

BCOR 320 Exam 3

Intellectual property-results from the creative process

Trademark-any distinctive mark (logo), product distinctions (ex: beetles record label [apple]), logo must be distinctive and registered with the patent office (ex: honey brown)

Product dilution-losing power of distinct emblem

Copyright-tangible idea, protect the way an idea is expressed, long period of time where the creator makes money from the idea

Infringement-unauthorized use of copyright infringement, get actual damages and statutory damages

-if you use a copyrighted work for a nonprofit or educational use-free pass

Patent-give an inventor exclusive right to make, sell, or use the invention (for 20 years); must file for a patent, show that idea is genuine, novel

-once you tell people how to do this invention then the patent right is given up

Trade secrets-body of law that protects ideas and their protection can be protected by contract, customer lists, plans etc.

-protected by common law (Uniform trade secrets Act)

Economic espionage act-federal law makes theft of trade secrets a federal crime (selling, divulging, or possessing) 10 years in prison, \$500k fine

Anti trust law-promotes interstate commerce, body of law, federal law; protect and preserve competition

Monopoly-big enemy to antitrust law, the existence of extreme market power in one entity or a collective, has the ability to affect the price and output, anti-competition

Important families

- Vanderbilt-owned railroads
- Rockefeller-owned oil
- Carnegie-steel
- J.P. Morgan-banks

Sherman act-federal law, we are going to protect the public from monopoly, and any combination of free trade

-we are going to protect free trade

-not going to have horizontal trade-across the market, restraint on competition when rival companies make an agreement about a price (price fixing), also is horizontal market fixing, and we are not going to have vertical trade-any product from raw material to sale, restraint on trade, agreements down the vertical chain

Clayton Act-passed in 1914, prohibits price discrimination-you cannot use price to drive a competitor out of the marketplace (have to have a reason for the price difference)

Exclusive dealing contracts-if you buy our product, you cannot buy other people's product-tying

FTC-federal trade commissions act, prohibits unfair methods of competition that affect commerce and unfair acts of commerce are prohibited, they decide your fate

Negotiable instruments-a signed writing that makes an unconditional promise to pay someone

- 2 types: (1) checks-substitute for money, orders to pay
- (2) Promissory note-a written not, IOU

Check-unconditional order to pay money

- Drawer-person who writes check→orders drawee bank→to pay payee
- it is a principal-agency agency-3 parties are involved, called the demand draft
- cashiers check-bank draws check on itself, bank both drawer and drawee
- certified check-bank accepts it in advance

Overdraft-writing a check without the available funds, NSF check, can refuse to pay it
Stale check-check date older than 6 months, banks can refuse the check and not pay it
-Stop payment-if you suspect fraud, need valid reason, bank can refuse the stop payment order

Forged checks-banks liable unless you have the negligence, you have the duty to examine your bank statement, you have 30 days to identify forgery

Altered checks-did your negligence contribute? If you leave blanks/pencil, yes.

Secured transaction-guaranteed payment of the debt usually secured by collateral (car, house)

- secured party-creditor, person lending the money, holds the security interest through collateral
- Debtor-person who owns the money
- Security agreement-issued by the debtor which creates a security interest to the secured party (collateral-security interest, car, home)
- if the debtor defaults-secured party can levy the secured interest

Possession of collateral-take materials, sell it, and pay what you can
sale goes to—(1)repot costs (2) balance of the debt (3) any other creditors-get their portion (4) excess money--debtor

Lien-security interest granted over an item of property to secure the payment of a debt (ex: mortgage on your home)

Mechanics lien/artisan's lien-a security interest in the title of the property for the benefit of those who have supplied labor or materials to improve that property

-automatic right

-ex: mechanic can keep your car until you pay him

-created automatically but you have to file to collect (if you refuse to pay)

Innkeeper's lien-hotel owner can keep any property you bring until you pay your bill, a lien allowing the innkeeper to hold your personal property as security interest for your debt

Foreclosure-a legal proceeding in which a real creditor sells or repossess real property due to the owner's failure to comply with an agreement, typically with mortgages

Surety-a person who agrees to be responsible for the debt of another (ex: cosigner)

Guaranty-agreement in which a person becomes a surety (written agreement)

Bankruptcy-a legal inability to pay debts, 3 chapters

Ch. 7-liquidation bankruptcy-sell everything, other debts are erased, goes on credit history

Ch. 11-reorganization bankruptcy-for businesses, retain assets and help you develop plan to pay, goes on credit history

Ch. 13-reorganization bankruptcy for individuals-retains assets and come up with plan to pay, goes on credit history

-----GET NOTES FOR THE FRIDAY BEFORE SPRING BREAK HERE-----

Clean Water act-create a sustainable environment (so that we do not have to improve it later)

-the most successful environmental legislation act in history

-environmental law

-started by a riverside fire in 1972 (Nixon)

