

Legal, Ethical, & Social Environment
BSAD 8010

Summer 2004
also note a fuller set of Key Slides in Spring 2003
Monday & Wednesday nights
Roskens Hall 214

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NOTICE
Each student is expected
to obtain and to sustain actual knowledge
of the contents of all of these slides.

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The law favors the objective over the subjective.

Both USA law and capitalism require knowing and voluntary.

The "reasonable person" is a legal fiction.

The law seeks to satisfy reasonable expectations based on what a reasonable person would have known at the time of action.

KNOWING	
actual knowledge	subjective
receipt of notice	objective
reason to know	objective

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Seeking to be objective, both contracts and evidence can be either express or implied.

When referring to contracts,

EXPRESS
all terms known by the parties'
WORDS
oral
or
written

IMPLIED
all terms known by the parties'
acts
words, and/or
circumstances

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Separation of Powers,
in order of importance,
from top to bottom and from left to right

Individual v. Government

Federal v. State

Within Government's Three Branches

legislature v. executive v. judiciary
makes law enforces law interprets law

JUDICIAL REVIEW

is the power to declare an act of either the
Legislative and/or the Executive unconstitutional.

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The law reacts to problems.

The legislature tends to act when:

1. unequal bargaining power;
2. history of abuse; and/or
3. disparate impact.

State's POLICE POWER

power of the State to regulate to protect the People's
health
safety
morals

and

general welfare

There is no federal Police Power.

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PROCEDURAL DUE PROCESS

notice

and

hearing

Both notice and hearing must be proportional
to the interest(s) involved life, liberty, and property

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FEDERAL GOVERNMENT
COMMERCE CLAUSE:
 commerce among the several States
 pre - 1937 direct Effect (result)
 transportation,
 but not manufacturing nor retailing

*post- 1937 close and substantial Affect (cause)
 transportation AND manufacturing*

core powers	tree	transportation
penumbras	shadow	manufacturing
emanations	breeze	retail

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Preemption is NOT favored,
 but MAY be allowed IF:

- 1) clear intent (silence?) of Congress AND national interests outweigh State interests;

OR

- 2) express intent of Congress AND need for uniformity.

CONCURRENT POWERS UNLESS DIRECT CONFLICT

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trial court: finds fact & applies law
appellate court: finds error & interprets law
 upon appeal, the appellate court will **AFFIRM**
 the trial court **UNLESS**

1. clear error of fact by the trial court
2. non-harmless error of procedure by the trial court, or
3. any error of law by the trial court

STANDING TO SUE
 injury in fact
 and
 within zone of protected interest
BURDENS OF PROOF
CRIMINAL: beyond a reasonable doubt
CIVIL: preponderance of the evidence

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CAPITALISM

ELEMENTS (means)	and	FUNCTIONS (ends)
private property		embody self interest
prices		measure self interest
markets		coordinate self interest
competition		regulate self interest
government		facilitates
		p.p., p., m., & c.

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SHUT DOWN RULE $TR < VC$
 which is the same as
 $TR/Q < VC/Q$
 which is the same as
 $P < AVC$

DESTRUCTIVE COMPETITION
 TR is persistently
 less than TC,
 but more than VC

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NON-PRICE DETERMINANTS OF SUPPLY	NON-PRICE DETERMINANTS OF DEMAND
# & size of sellers	# & size of buyers
horizontally sum	horizontally sum
costs for inputs	income
prices of related goods	prices of related goods
substitutes (A or B)	substitutes (A or B)
compliments (A and B)	compliments (A and B)
taxes	tastes
technology	expectations
expectations	

Technology is dynamic.
 Expectations are volatile.

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ELEMENTS OF A CONTRACT

- Agreement
- Consideration
- Capacity
- Reality of Assent
- Form
- Legal Subject Matter

ELEMENTS OF COMMON LAW FRAUD

- knowing
- intentional
- misrepresentation of a material fact
- justifiable reliance AND
- causing injury

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Statute of Frauds

IF

1. sale of "goods" of at least \$500
2. sale of land
3. **must** last more than one year
4. guarantee debts of another **OR**
5. in consideration of marriage

THEN

- written memorandum of material terms**
- parties (signature [s?])
- consideration
- time **AND**
- subject matter
- with sufficient definiteness**
- to support court enforcement**

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An "agent" **acts for and acts instead of the "principal"** when the agent acts **within the "agents" scope of authority.**

