to determine the title to land located inside State A. Assuming that State A's trial courts have jurisdiction over this case, any county trial court in State A can decide X's suit.
- T F 6. An arbitrator's decision typically is binding on the parties, while a mediator's decision is not.
- T F 7. One of the purposes of the pretrial conference is to get the parties to stipulate to facts that are not in dispute.
- T F 8. When the trial judge decides to have the jury return a *general verdict*, the jury will declare which party wins the case and the relief, if any, to be awarded.
- T F 9. X sues to determine the title to land located in State A. Y, the defendant, has not been anywhere near State A in 30 years. For this reason, State A's trial courts lack jurisdiction over the case.
- T F 10. There is no procedural device for attacking a jury's verdict once it has been issued; the jury has the last word.
- T F 11. Once the plaintiff has filed a complaint, the defendant ordinarily must file a *reply* in response to that complaint.
- T F 12. Today, the amount-in-controversy requirement for federal question jurisdiction is \$75,000.
- T F 13. In order for a court to be the appropriate venue for a case, it must have jurisdiction. But a court can have jurisdiction without having venue.
- T F 14. In order to have jurisdiction over a case, a state trial court must have both in rem jurisdiction and in personam jurisdiction.

Multiple Choice--Circle the best answer.

15. Assume that a party from Indiana is involved in an automobile accident in Tennessee. The driver of the other vehicle is from Kentucky. Which courts would have jurisdiction over a dispute in this case if the Indiana party sues the other driver?
- Tennessee
 - Kentucky
 - Indiana
 - (a) and (b)
 - (a) (b) and (c)
16. Unlike state courts, federal courts:
- are courts of limited jurisdiction
 - can not rule on matters of state law even if the issue involves a federal constitutional challenge to that law
 - can only grant damages, not equitable remedies
 - can not be increased or decreased in number.
17. Which of the following motions, states that "the facts are not in dispute and the moving party is entitled to judgment as a matter of law?"
- The motion to dismiss.
 - The motion for summary judgment.
 - The motion for a directed verdict.
 - The motion for a new trial.
18. Which of the following is the pleading that the plaintiff often must file in response to the defendant's counterclaim?
- The reply.
 - The answer.
 - The affirmative defense.
 - The interrogatory.
19. X sues Y for breach of contract. Y wants to argue that he shouldn't be bound because X's fraud induced him to enter the contract. In civil procedure, Y's fraud claim is called a (n):
- Affirmative defense.
 - Counterclaim.
 - Reply.
 - Appeal.
20. Which of the following *will* give a state trial court the power to hear a civil case?
- Diversity jurisdiction and in rem jurisdiction.
 - Subject-matter jurisdiction and in rem jurisdiction.
 - In personam jurisdiction and diversity jurisdiction.
 - Long-arm jurisdiction and in rem jurisdiction.

21. Which of the following is not a recognized method of alternative dispute resolution (ADR)?
- The minitrial.
 - Court-annexed arbitration.
 - Summary judgment.
 - Summary jury trial.
22. Which of the following normally comes latest in the course of a civil case?
- The answer.
 - The motion for a directed verdict.
 - The motion for summary judgment.
 - The motion to dismiss.
23. Which of the following is true regarding the U.S. Supreme Court?
- In certain cases, it may act as a trial court.
 - It must hear every appeal directed to it.
 - It only considers cases between citizens of different states in which the amount in controversy exceeds \$50,000.
 - It only hears appeals from the other federal courts, and not from state courts.
24. Potter sues Davis for "aesthetic pollution." The basis for his suit is Davis's extreme ugliness. Potter's complaint details Davis's ugliness in many separate, numbered paragraphs. Potter's suit, however, does not stand a chance, because no legal rule requires one to pay damages for being ugly and for causing aesthetic dissatisfaction to some other party. Thus, Davis wants to defeat Potter's case as fast as possible. His *best* procedural device for doing so is:
- The reply.
 - The motion to dismiss for failure to state a claim upon which relief can be granted (or demurrer).
 - The motion for summary judgment.
 - The motion for judgment notwithstanding the verdict.
25. Which of the following motions can only be made by the defendant?
- The motion to dismiss.
 - The motion for summary judgment.
 - The motion for a directed verdict.
 - Two of the above.
 - a, b, and c.
26. In which of the following does the jury simply make findings of fact, after which the judge applies the law to those findings?
- The directed verdict.
 - The general verdict.
 - The special verdict.
 - The partial verdict.

Short Essay

27. What is the difference between a motion for a judgment NOV and a motion to discuss for failure to state a claim?
28. Suppose that, in response to P's suit for breach of contract, D raises P's fraud as an affirmative defense and also counterclaims for P's fraud. Suppose that P indeed did defraud D and that P cannot defend herself against D's affirmative defense and counterclaim. In each case, what does this mean for P?
29. What common characteristic is shared by in personam jurisdiction and in rem jurisdiction? What is the crucial difference between these types of jurisdiction?
30. Is it more correct to say that there must be jurisdiction before venue questions arise, or the reverse? Why?