Exam 1 Review

- This presentation contains the end of chapter questions that are contained within the chapter or topic PPT presentations during class (i.e., Chs. 1, 2, 3, 37 & 42) and some additional questions.
- Each slide’s “answer key” follows each set of questions.

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T/F

• The Constitution, statutes, and case law are sources of law in the United States
• Agency regulations, presidential orders, and treaties are sources of law in the U.S.
• Stare decisis refers to the doctrine of equity
• The Supremacy Clause states that the U.S. Constitution is the supreme U.S. law
T/F Answers

- True
- True
- True
- False. Stare decisis (to stand on the decision) refers to the doctrine of precedent. The doctrine of equity is applied by judges to achieve justice when legal rules would produce unfair results
- True
T/F

- Civil law establishes the duties an individual has to keeping a civil society
- Substantive law establishes how to enforce the rights and duties of people in society
- Jurisprudence refers to the philosophy of law as well as the collection of laws
- Legal reasoning is basically inductive
T/F Answers

• False. Civil law establishes duties between private parties.
• False. Substantive law establishes rights and duties of people in society. Procedural law establishes how to enforce the rights and duties of people in society.
• True
• False. Legal reasoning is deductive.
Multiple Choice

- The plain meaning rule means that the court applies a statute

  (a) according to the unique or special meaning of words
  (b) according to usual meaning of the words
  (c) according to public policy and legislative purpose
Multiple Choice Answer

- The plain meaning rule means that the court applies a statute
  (b) according to usual meaning of the words
Multiple Choice

- Courts are:
  
  (a) Limited to hearing existing cases or controversies

  (b) Limited to hearing cases in which plaintiff has standing (a direct interest in the outcome)

  (c) Unlimited in types of cases they may hear

  (d) All of the above

  (e) Both A & B
Multiple Choice Answer

- Courts are:
  (e) Both A & B
Thought Question

• What do you think the authors of the U.S. Constitution would think about current legal issues in our society?
T/F

- *In personam* jurisdiction refers to the court’s jurisdiction over the defendant, but in rem jurisdiction refers to the court’s jurisdiction over the property in dispute
- The burden of proof solely rests on the plaintiff
- Matters of law are determined by either the jury or the judge.
T/F Answers

• True
• False. The burden of proof begins with the plaintiff, but once a plaintiff proves a prima facie (on its face) case, the burden may shift to the defendant. For example, in an auto accident case, the plaintiff may prove the prima facie case by showing a police report that places the fault of the accident on the defendant and showing that the accident caused plaintiff’s injuries (property damage, physical injury). The burden then shifts to the defendant, who may raise a defense, such as contributory negligence.
• False. Only a judge may determine a matter of law. A judge OR jury may act as the trier of fact.
Multiple Choice

• Diversity jurisdiction refers to:
  (a) a jury pool that reflects the ethnic makeup of the city
  (b) a citizen’s lawsuit against the government
  (c) a lawsuit by a citizen of one state against a citizen of a different state
Multiple Choice Answer

- Diversity jurisdiction refers to:
  (c) a lawsuit by a citizen of one state against a citizen of a different state
Multiple Choice

- Methods of alternative dispute resolution:
  (a) Mediation
  (b) Arbitration
  (c) Summary jury trial
  (d) All of the above
Multiple Choice Answer

- Methods of alternative dispute resolution:
  (d) All of the above
Multiple Choice

• Discovery refers to:
  (a) the discovery that a dispute exists
  (b) the pre-trial process involving interrogatories, requests for admissions, and requests for documents
  (c) the analysis of fault in a dispute
Multiple Choice Answer

- Discovery refers to:
  (b) the pre-trial process involving interrogatories, requests for admissions, and requests for documents
Multiple Choice Answer

- After the verdict:
  (a) Either party may make post-verdict motions. Post-verdict motions include remittitur, motion for new trial, motion for judgment notwithstanding the verdict. If no motions occur, THEN the case ends.
T/F

- The Constitution establishes a tripartite government
- The federal government has exclusive power over matters of war and taxation
- States possess exclusive power to enact laws to protect welfare, health, and safety
- The Fifth Amendment prohibits depriving any person of life, liberty or happiness
- Federal supremacy means that the U.S. Constitution is the supreme law of the land
T/F Answers

