



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