-prohibits the discharge of a pollutant to any water in the US without a permit

Pollutant-almost anything (heat, sediment)

Point-source-any discrete conveyance into water (pipe, ditch)

Non-point source-uncontrolled run off

NPDES permit-clean water act-permission to discharge from a point source-the discharge of any pollutant unless in compliance with permit and accordance with clean water act

Assimilative capacity-ability of water to take pollution and clean itself (ex: beaver dam, how the water cleaned itself is now gone, so a decrease in assimilative capacity)

-public property (we all own it)

Water quality standards-3 elements

1. Designate the use of the stream-designates pollution level, how do we protect it?
(ex: native trout stream, has the highest standards of protections)
2. Water quality criteria-criteria to protect the designated use
3. Antidegradation policy-to not let anyone touch, protect the stream from being degraded

-if you violate the clear water/air act you are subject to prison/fines, it is a federal crime
-Citizens suit provisions-if you see when the act was being written and the government fails to enforce the act, you can enforce the clean air/water act

Safe drinking water act-federal law to protect public health to regulate drinking water supply and to protect the source of the water
-fund development for water protection

Environmental justice-no socioeconomic group should have to bear a disproportionate share from unfair share of negative waste (poop)

Relationship between employee and employer is contractual relationship

3 categories of employment:

- individual employment contract-rarest, a lot of bargaining power
- collective bargaining contract: union contract, in which a representative of employees negotiates terms for the employees (management-nonunion, employee-union) ex: work identification promotion, wage and benefits, etc
- employment at will: someone who in theory can be fired at any time, for any reason, or for no reason at all OR someone who can leave at any time, for any reason or for no reason at all

Exceptions:

- Discrimination-can't fire someone based on race, gender, religion, age
- Can't fire someone to avoid contractual obligations (ex: to avoid paying the retirement obligation)
- Whistleblower-someone who participates in public policy

NCRA-protects ability of workers to organize, join unions, and collectively bargain (1935), you may not discriminate against employees because of union activity

NLRB-national labor relations board, panel of 5 appointed by president, decides what unfair, certifies unions

Right to work law-you may not make union membership mandatory for a job

Strike-if collective bargaining fails then you can reach an impasse. Union works refuse to work, reasons (1) economic-no guarantee of retaining jobs, (2) work condition-when strike ends union members get jobs back

Reemployment rights

Picketing-public protest at employer's place of business

Employment rights:

1. Timely and complete compensation

-wage payment and collection act-employee is entitled a payment every 2 weeks and company cannot automatically deduct things (avoid wage slavery)

Fair labor standards act-federal, defines minimum wage, overtime, and child labor

Overtime

-Salary exempt-exempt from getting paid OT (exec, admin, outside sales, supervisors)

-Non salary exempt-gets OT, any hours over 40 get at least time and a half

ERISA-protect employee pension plans

Fiduciary-agent for employees paying into the fund

Vesting-right of employee to keep the money the employer put into the plan

Unemployment compensation-wage replacement for employees who lose their job through no fault of their own

-must make yourself available for work

Employee privacy-employees are entitled to reasonable expectation of privacy

-may listen to employees phone call to determine if its business or personal

-tell employees computer is for business purposes and we will monitor your use

-look at employee's workspace and decide what expectation the employee should have of privacy

Drug and alcohol testing

-For cause-someone comes into work apparently impaired

-Random-if employee is in a safety sensitive position

FMLA-family medical leave act, it is for people who need to leave work under serious health conditions (1993)

**applies to companies with only 50 employees or more

**you have to have been working there at least a year to qualify

-you get 12 weeks of unpaid leave for

1. Serious health condition you may be suffering

2. Someone in your family that you need to care for (spouse, parent, child)

3. Pregnancy or adoption

-your benefits continue and you get reemployment rights only for 12 weeks

-you have to be ready after 12 weeks or your not guaranteed your job-employers have a choice to work with you for long, but not a duty

Non-competition agreement-contract law

- private contract agreement under you and your employer
- employee is faced with individual employment contract not to compete
- will only enforce narrowly
- restricts you from hurting the employments business after you leave under 2 conditions:
 1. Not to compete
 2. Non piracy-you can compete but you can't use any of our info (more restrictive)
- if overly broad or punishable, it won't be enforced

OSHA-federal law (1970), establishes health and safety standards and enforces those standards

- employers duty: to keep the workplace free from hazards that may cause death, injury, or illness; must keep record of death, injury, or illness
- dept of labor inspects companies and makes the rules (these are the people you go to if you have a problem)

EMPLOYEE DISCRIMINATION

Civil rights Act of 1964-end of institutional discrimination

Title 7-focuses on employment discrimination, applies to companies with 15 or more employees, and says that employee discrimination is illegal

Employee discrimination-treating employees or applicants unequally by:
protected class, disability, or age

Protected class: -race/color

-religion

-gender/sex

-national origin

-you may not make a decisions base on any of these

-but there are some exceptions...

