

Study Guide to Accompany

BUSINESS LAW

Text and Cases



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ISBN: 0-15-505622-0

Library of Congress Catalog Card Number: 82-81961

Printed in the United States of America

PREFACE

This Study Guide is designed to supplement the text BUSINESS LAW: Text and Cases. Its purpose is to provide you with summaries, questions for review, and cases for analysis that can be used in conjunction with the textbook to broaden your understanding of business law and enhance your performance in the course. Approach this book as a guide to studying the text, however, not as a substitute for it.

Each chapter begins with a skeletal outline of the corresponding text chapter, followed by a section of key terms with their definitions, a set of review questions, and several cases for analysis.

The Study Outline section of each chapter offers a quick review of the chapter's major topics. Use it as an "organizer" to help set the chapter clearly in your mind.

Like all disciplines, business law has a vocabulary consisting partly of terms you may never have heard before and partly of familiar words that have special meanings in the field of law. To learn the subject you must learn its language, and this does not mean only memorizing short definitions. The Key Terms in Context and their definitions are scrambled. Hence they serve as a matching exercise to help you recall and rehearse these important concepts.

The Review Questions have two major purposes--to give you an opportunity to test your own knowledge and understanding of the chapter and to give you some warm-up practice for exams. Remember, though, that every instructor is unique. Don't assume that the questions here are representative of the kinds your instructor prefers. You will find answers to the Review Questions at the end of the chapter, so you can identify what you don't know. Page references to the text are included so you can find the answers to those questions you may have missed. To use the Review Questions effectively, study the chapter thoroughly before trying to answer them. Check your answers and, for each one you get wrong, go back and reread the appropriate parts of the chapter to find out why.

Because an understanding of business law cannot be reduced simply to a mastery of facts and terms, each chapter of this guide offers a concluding section called Cases for Analysis. These cases are similar in form and substance to those appearing in your text and to those you may eventually be called on to analyze in class and on examinations. The majority of the exercises in this section derive from actual cases in business law. Most require you to assess the legal implications of a suit or scenario and to respond, in the space provided under each exercise, with a discussion, analysis, or judgment. (An exception to this format is made in the early chapters, in which more traditional essay questions are occasionally substituted for actual cases.) Because your success in this course and, to a large degree, in your later use of law in business will depend on your familiarity with case precedents and with a wide range of business law applications, you are encouraged to give these practice cases your full attention. Answers are provided for most of these exercises at the end of the chapter.

We are proud of this guide to BUSINESS LAW: Text and Cases. We hope that it will help make your introduction to business law both meaningful and enjoyable.

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1 Nature and Sources of Law

STUDY OUTLINE

1:1 What Is Law?

- A. Functions of Law
- B. Law as a Dynamic Process
- C. Law as an Instrument of Business

1:2 Common Law and Equity

- A. The Courts of Equity
- B. Adaption of English Common-law and Equity Systems in the United States

1:3 Statutory Law

- A. Uniform and Model Laws and the Restatement
- B. Ordinances
- C. Treaties

1:4 The Constitution and the Federal-State System

- A. Supremacy Clause
- B. Delegated Powers Doctrine
- C. Necessary and Proper Clause
- D. Commerce Clause
- E. Protection of Rights of the Individual
- F. Flexibility of Constitution

1:5 Preventive Law in Business

1:6 The Attorney-Business Relationship

- A. Selection of Attorney
- B. The Fee Arrangement
- C. Attorney-Client Communication
- D. Privileged Attorney-Client Communications

KEY TERMS IN CONTEXT

- | | |
|--------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| _____ 1. Bill of Rights | A. A system of government under which governmental powers are divided between the central government and other self-governing parts |
| _____ 2. Common law | B. An attempt to minimize legal disputes and conflicts by making people aware of the legal consequences of their actions before they act |
| _____ 3. Delegated powers doctrine | C. The supreme governing document of the United States |
| _____ 4. Due process of law | D. The first ten amendments to the Constitution, which set forth express limitations on governmental power |
| _____ 5. Equity | E. "The principles of liberty and justice which lie at the base of all our civil and political institutions" |
| _____ 6. Federalism | F. A system of judge-made rules drawn from customs, traditions, business practices, and community standards |
| _____ 7. Law | G. The whole body of rules applied and enforced under the authority of established government in determining what conduct is proper and should be permitted and what conduct should be prohibited or penalized |
| _____ 8. Ordinances | H. Published opinions of the American Law Institute concerning proper rules of law |
| _____ 9. Preventive law | I. Model statutes in various areas of law which have been adopted, in whole or in part, by the state legislatures |
| _____ 10. Restatement | J. The process by which the Constitution grants specific powers to each of the branches of the federal government |
| _____ 11. Statutory law | K. Remedies granted by the Court of Chancery |
| _____ 12. Uniform laws | L. Laws enacted by the legislative body of a municipal corporation |
| _____ 13. United States Constitution | M. Laws which have resulted from legislation passed by state legislatures and Congress |

REVIEW QUESTIONS

- _____ 1. The body of rules which are applied or enforced under the authority of an established government to determine what conduct is proper and should be permitted and what conduct should be prohibited or penalized is called _____.

