

## BCOR 320 Exam 1 Terms

Natural law: have understanding of what's right and wrong (ex: William Calley, Junior officer, had order to kill and capture people in ditch and killed them, he said he was only following orders, but he should have said NO because it was wrong)

Positive law: codes/rules written down by man; it's a systematic comprehension (federal codes-laws within own states)

Constitution-the keystone document, a body of principles that define the relationship between the government and the govern (when you go to court, you go to the constitution)

Statue-laws written by a legislature, federal=for country, state=for state

Regulation-created by government agencies to implement statues, created by executive branch, have the strength of law

Right: a legal capacity to require someone to do something or to prevent them from doing something

Duty: an obligation to perform or refrain from performing an action (NO SUCH THING AS A RIGHT WITHOUT A DUTY)

Common law: we decide every case the same as we did before, judges interpret the law and apply it

Precedent-our facts are the same as they were before, earlier decision given the same facts have the same outcome, controls almost always, and judges rule individual cases under pervious cases (stare diesis)

Stare diesis-how judges rule cases, synonym for precedent, how judges rule individual cases under previous cases

Five principles of US constitutional law:

1. limited government and popular sovereignty-power is from the people, choose who we want to run our country, we allow the government to do things
2. horizontal separation of powers

Article I legislature-sets up legislature for senate and House of Representatives

3 major powers (interstate commerce, taxing, spending supremacy clause)

Interstate commerce-has no national police power, but, can regulate interstate commerce (keep peace between states)

Tax-use taxes to influence our behavior

Spending-if you give money, it's owned federally (so federal judgment is used)

Supremacy Clause-says anytime a state law contradicts a federal law, **the federal law controls**

Article II executive-president, has no law making power (only legislature can do that), and are constrained by the constitution

Article III judiciary-supreme court

Limited jurisdiction-limited by the constitution and laws of congress (state law—has unlimited jurisdiction)

3. vertical separation of powers-we have a nation of states; federalism-states will have more power (idea); concerning a state law, the **state supreme court is highest**
4. checks and balances-powers are divided and then blended; judicial review-the courts have the power to invalidate, have the final say and no one is above the law

Marbury vs. Madison (Marbury: plaintiff/sheriff of county, Madison: defendant/security of state)-refused to give Marbury job, Sued because they were working against the law, court said have judicial law reviewed

5. individual rights and liberties-why our constitution is here, keeps government from the people (protection)

Bill of Rights: first 10 amendments to address complaints of our individual rights and freedoms, written by first congress (which have the same amount of the people that are in the first congress today), positive law, exists because we agree on it

14<sup>th</sup> amendment-3 parts

-no state can take away a privilege or immunity provided by federal law

-the government cannot take away life, liberty, or property without due process of law

Substantive due process-is the law fair? If the government passes a federal law that impact our **fundamental right** courts review under **strict scrutiny**

**Non-fundamental right-rational basis test**

Procedural due process-did the government follow fair procedures when using the law? Government has to treat us fairly, the must use procedure, that can't do anything without notice and a hearing

Strict Scrutiny/traditional basis tests

Strict Scrutiny test: fundamental right, government has burden of proof...they have to prove (1) compelling state interest and (2) no less burden to meet our objective  
non-fundamental right: judiciary congers to government, burden of proof lies on the challenger...they have to show there is no relation between law and objective

Burden of proof-who has to prove the case, have the evidence

Equal protection-no sate shall deny anyone equal protection of the law

Suspect Classifications-anytime the government sorts us...based on gender, race, national origin, age, disability, religion goes under review of strict scrutiny test; if government sorts under nonsuspect classification (ex-economic status) goes under review by rational basis test

Fundamental rights-

- Express: rights specifically stated in the constitution (ex: religion)
- Implicit: right to support the express right, implied (ex: gathering of religious groups)
- Unremunerated rights: judicial activist making something up, traditional/values/reason created by court and forced (ex: stand on birth control)

First Amendment-freedom of religion: government must be neutral in regards to constitution, the government (1) can only be secular (2) it may neither enhance nor prohibit any religion (3) government may not get entangled in religion (explicit right); freedom of association-implicit right, can gather, ex: government cant break up a church meeting; freedom of press: implicit-writer can keep her notes, doesn't have to show them to government

Federal court jurisdiction

Diversity jurisdiction-if you have citizens from two different states and the amount is greater than \$75,000 then you can go to federal court

Federal question jurisdiction-when question a federal law, the parties are litigating a question to federal law or the federal government is a party of the lawsuit

Federal/State court system-you have establish facts of dispute where you admit the crime or deny it and try to resolve the alleged fact in court

In WV: supreme Court, circuit court (trial courts-what you see on TV), minor court (parking tickets)

Standing-have to have a personal stake in the matter, about to suffer harm of have suffered harm

Jurisdiction-the power to hear the case (federal courts do not have the power, only have limited jurisdiction)

Venue-are you in the proper location to have the case heard?