Bona fide occupational qualification-BFOQ, what we use to allow discrimination, when you may discriminate, the exceptions!

Employment discrimination:

Race/color: 4 races-black, white, Asian specific, Native American; you CAN NEVER discriminate in any way with race

Religion-has the employer made a decision that hurts the employee because of religion? Has that employer not allowed the employee to practice their religion? These are the questions at hand; as the employer you need to practice REASONABLE ACCOMODATION

Gender/sex: if you use gender as a hire, fir, or promotion is in order; we mask this with physical attributes (if you can't do x number of pull ups you can't be in airborne school), these are false attributes requirements that exclude women, we do not allow but there is a narrow exception

National origin: may be some exception but non in case law

-may also discriminate based on seniority-based on years of experiences; this is discrimination that is allowed.

Theories of discrimination:

Desperate treatment (preferred theory) by plaintiffs, member of a protected class (race, religion, national origin, gender, age, disability)

-applies for or is qualified for a promotion is the rejected then job is filled by someone in a nonprotected class

Prima facie-will get to the jury

Shifting burden of proof-plaintiff goes first, then shifts to defendant to show that the hired person is better qualified, back to plaintiff to show no the reason they hired the nonprotected class candidate is a lie

Dispart impact-statistics case, showing averages in jobs (neutral practice significantly impacts a protected group)

Ex: employee reduction, 45% female workforce, the reduce force by 75% female- doesn't reduce equally

Victorious plaintiff-

Reinstatement/hired

Back pay (set-off)

**impact and treatment only

Seniority

Fees/costs to pay for lawyers

Also with disparate treatment you receive-COMPENSATORY & PUNITIVE damages as well

Equal Pay Act 1963-women get paid the same as men-if a woman is doing=work in a job that requires=skill and effort and jobs are performed under similar conditions

-any differential not based on gender is acceptable

ADEA-age discrimination act-protects people cover age 40, get double damage awards (back pay and benefits)

ADA-Americans with disability Act

-employers must make a reasonable accommodation for your disabled employees

-as long as the employee/applicant can perform all required duties with reasonable accommodations

EEOC-equal employment opportunities commissions

-5 people committee appointed by the president

-You believe you suffered employment discrimination

-180 days to report claim to EEOC

-EEOC issues a right to sue letter means you can be heard in federal court

-then you have 90 days to take the claim to court

Affirmative Action-started by executive order (not passed by congress)

-2 ideas:

1. compensation for historical injustice
2. diversity among elites (responsible for another)-benefits society

**Now only allowed to remedy past discrimination, you can only have affirmative action in instances where there has been past discriminated

-special effort to hire and help advancement of minorities (traditionally disadvantage classes)

Sexual harassment-gender based discrimination not about sex, but about POWER

Quid Pro Quo-something for something-most serious (ex: given a promotion for having/giving sexual favors)

Hostile work environment-conduct in the workplace causes great anxiety in the workplace

*****GET NOTES*****

Real property-land and things that grow or are fixed to the land

-things that are bolted to the floor are also included

-Latin: in rem

Personal property-everything that is not real property

-Latin: in persona

Gift-a title transfer without consideration

-Donor-holds the title of property

Donee-the person who accepts gift

-need 2 things for gift (1) intent to give and (2) delivery

-Once you make a gift-it's final

Conditional gift: one in which the gift fails if the conditions are not met

-conditions

Precedent-does not exist until you have met this condition

Subsequent-its yours until this happens

Lost property-you have title superior to anyone else except the owner

-if the owner finds out you have it can come back at any time to claim, no time limit

-if you're the finder you have possession but you never have title

Abandoned property-the owner relinquishes position with intent to disclaim title goes to the first person who claims the property

Tenants in common-two or more people own an undivided interest in property-not split by percentages (no right to survivorship)

Joint tenants-has right of survivorship (how you avoid taxes)

-not as flexible

-usually used by married people

Tenants by entireties: just like joint tenancy but you can only use if you're married

-creditors cannot reach the property of one of the owners from premarital debt

-only allowed if married

-if divorced-tenants in common

Bailment-only applies to personal property

-when you own something and expect it back (in same condition)

-delivery of property to another under an agreement expecting return

Ex: coat check with person, not when you put it on hanger yourself

Car rental

Bailor/bailee rights and duties:

3 elements:

1. Agreement

2. Delivery

3. Acceptance

Bailor-the person who has the title/possession

Bailee-the person, who accepts the property, cannot transfer more ownership interest than they have

Types: contract bailment-exchange of money (car rental)

Gratuitous bailment-no exchange of money

Rights:

1. to recover property

2. right to receive payment for use of property-rent

3. the acceptor is responsible for property of normal use within

4. can't disclaim away your responsibilities

If...benefits bailee only-held to high standard of care, liable for slight negligence

...benefits both-mutual benefit-held to normal standard of care, liable for ordinary negligence

...benefits bailor only-bailee held at low standard of care, liable for gross negligence

****can never disclaim negligence

Real property-land and fixtures on land (not easily moved)...also includes:

-subsurface rights-not included in real property (minerals underground of your house)

-air rights-right to have a view is protected in some contracts

-water rights-considered real property so are included

Possessory interests-ownership rights

...power to...