• True; executive, legislative, & judicial
• False. Both federal and state levels of government have the power to tax.
• True
• False. (a) there is no Constitutional guarantee of “happiness.” (b) prohibition is against the government from “depriving any person of life, liberty, or property without due process.”
• True
T/F

- The Federal government may not interfere with interstate commerce
- The federal government may not restrict individual or commercial speech
- Constitutional limitations on governmental power includes the Fifth Amendment
- The “takings clause” means that the federal government cannot take away an individual’s freedom
T/F Answers

- False. The Commerce Clause provides that federal gov’t has power to regulate interstate commerce.
- False. A restriction on commercial speech is valid if it (1) seeks to implement a substantial gov’t interest, (2) directly advances the interest, & (3) is least restrictive method of achieving goal.
- True
- False. “Takings clause” refers to the prohibition against the gov’t taking an individual’s property without due process. Due process means (in this case) just compensation. The real issue, however, is almost always what compensation is “just?”
Courts apply a means-ends test to review an allegedly unconstitutional statute. Which level of scrutiny applies to a statute that gives benefits to people based on their religion?

(a) Minimal scrutiny
(b) Intermediate scrutiny
(c) Strict scrutiny
Courts apply a means-ends test to review an allegedly unconstitutional statute. Which level of scrutiny applies to a statute that gives benefits to people based on their religion?

(c) Strict scrutiny because the basis is religion, thus the law is presumed invalid.
Multiple Choice

- Substantive due process refers to a prohibition against:
  (a) Unreasonable procedures
  (b) Unreasonable laws
  (c) Unreasonable (unfair) results
Multiple Choice Answer

- Substantive due process refers to a prohibition against:

  (b) Unreasonable laws. Procedural due process protects from unreasonable procedures.
T/F

• In general, management decisions in a partnership are decided by majority rule.
• A general partnership is liable for a partner’s negligence.
• For contract obligations of an LLP, only the partners are liable.
• A partner with authority to borrow money has authority to issue negotiable instruments.
T/F Answers

- True.
- True.
- False. For contract obligations of an LLP, only the LLP is liable.
- True.
T/F

- Partners owe to the partnership and each other an ordinary degree of loyalty.
- Partners may compete with the partnership as long as it does not harm the partnership.
- A partner is liable to the partnership for losses resulting from gross negligence or reckless conduct.
- A partnership may sue in its own name.
T/F Answers

• False. Partners owe the partnership entity and each other the highest degree of loyalty.
• False. Partners may compete with the partnership only upon the consent of partners.
• True. A partner isn’t liable to the partnership for honest errors in judgment (negligence), but is liable for losses resulting from gross negligence, reckless conduct, intentional misconduct, or a knowing violation of law.
• True.
T/F

- The Revised Uniform Partnership Act (RUPA) is a model partnership statute.
- Partnership is an “association of two or more persons to carry on as co-owners a business for profit.”
- Partnership capital belongs to the individual partners in equal shares.
T/F Answers

- True.
- True.
- True.
- False. Partnership capital belongs to partnership as an entity.
Multiple Choice

- A partnership interest includes a partner’s:
  (a) Management and other rights participation
  (b) Share of profits and losses and right to receive partnership distributions
  (c) Ownership interest in partnership capital
  (d) both A and B
  (e) none of the above
Multiple Choice Answer

- A partnership interest includes a partner’s:
  (d) both A and B. (does not include ownership in partnership capital)
Multiple Choice

• Two accountants formed Caine & Able, LLP. The partnership and each partner was sued for Able’s alleged negligence. Who might be liable?

(a) Only Able due to his negligence
(b) Only the partnership, Caine & Able
(c) The partnership and Able
(d) The partnership and either partner, jointly or severally
• Two accountants formed Caine & Able, LLP. The partnership and each partner was sued for Able’s alleged negligence. Who might be liable?
   
   (c) The partnership and Able
Multiple Choice

A partner in a trading partnership has what type(s) of authority for borrowing money?