Trial court- one shot to dispute, once you resolved you can't do anything but dispute the law, put your facts on, resolve the facts then you are done! It's the battleground where we result the dispute of facts

Complaint-is filled into a court that can listen to it in the right (plaintiff)

Answer-admit/deny the facts

Discovery-no one gets surprised, both parties are entitled to get info from the other side by: (1) deposition-sworn testimonies under court (2) interrogatories- written request for documents (3) documents

Mediation-where parties attempt to settle their dispute with the assistance of a mediator, informal, without judges, parties maintain control

Arbitration-court case, arbitrators will make a decision about the facts-binding: have to do it, nonbinding: parties agree/disagree

Tort-life law, what was, interference with another's person or property in result of damages, objective: avoid injuring others, make victims whole, and punish the wrongdoer.

Definition-law that promotes/enforces an item of care

Elements-(1) you have some duty to an injured person

(2) If you fail to meet that duty, you breach element of reasonable care

(3) Causes injury

Negligence

Definition-failure to meet that care and results in harm

Elements: (1) did I have a duty to act reasonable and not harm someone else?

(Question of fact, not duty)

(2) Did the defendant's action satisfy the standard (breach)?

(3) But for the plaintiff would have been harmed anyway? (Is the

defendants act cause for injury?)

(4) Injury

When owner of a business:

-Invitee-if someone walks into your business for business purposes, your highest duty of care is to protect the invitee

-Licensee-if someone is coming into store to talk to employees, enter for own reasons, social guest; duty is not as high, but you must refrain from negligence

-Trespasser-only gets protection from intentional harm

Contingent fee-if someone suffers an injury, you go and sees a lawyer; lawyer makes a fee with plaintiff; the lawyer will undergo all costs and is paid only when awarding cases; if lawyer proves damages they get a % of the win

Contributory negligence-if you are a part of any of the injury, you will get nothing (plaintiff)

Comparative negligence-we recognize that the injured party was part of the injury; it will be rewarded though partially to all of the cause

Assumption of risk-plaintiff: knew the risk and chose to act anyways, what she suffered she cannot get compensated (aware of the risk but did it anyways, voluntarily assumed the risk)

Disclaimer-a potential tort defendant denying liability if anything happens (a notices of risk that we are not responsible for); putting you on notice that you're assuming the risk

Good Samaritan-we have statues that encourage rescue; you have no duty to help but if you do are you liable if something else happens? NO, because of the Good Samaritan law, encourages rescue even if there is no legal obligation to do so

False imprisonment-obtain someone without their consent, frequently in shoplifting cases; you may only obtain someone for a “reasonable” amount of time. It leads to...  
-Assault-fear of imminent bodily harm (ex: when a person raises their hand to hit you, its that fear that you will be hit)  
-Battery-a harmful or objective of touching of someone; ex: the actual hit, delivery of the fear/harm

Intentional infliction of emotional distress-IIED, if your conduct is so extreme or outrageous that it causes someone emotional distress (ex: a girl with the invisible bathing suit, suffered embarrassment and emotional distress from the host of the party)

Defamation-an untrue statement about another person

Slander-spoken defamation

Libel-written defamation

Elements: 1. an untrue statement about a person’s character

2. Told to a third party

3. Which causes damages

-if you’re a public figure you also have to show...

4. Malice-knew it was false or recklessly disregarded the truth

Wrongful interference-predatory behavior that is unacceptable that may give rise to wrongful business interference within business relationships

-competitive behavior is ok, but don’t divert them to your business by bashing another

Product disparagement-false statement about a product to a third party, you’re liable

Res ipsa loquitur

Crime-a wrong that violates public standards of morality that is defined by our public codes of reality, a wrong against society

Classifications (3):

1. petty crimes-summary offense (parking/speeding ticket)

2. misdemeanors-crimes that are punishable in prison for up to a year

3. Felony-includes punishment of longer than a year, even the death penalty in some cases.

Meas rea and act

Every crime has 2 elements:

(1) Meas rea Act-did you voluntarily do that act?