- A B C D 2. Which of the following statements about law is not true?
- (A) Law is society's means of establishing protection for the individual.
 - (B) Law is a way of providing a peaceful means of settling disputes.
 - (C) Law is timeless in that it exists independently of the society and time in which it operates.
 - (D) Law is the product of a pragmatic developmental process.
- _____ 3. Law is best understood by viewing the legal system as a _____ which evolves in response to society's need for guides to reasonableness and fairness of conduct in pursuing its needs and goals.
- T F 4. Law as an instrument of business is traceable to the law merchant, the forerunner of modern commercial law.
- _____ 5. The system of judge-made rules instituted by the Norman conquerors of England gave rise to the English system of _____, which forms the basis of the American legal system.
- A B C D 6. The Court of Chancery:
- (A) is the highest court dispensing common law judgments.
 - (B) could go beyond awarding monetary damages to require or prevent performance of certain activities.
 - (C) awarded only monetary damages for violations of legal rights.
 - (D) dealt solely with crimes against the state.
- T F 7. The English Court of Chancery was empowered to issue an order requiring a person to perform certain activities.
- T F 8. Because of the Revolutionary War, the American legal system bears very little resemblance to the English system.
- A B C D 9. The legal systems of all of the states composing the United States are based on the English common law and equity with the lone exception of:
- (A) Louisiana, whose system is based on French civil law.
 - (B) Alabama, whose system is based on French civil law.
 - (C) Florida, whose system is based on Spanish civil law.
 - (D) Pennsylvania, whose system is based on Dutch civil law.
- (a) _____ 10. In a "lawsuit," action is initiated by a (a) _____ who files a (b) _____.
- (b) _____
- (a) _____ 11. In an equity case, a suit is initiated by a (a) _____ who files a (b) _____.
- (b) _____
- T F 12. The decision of a law judge is called a decree, whereas that of an equity judge is called a judgment.
- A B C D 13. Business law is almost totally the product of:
- (A) common law.
 - (B) equity law.

- (C) constitutional law.
(D) statutory law.

T F

14. One of the major forces behind recognition of the need for uniformity of laws among the states was increasing interstate commerce.

_____ 15. In published opinions called _____, the American Law Institute provides statements of what it believes to be proper rules or interpretations of nonstatutory law.

T F

16. The Restatements of Law, published by the American Law Institute, constitute actual law and are so treated in the courts.

A B C D

17. Statutory laws enacted by the legislative body of municipal corporations are called:

- (A) treaties.
(B) corporate laws.
(C) ordinances.
(D) equity law.

_____ 18. A _____ is a written contract between nations which is attended with a great deal of formality, even though it may not follow a particular or prescribed format.

T F

19. Individual states may enter into treaties with foreign countries if Congress consents.

_____ 20. The framers of the United States Constitution sought to obviate the possibility of tyranny by dividing governmental powers between the central and state governments under a system of _____.

A B C D

21. In the event of conflict between the Constitution, laws, and treaties of the United States and those of any individual state, the pre-eminence of the federal power is guaranteed by the:

- (A) Necessary and Proper Clause.
(B) Commerce Clause.
(C) Delegated Powers Doctrine.
(D) Supremacy Clause.

A B C D

22. Congress passes a law empowering the executive branch to "promulgate whatever laws the executive branch deems proper to regulate the transport of farm products in interstate commerce." This law is most likely to violate:

- (A) the Commerce Clause of the U.S. Constitution.
(B) the Delegated Powers Doctrine of the U.S. Constitution.
(C) the Supremacy Clause of the U.S. Constitution.
(D) the Necessary and Proper Clause of the U.S. Constitution.

(a) _____

23. The specific powers of Congress are enumerated and limited under the _____ Doctrine but may be expanded when necessary in accordance with the _____ Clause.

(b) _____

T F 24. The Commerce Clause, which is read in conjunction with the Necessary and Proper Clause, specifically limits Congressional regulatory power to interstate commerce.

A B C D 25. Individual rights are primarily protected by the:
(A) Bill of Rights.
(B) Necessary and Proper Clause.
(C) Delegated Powers Clause.
(D) Supremacy Clause.

T F 26. The phrase "due process of law" refers to a specific rule of law governing the dispensation of justice.

T F 27. The sole function of law is to resolve disputes equitably.

_____ 28. _____ law seeks to minimize legal disputes and conflicts by making people aware of the legal consequences of their actions before they act.

T F 29. The most important role for the attorney in business practice is the adroit handling of courtroom litigation.