(a) Express authority
(b) Implied and apparent authority
(c) Actual authority
(d) Implied authority
(e) All of the above
Multiple Choice Answer

• A partner in a trading partnership has what type(s) of authority for borrowing money?
  (e) All of the above. A partner in a trading partnership (with inventory) has implied and apparent authority to borrow money for partnership.
Problem

- John, Gary, and Rob are active members of a partnership called Swim City. Swim City manufactures, sells, and installs outdoor swimming pools in NC and VA. Partners want to continue to be active in management and expand business into other states. They’re concerned about recent judgments against swimming pool firms in the US. Should they incorporate?
Problem

- Cecil Hill was in construction and did business as “C&M Builders, Inc.” There wasn’t actually such a corporation. County Concrete Co. supplied “C&M Builders, Inc.” with > $50,000 worth of concrete and wasn’t paid. Supplier filed suit in MD against Hill personally. Hill argued that because supplier thought it was doing business with a corporate entity, C&M was a *de facto* corporation and Hill wasn’t personally liable. Should Hill be allowed to avoid personal liability under the theory of corporation by estoppel?
T/F

- A promoter is always liable for contracts made during the preincorporation period.
- A U.S. business may incorporate in any state.
- A *de facto* corporation exists when promoters and incorporators in fact comply with each mandatory requirement to incorporate the business.
- *Warrants* are stock options evidenced by certificates.
T/F Answers

• False. A promoter will be liable for contracts made during the preincorporation period unless the corporation adopts the contracts made by the promoter (adoption) and the third party agrees to substitute the corporation for the promoter (novation).
• True.
• False. A *de jure corporation* exists when promoters and incorporators substantially comply with each mandatory (shall, must) requirement to incorporate the business. *De facto corporation*: exists when promoters fail to comply with all of the mandatory requirements, yet comply with most of the mandatory provisions.
• True.
T/F

- Preferred shareholders have the exclusive right to elect corporate directors and the exclusive right to dividend payments.
- For-profit corporations are financed only by issuing securities in the form of shares.
- The MBCA permits shares to be issued in return for any tangible or intangible property or benefit to the corporation.
T/F Answers

• False. Common shareholders have the exclusive right to elect corporate directors. Preferred shareholders may have the right to elect corporate directors only if the preference is stated. Preferred shareholders have preference over common shareholders with regard to dividend payments.

• False. For-profit corporations may be financed by issuing securities, obtaining bank loans, or short-term financing (e.g., inventory financing).

• True.
Prior to the mid-1800s, U.S. corporations were limited by law in terms of time and scope of operations.

A corporation is a fictitious, but legal, person.

Corporations may be classified only in terms of ownership.

Under the Commerce Clause, states have the power to regulate commerce within their state.
TF Answers

- True
- True
- False. Corporations may also be classified in terms of purpose, such as for-profit or non-profit.
- False. Under the Commerce Clause, the federal government has the power to regulate interstate commerce.
A state organized under Kansas corporate law is a domestic company when it operates within the state of Kansas and a foreign company in any state other than Kansas.

Cole Inc. is owned by two people. Each owner built a home with money obtained by a loan from State Bank to Cole Inc. The corporate shield provides absolute protection to both owners from personal liability for repayment of the loans.
TF Answers

• True
• False. Given this evidence, a court probably could pierce the corporate veil because the owners commingled corporate and personal funds.
Multiple Choice

- A state law that regulates business activities of a foreign corporation is constitutional if:
  (a) It serves a legitimate state interest
  (b) The legitimate state interest outweighs the burden on interstate commerce
  (c) It is the most burdensome means of promoting that interest
  (d) All of the above
  (e) A and B, but not C
Multiple Choice Answer

- A state law that regulates business activities of a foreign corporation is constitutional if:
  
  (c) It is the most burdensome means of promoting that interest
Multiple Choice

Which of the following activities meet the requirements for *doing business* in a state?

(a) Owning personal property as investment
(b) Maintaining a bank account for collection purposes
(c) Maintaining a storefront for product sales
(d) Soliciting product orders through a catalog
(e) All of the above
Multiple Choice Answer

- Which of the following activities meet the requirements for *doing business* in a state?

  (c) Maintaining a storefront for product sales. All of the other activities do NOT meet the requirements for doing business within a state for purposes of conferring jurisdiction over a foreign corporation.
End

- The chapters presented in class on critical thinking, ethics, and international law were not included in this review.