

Jurisdiction: exclusive v. concurrent: substantial minimal contacts
Appellate Court review of a Trial Court decision
Person: Reasonable v. Natural v. Legal v. Citizen
Police Power
Commerce Clause: pre- and post-1937
Supremacy Clause: preemption doctrine v. concurrent powers
Due Process: Amd. V (proportional notice and hearing) v. Amd. XIV (Incorporation)
Free Speech: Amd. I: political v. commercial
Search and Seizure: Amd. IV
Taking: Amd. V v. mere regulation
Privacy: not express: reasonable expectation of privacy
Amendment 14: Equal Protection Clause
rational basis v. heightened analysis v. strict scrutiny
Full Faith and Credit: Art. IV, Sec. 1 v. Amd. XI
comity v. Act of State v. sovereign immunity
choice of law v. venue v. forum v. language
damages
nominal v. compensatory v. consequential v. mitigate v. cure
exculpatory v. liquidated v. penalty v. punitive
Intellectual property
trade secrets
reverse engineering
patent: utility v. design v. plant
infringement
copyright: expression
fair use
trademark
reasonable likelihood of confusion: secondary meaning: v. dilution
concurrent
Torts
elements: duty, breach, causation, injury, and no defenses
actual cause v. proximate cause (reasonably foreseeable)
intentional
defamation v. disparagement
fraud
trespass v. conversion v. appropriation
wrongful interference
negligence
reasonable person: "consumer" v. "merchant"
strict liability
defenses (= yes, but ...)
assumption of the risk
Elements of Crimes: bad deed, bad thought, no defenses
separation of power

I v. G: burden of proof: asymmetric power
exclusionary rule & Miranda Rule
F v. S: double jeopardy
L v. E v. J: only legislature may create crimes
but, void for vagueness, contempt of court, & punitive dam.

Efficiency as Ethics
spillovers

Ethics: points of reference: obligation v. loyalty

Property

personal v. real

fixtures: intent (objective v. subjective)

easement v. profit v. license

deed: warranty v. quit claim: recording statutes: adverse possession

Nuisance: private v. public: public good

lease: residential v. commercial: habitability & duty to disclose

quiet enjoyment v. constructive eviction v. waste

bailment (not = contracts): possession without title

insurance v. gambling

insurable interest: life v. property

Types of Good Faith

"consumer": subjective (= Honesty in Fact)

"merchant": subj. (= HiF) & objective (= commercial reasonableness)

fiduciary (or utmost good faith): subj. & obj. (= personalized)

Contracts

elements

valid v. void v. voidable v. unenforceable v. severable v. reformation

promissory estoppel v. detrimental reliance

knowing: levels of capacity: ratification

voluntary:

mistakes) levels of material

common law fraud)

Statute of Frauds

contracts covered

parole evidence rule v. equal dignity rule

material terms: parties, time, consideration, and subject matter

signature

warranties

assign v. delegate

third parties; intended v. incidental: vesting

"Sale" of "Goods"

merchant: open terms; *firm offer*; additional terms v. *modifications*

identification v. passing title v. risk of loss v. insurable interest

perfect tender v. conforming goods v. cure

inspection v. rejection v. revocation of acceptance

warranties
 express v. implied: disclaimers
"goods" v. service v. product
Risk cannot be zero.
Aggregate information
error: design v. construction v. label
injury: person v. property
§402A
market share liability
Negotiable Instruments
 elements: note v. draft v. check
 primary v. secondary liability: sign v. indorse
 HDC, but FTC 3 day rule: HtHDC, but reacquisition
 defenses: personal (voidable) v. universal (void)
Secured Transactions
 security agreement: attachment: PMSI v. floating
 financing statement
 perfection v. priority
bankruptcy = exit
 automatic stay
 trustee's powers: preferential transfers
 7 v. 11 (w/ cram down) v. 13
 discharge: exemptions v. exceptions
Principal - Agent (not = contracts)
 P-A v. P-IC v. Er-Ee: what and how: control = liability
 within the scope of authority
 imputed knowledge
 notice and liability: "disclosed" v. *ratification v. termination*
 conflicts of interest
 confidential v. privileged
 professionals
 third parties and reasonably foreseeable consequences and reliance
Sole proprietor v. partnership v. corporation v. LLC
 unlimited personal liability v. limited liability
 taxation: number of "persons"
Partners
 "agreement": internal v. external effect
 general v. limited: material parties
Corporation
 roles and rights of shareholders, of Board, of Directors, of Officers
 derivative law suits
 Pierce the Corporate Veil
 Business Judgment Rule
 proxy v. tender offer

"Security"

issue v. trade
exempt issues
securities' fraud
insider trading: 10b v. 16b

Employment At Will: Amd. XIII

Work place safety

State: workers compensation: fast, favors employee, low payout
federal

OSHA: general duty clause: reporting

Equal Employment Opportunity

proportional to legitimate business interest
Protected classes
objectively qualified for job: BFOQ v. BF seniority
sex: pay v. harassment
reasonable accommodation

Unions

"management" v. "labor"
topics of good faith bargaining
mandatory v. permissive v. prohibited
proportional to legitimate business interest

Administrative Law

separation of powers: APA v. Enabling Act
rules as law
intelligible principle
arbitrary and capricious v. substantial evidence on the record

Consumer protection

advertising
products
lending, collecting, and reporting credit

Antitrust

FTC sec. 5: unfair competition v. unfair or deceptive trade practices
SA 1: contracts in restraint of trade
Rule of Reason v. *Per Se* Unreasonable Tests
Proportional to a Legitimate Business Interest
proportional = purpose, intent, effect, & power conferred
Minimum Efficient Size
SA 2: monopolization
CA 2: *price discrimination*
CA 7: *mergers and acquisitions*

Environment

Static and dynamic limits to ecosystem's regenerative ability
quantity and quality of pollution
Zero priced public good

geopolitical boundaries and standing to sue
water > air and hazardous waste > toxic products
CERCLA: lender liability and cannot abandon