A B C D 30. A friend of yours asks for your advice about the most important quality to look for in selecting an attorney to help with business matters. You would tell her that she should find a lawyer who:
(A) is best at preventing legal problems from arising.
(B) is best at winning litigation.
(C) is most sympathetic to the concerns and interests of big business.
(D) is the most expensive, because such attorneys are the most successful and their fees are tax-deductible.

_____ 31. Attorneys who represent plaintiffs suing for damages are generally paid on a _____ basis.

_____ 32. Communications between a corporation's employees and the corporation's general counsel have been ruled _____ communications that are protected from forced disclosure in court action.

CASES FOR ANALYSIS

1. Sir Steven contracted to sell Squire Eric an albino mooseskin--the only one in existence. After Eric paid the purchase price, Steven refused to transfer the mooseskin. Under the old English common law, what should Eric do?

-
-
-
2. Wisconsin had a statute making it unlawful for any person under the age of sixteen not to attend an accredited school. Amish parents sought to exempt their children from such regulation on the basis of the First Amendment's Freedom of Religion clause. They asserted that their religion required children to be educated in the home after the age of fourteen. Does such an argument have any basis in law?
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3. The FCC, an agency of Congress, promulgated regulations which controlled the use of interstate microwave transmitters used by television cable companies. A cable company alleged that the regulations were unconstitutional, because such transmissions are not "commerce" as contemplated by the authors of the Constitution in drafting the Commerce Clause. What is the result in court?
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-

4. Larry Lawyer agreed to represent Bob Business in a suit against Big Company. The day before trial, Bob had still heard nothing from Larry about the case. On this day, Larry met alone with the owner of Big Co. and told him several things that Bob had told Larry in their one and only meeting. The owner of

Big Co. made a reasonable settlement offer which Larry rejected. Identify the issues involved here.

ANSWERS TO CHAPTER EXERCISES

Key Terms in Context

- | | |
|-------------|--------------|
| 1. D (p. 9) | 8. L (p. 7) |
| 2. F (p. 5) | 9. B (p. 10) |
| 3. J (p. 8) | 10. H (p. 7) |
| 4. E (p. 9) | 11. M (p. 6) |
| 5. K (p. 5) | 12. I (p. 6) |
| 6. A (p. 8) | 13. C (p. 8) |
| 7. G (p. 3) | |

Review Questions

- | | |
|---------------------------|---------------------------------|
| 1. law (p. 3) | 17. C (p. 7) |
| 2. C (p. 4) | 18. treaty (p. 7) |
| 3. process (p. 4) | 19. T (p. 7) |
| 4. T (p. 4) | 20. federalism (p. 8) |
| 5. common law (pp. 4-5) | 21. D (p. 8) |
| 6. B (p. 5) | 22. B (p. 8) |
| 7. T (p. 5) | 23. (a) Delegated Powers (p. 8) |
| 8. F (p. 5) | (b) Necessary and Proper (p. 8) |
| 9. A (p. 5) | 24. F (p. 9) |
| 10. (a) plaintiff (p. 6) | 25. A (p. 9) |
| (b) complaint (p. 6) | 26. F (p. 9) |
| 11. (a) petitioner (p. 6) | 27. F (p. 10) |
| (b) bill in equity (p. 6) | 28. Preventive (p. 10) |
| 12. F (p. 6) | 29. F (p. 10) |
| 13. D (p. 6) | 30. A (p. 10) |
| 14. T (p. 6) | 31. contingency fee (p. 12) |
| 15. restatements (p. 7) | 32. privileged (p. 12) |
| 16. F (p. 7) | |

Cases for Analysis

See page 407 of this book.

2 Court System

STUDY OUTLINE

- 2:1 Judicial Functions
 - A. Judicial Review
- 2:2 The Judicial Structure
 - A. Federal Court System
 - B. State Court Systems
 - C. Small Claims Courts
- 2:3 Nature of a Lawsuit
 - A. Pleadings and Service of Process
 - B. Discovery
 - C. Pretrial Conference
 - D. Settlement Negotiation
 - E. Trial
 - F. Appeal
- 2:4 Anatomy of a Judicial Decision
 - A. Case Citation
- 2:5 Basic Judicial Concepts
 - A. Jurisdiction
 - B. Long Arm Legislation
 - C. Standing to Sue
 - D. Class Action
 - E. Justiciable Controversy
 - F. Declaratory Judgments
 - G. Res Judicata
 - H. Stare Decisis
 - I. Deviating from Precedent
- 2:6 Arbitration: The Growing Trend