(2) The act itself

(3)

General intent crime- we don't care about the motive, only concerned with the forming of the intent (mens rea), the state does not have to prove the motive

Specific intent crime- the state has a higher burden of proof, have to prove the motive and the purpose (what was intended); ex: conspiracy-2 or more people agree to commit an unlawful det-fraud-general intent, conspiracy-specific intent)

4 mental cases

1. purposefully/intentionally committing the act, malice of forethought
2. Knowingly doing something-you are reasonably sure you know that it (the act) will cause harm
3. recklessness-disregard of the risk that you know is present (ex: hunting, any time you pull a trigger you know of risk)
4. negligence-carelessness, ignoring risk

Vicarious liability

Respondent superior-in business crimes, you can hold liable even if you did not participate in the crime. You have criminal liability imputed (assigned) to you. If you can prevent the crime and you didn't you can be held responsible; **a corporation can be liable for the acts or nonacts of its officers, agents, and employees.**

Responsible corporate officer-you may be assigned liability (personally) if you know about the crime and/or do not prevent the crime from happening.

Conspiracy-2 or more people agreeing to commit an unlawful act; it's never a defense to say "I was just doing what I was told"; a crime whether the plan works or not, the crime succeeds

Defenses-most go to mens rea; trying to prove that the person could not form the voluntary thoughts/ intents

Infancy-impossible for a child to form/intent "evil mind" to commit a crime

Intoxication-"I was drunk"; this is never a defense if you voluntarily intoxicate yourself and commit a crime

Involuntary intoxication-getting something slipped in your drink, this a defense but hard to get jury to believe you

Insanity-self explained

Mistake of fact-this negates the mens rea; you should know the law

Self defense-you can't use deadly force to protect property-only to protect life and limb or your family's life and limb-protects you from imminent bodily harm

Larceny-taking of property of another with the intent to deprive the owner of that property

Robbery-taking property by force

Forgery-make or alter a writing that alters another's legal identity/status, the instrument being forged must have some legal power

Uttering-you deliver the forgery with the intent to commit fraud

Perjury-never lie to you lawyer and never lie in trial; false testimony in a judicial proceeding

Embezzlement-employee stealing an employer's money

4<sup>th</sup> amendment-protects from unreasonable searches/seizures of your private property; protects your privacy

Probable cause: good reason to believe that evidence exists

Reasonable exception of privacy: what probable cause protects

5<sup>th</sup> amendment-protection from being a witness against yourself, only applies to individuals not corporations

6<sup>th</sup> amendment-the right to due process and a speedy trial, right to be heard, right to impartial jury

Contract law-an agreement between parties creating rights and duties; people negotiate to get what they want to need; do business law as you see fit (a framework in which we get what we want and need); a framework where we solve business disputes

6 elements of contract

1. agreement-in law called offer and acceptance
2. has to be between competent parties
3. must be based on genuine assent-meeting of the minds
4. contract has to be supported by consideration
5. for a lawful purpose
6. form required by law

\*\*must have all 6 that the law says is enforceable

Amoral-have no morality, to enforce a standard of fairness, we are not going to punish anyone for making a product, nothing will be held against you (except reputation)

Express contracts-those contracts made in writing or orally (ex: painter painting your house on verbal agreement, if you meet with them and say nothing but they paint anyway-still express contract)

Implied/Implicit contract-a contract created out of the conduct of both parties (ex: parking authorities paint lines/machine, you make implied contract when you park there)

Executed contracts-contract is fully carried out to satisfy both contracts

Executory contracts-there is still rights/ duties to be performed

Negotiation→6 elements→executory (perform) →executed

Bilateral contract-contract in which contracts are made and promises exchanged about future dates, an exchange of promises

Unilateral contract-a contract to induce performance (ex-run in race and the winner gets reward, you have a contract to perform), just looking for performance, not exchange of promise, it's a promise causing an act

Option contract-one in which you agree to hold an offer open for some period of time; still have to have 6 elements; common in property contracts; have to pay for it

Offer-someone manifesting serious intent in making a binding contract, a statement of intent to engage in a binding relationships including terms (minimum terms of offer: subject matter and quantity)