The "agent" is **not acting personally,** rather, the "principal" is acting.

every partner is **simultaneously a principal and an agent for the other partners** thus, **presumed equal division of profit and management**

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GOOD FAITH

consumer

subjective: honesty in fact

objective: objectively know nothing

merchant

subjective: honesty in fact

objective: commercial reasonableness

UTMOST GOOD FAITH

fiduciary duty

subjective: honesty in fact

objective: personalized objective

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GENERAL ELEMENTS OF ALL TYPES OF TORTS

1. duty of care

2. breach of the duty

3. injury

4. proximate cause

(i.e., legal, not factual, cause)

Proximate cause if the plaintiff's injury is
reasonably foreseeable by the defendant
at the time of the defendant's breach.

5. no defenses

ASSUMPTION OF THE RISK

knowing AND voluntary

RISK CANNOT BE ZERO

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REAL PROPERTY

nuisance

interfere with reasonable use and enjoyment

Eminent Domain

Power of a government to take
private property for a public purpose
upon due process and
payment of just compensation

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CRIMES
PLAINTIFF IS THE STATE

ELEMENTS

- 1. bad deed or *actus rea*
- 2. bad thought or *mens rea*
- 3. no defense

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Anti-trust law
Both the federal and the State governments make it both criminally and civilly actionable to **injury competition** or to **destroy competition**.

Rule of Reason
proportional to your legitimate business interest(s)
Covenant not to Compete
ancillary to legitimate business interest(s)
reasonable time and area
Nebraska: one year & one county

Per Se Unreasonable
price fixing, horizontal division of territories, group boycotts, tying

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NEGOTIABLE INSTRUMENTS
specialized contract that accepts all third parties

requirements of an instrument
must be **on the face** of the instrument

- writing
- signed by maker or drawer
- any mark
- with the current intent to authenticate the document
- unconditional promise or order to pay
- payable to order or bear
- fixed amount of money
- on demand or a definite time

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Security Interest
written agreement or possession
debtor sign
describe collateral to grant and
to allocate ownership interests
debtor has rights to collateral

Perfection of a security interest
Financing Statement
written
signature of debtor
describe collateral to put world on notice
of potential claims to ownership
name and addresses
debtor
creditor

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Hierarchy of laws and rules
controlling corporations:
USA Constitution
USA laws
USA regulations
State's Constitution
State laws
State regulations
Articles of Incorporation
Corporate By Laws
Board of Directors' Resolutions

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PIERCE THE CORPORATE VEIL

often a derivative lawsuit

shareholder and/or director made personal liable

lawsuit in equity
based on shareholder's or director's
fraud, illegality, injustice

thinly capitalized

ignored formalities

commingled assets

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BUSINESS JUDGMENT RULE

immunizes both Directors and officers
but to different degrees

requires the Directors and officers to
use their **best judgment**
to obtain **corporation's best interests**

no conflict of interests

Directors: disclose and **abstain**

officers: disclose and **obtain approval**

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BUSINESS JUDGMENT RULE, continued

Directors and officers are **not insurers**
no liability for honest mistakes
of an **informed decision**
(i.e., **required to seek out information**)
made **within the scope of authority**
upon a **reasonable basis**
using the **care of ordinarily prudent person**
in a **like position and circumstances**

officers
know or should know more
than Directors

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PATENTS protect **ideas**
reduced to physical practice

COPYRIGHTS protect **expressions** of ideas

TRADEMARKS protect marks that
identify
a source of goods or services

TRADE SECRETS protect
commercially valuable
generally unknown
information

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EXCLUSIVE COPYRIGHTS LIMITED BY:

FAIR USE (a major limitation),

1. **purpose** of copy
non-profit in-class educational use
2. **nature** of the work
books get more protection than data
3. **substantiality of the copying**
small portions versus whole
and (*but, in effect, an "and/or"*)
4. **effect on the market**
portion of the potential market for copies

Fair use is part of the **public domain**
during the duration of the copyright.

Parody is a constitutional right.

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SECURITY

is an investment of **money**
in a **common** enterprise
with a **reasonable expectation** of profit
with profit derived from the
undeniably **significant** (sole?) efforts of others.

SECURITY LAW FRAUD

1. **MISREPRESENTATION OR OMISSION
OF MATERIAL FACT** and
2. causing **INJURY**

material = reasonably prudent investor
would wish to know beforehand

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