KEY TERMS IN CONTEXT

- | | | |
|-----------|------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| _____ 1. | Appellate courts | A. A private proceeding for the resolution of a dispute between two parties |
| _____ 2. | Arbitration | B. A "case law" decision that provides guidance for future cases |
| _____ 3. | Class action | C. The doctrine that judicial decisions stand as precedents or guidance for similar future cases |
| _____ 4. | Discovery | D. The stage in a lawsuit in which each party is provided the opportunity to acquire information about the other party's case prior to trial |
| _____ 5. | Judgment | E. Courts to which persons who have lost at the trial level may appeal for review |
| _____ 6. | Lawsuit | F. The posture of an individual who has an actual interest in a case and is seeking judicial relief |
| _____ 7. | Pleadings | G. A lawsuit filed by several persons on behalf of so many other persons that their voluntarily and unanimously joining in a suit is impractical |
| _____ 8. | Precedent | H. The court's actual decision regarding a case tried before it |
| _____ 9. | Res judicata | I. The doctrine holding that a court judgment is final and that no issues litigated in that case can be relitigated between the same parties |
| _____ 10. | Standing to sue | J. An adversary proceeding in which the person bringing the action--the plaintiff--and the person defending the action--the defendant--both seek to persuade the trier of fact that, under the facts of the case, the law entitles him or her to win |
| _____ 11. | Stare decisis | K. The complaint, answer, reply, demurrer, cross-complaint, and related documents filed by a person initiating or defending a lawsuit |

REVIEW QUESTIONS

- A B C D 1. Courts have the power to do all of the following except:
- (A) create new laws.
(B) interpret law.
(C) change existing law.
(D) create new legislation.
-
2. Courts are sometimes asked to rule on the constitutional validity of legislation under a process referred to as

T F 3. The U.S. Constitution provides that the U.S. Supreme Court has the power and authority to establish inferior courts.

T F 4. The Supreme Court has the power of appellate jurisdiction over all cases and controversies that come from a lower court.

A B C D 5. In the federal court system, the basic trial courts are called:

- (A) district courts.
- (B) Supreme Courts.
- (C) Small Claims Courts.
- (D) Courts of Appeal.

_____ 6. The Supreme Court's primary function is to _____ decisions of the lower federal courts or, where federal questions are involved, of state courts.

T F 7. Congress decides which cases will be heard by the Supreme Court.

8. List the four courts created by Congress to augment its legislative powers.

- (a) _____
- (b) _____
- (c) _____
- (d) _____

Match each of the three levels of state courts with its description.

- | | |
|------------------------------------------|--------------------------------------------------------------------------------------------------------|
| _____ 9. Trial courts | A. Courts to which persons may appeal cases lost at the trial level |
| _____ 10. Courts of limited jurisdiction | B. Courts in which litigation actually takes place through presentation of evidence to a judge or jury |
| _____ 11. Appellate courts | C. Courts empowered to hear cases in specialized areas |

T F 12. A federal court will not ordinarily interfere with the decision of a state court.

A B C D 13. The Supreme Court, at both the federal and the state level, would best be described as a(an):

- (A) trial court.
- (B) court of limited jurisdiction.
- (C) appellate court.
- (D) court of claims.

_____ 14. By emphasizing the use of _____, many states are seeking to provide a faster and less costly means of resolving disputes involving small sums of money.

- A B C D 15. Les claims Cy owes him \$75 from the sale of a bicycle. In determining whether to sue in a court of general jurisdiction or in a small claims court, which of the following factors should Les not regard as a relevant consideration?
- (A) expense of litigation
 - (B) availability of an appeal
 - (C) speed of adjudication
 - (D) true value of the bicycle
- T F 16. A lawsuit is essentially an adversary proceeding.
- _____ 17. The procedure of providing a defendant with a court-issued summons and a copy of the plaintiff's complaint is called _____.

- A B C D 18. A defendant who has been served with a notice of a lawsuit against him may bring an action against the plaintiff by filing a(an):
- (A) demurrer.
 - (B) reply.
 - (C) answer.
 - (D) cross-complaint.
- _____ 19. The complaint, answer, reply, demurrer, and cross-complaint are called _____.

- A B C D 20. In which of the following stages of a lawsuit is each party to the suit given the opportunity to acquire information about the other party's case prior to trial?
- (A) pleadings
 - (B) discovery
 - (C) pretrial conference
 - (D) settlement negotiation
- _____ 21. In the _____, the judge meets with attorneys representing both sides to encourage settlement of the case.

- T F 22. A trial always involves both a judge and a jury.
- T F 23. An experienced attorney may, after the pretrial conference, seek a settlement negotiation rather than going to trial.
- A B C D 24. All of the following statements about the appeal process are true except:
- (A) A party which loses in a trial court may appeal the decision to an appellate court.
 - (B) An appellate court begins its action by reviewing a certified record of the trial.
 - (C) After reviewing the certified trial record, the appellate court takes testimony from witnesses.
 - (D) The appellate court issues a written opinion which may reverse, modify, or affirm the trial court's judgment.