Acceptance-any reasonable acceptance method

Revocation-at any time when offer is taken away, before offer has been accepted (change your mind before deal has been made), taking back an offer prior to acceptance

Meeting of the minds

Mirror image rule-you have to accept exactly what's offered to create a contract, if you change it=counteroffer

Counter offer-destroys an original offer, changes terms of original offer, distinguishes it (Ex: offer: car; counteroffer: yes, car with a trailer)

Objective/subjective theories

6 elements of a contract

1. agreement (offer + acceptance)
2. between competent parties
3. based on genuine assent
4. has to be supported by consideration
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6. form required by law

Agreement:

Counter offer: make an offer, then you make a different offer (but the first offer is terminated after you make the new offer); questions do not terminate an offer

Mirror image rule: can only accept what is offered

Between competent parties:

Capacity-you must know what is going on, that you're entering a contract and the consequences with it

Status incapacity/status incapable-when the law says you don't have the capacity, ex: infant rule (if a 17 yr old enters a contract, if he changes his mind, contract is void)

Factual incapacity/in fact capable-when it is not possible due to some fact for the person to know they are entering a contract or the consequences

Ex: intoxication-if they enter a contract drunk, its void when they are sober, if you know they were drunk, contract is still void

Ex: mental disorder: don't know or understand that they are entering contract/consequences are void; the representation of that person can void it as well

Based on genuine assent:

Meeting of the mind/ mutual assent-both parties have agreed to the same contract with the same terms

Unilateral mistake-when only one of the parties is mistake about facts relating to the agreement (do not void contract)—exception: the nonmistaken party knew it was a mistake

Mutual mistake of fact-both parties make a mistake about a fact of the agreement, has to be the same fact, it's voidable (ex: cow is pregnant, but they thought it couldn't get pregnant and sold it because she was useless, buyer found out she was pregnant—mistake of fact)

Mistake of judgment-when a party to a contract has an incorrect belief about a decision, conclusion, or opinion of the contract (ex: dealer believes car is in good condition, later it breaks down, seller at fault but it is not voidable because it's a mistake of judgment)

Fraud-misrepresentation of a material fact; lying about a critical element of the agreement...contract is voidable (3 forms-1) misrepresentation, 2) failure to disclose, 3) actively concealing)

Puffery-"blowing smoke"; a representation of an opinion that may not be truthful; contract is nonvoidable

Disclosure-if the problem can be found through a reasonable inspection, you do not have to disclose it; if the problem cannot be found through a reasonable inspection, you have to disclose it; (ex: actively concealing-concealing a material fact, concealing the fact that you have a leaky roof with a coat of fresh paint on the walls)

Consideration-by the terms of the agreement what is determined and gained, how much value is surrendered? Should be legally sufficient (some exchange in value); must have either exchange in promises (bilateral) or performance (unilateral) and performance for exchange (basis of a contract)

Past consideration-something's already happened, promise made for events or actions or performances that have already been made (it's a gift)

Pre-existing duty-trying to renegotiate a contract, already obligated to a duty under a contract, would be a gift, this is where athletes abuse the contract (football players, go to president and ask for more money)

Forbearance- giving up something that you would otherwise have a right to do; voluntarily restricting your freedom in exchange for a promise (ex: your rich uncle asks you not to date while in college and he will give you \$10,000 at graduation, you don't and get the money)

Gift-an exchange of value without consideration, a voluntary transfer of property from transferor to transferee (must have a promise and delivery)

Conditional gift-engagement ring, give you a ring with a promise to get married (gift becomes final when the condition is met)

Unjust enrichment-common law; an equitable theory that has 3 elements: (1) plaintiff confers benefit to the defendant (2) defendant accepts/rejects (3) unfair

Unconscionable-one that is so unfair that it shocks the court and the court will not enforce it, where the terms are unreasonably favorable to one side

Contract of adhesion-an Unconscionable contract out of one party has more power than the other (ex: contract to be paid at \$14 but the law only requires \$9/hr, so they say if you want your job you have to give the \$5 kickback to the company)

Usury-how the law sinks to the lowest common denominator; a legal rate of interest for a loan

Non-competition clause-in employment contracts; says that you may not compete with us for sometime after and employment with a specific company, only is important when there are important trade secrets with clients

Statute of frauds

Surety

Plain meeting rule

Parole evidence rule

Rules of interpretation

Discharge

Conditions subsequent and precedent

Time of performance-"time is of the essence"

Impossibility

Fungible