- Use of the land-only constrained in area you live
- Exclude people from your property-including the state
- Transfer property
- Immunity from damages-tort feaser to compensate you

Fee simple absolute: most complete form of ownership to the property, you get all these rights and get to hold the property forever (to Adams and her heirs)

Fee simple defeasible: where you hold the right of the property where it ends on a stated event (to Adam's and her heirs as long as no bar is placed on the property-condition)

life estate-when you grant someone the use of land usually for a measured life (to Adams for her life/the life of her daughter), if granted to her daughter and her daughter dies before her, as soon as the measured life ends property reverts back to grantor

Non Possessory interest-an interest in property that you do not have possession of

-still have use, exclusion, transfer, and immunity but only up to your ownership right

Easement-right to use property for limited use without taking anything from the property, limited use to those who use property (power lines, gas lines and their company)

Profit-right to go on someone else's land and take away some product of the land (timber)

License-revocable right to come onto the property for a limited time (ticket to a WVU football game-must follow the rules or you will get kicked out)

5th amendment-cannot take away private property without just cause

Eminent domain/condemnation-when the state takes private property for government use -they have to pay you fair price, between what you think and they think its worth

Leasehold estate-interested in property without possession

Lease-one person has lawful possession of real property owned by another

Tenancy for years-when the property is leased fro a specified period of time (doesn't have to be one year)

Periodic tenancy-no specified amount of time but you still have to pay (monthly rent); doesn't specify term but intervals to pay-no interest or guarantee you going to stay

Tenancy at will-property leased and can be terminated at any time; they just need to give you one period notice

Implied warranty of habitability-the implicit contract that the landlord must deliver and maintain a reasonable fit and safe way for habitation (WV code 837-6-30)

-what if landlord breaches? You can leave and he pays moving costs, stay and seeks damages (FMV-actual value)

Constructive eviction-when landlord does or fails to do something that makes the continued use of your property impossible or difficult
-when property rights are transferred, responsible for lease

Will-document that directs the disposal of real or personal property after death

Testator-person making the will, will become deceased

Beneficiary-takes the property under the will

Executor-act on behalf of the deceased; carries out testator's wishes

Required for valid will

- testator must be coherent (capacity)
- signed writing
- must be 2 witnesses who are not interest in the will

Elective share-spouse cannot be cut out because they are entitled to an elective share

Codicil-change a will, same rules apply as to creating the will

Probate-court that deals with wills and trusts, determines if will is valid or invalid and the administers the estate

Intestate-you die without a will, state decides who gets your property

Trust-when title of property is held by one person for the benefit of another

Trustee-legal title of the trust, carries out wishes of grantor

Beneficiary-equitable title of the trust, receives economic benefits of the trust

Insurance-contractual relationship or policy where agency agrees to pay upon event

Insurance Company-right: to receive premium payments, duty: pay on stated event

Indemnify-to restore a victim of a loss by payment, repair, or placement

Life insurance-goal is to protect your dependants

Term-life insurance for a specific period that pays on death

Whole-portion for death benefit, and a savings portion, pays on death benefits (not taxable)

Health insurance-indemnity policy, service policy

Replacement cost/actual cash value-ACV-depreciated value of the asset

Replacement-appreciated cost of the asset

Replacement coverage-more expensive

Subrogation-right of one party to stand in for another

Workers compensation-a mechanism created by the statute (a law created by legislature) that allows employees to be compensated for the injury sustained at work

-with workers comp, the worker cannot sue but they get compensation for their injury

Exclusive remedy-has to happen in the course of employment (job related injury)-skewed in favor of the worker

Course of employment-the stops you can make during work

Occupational injury-injury sustained at work

Occupational disease-getting disease from work (ex: dust at work can be linked with emphysema even though the worker was a smoker for 10 years)

Compensation benefits-medical benefits (no time limit)

-wage replacement benefits

- temporary total disability benefits-TTD-if you miss 3 or more days of work you get 2/3 of wage until you go back to work
- Permanent partial disability-PPD-return to work but you have lost part of body (finger) you get paid a lump sum for your disability (66%)
- Permanent total disability-PTD-work injury prevents you from working forever (entitled to 66%)

Exception-if the employer is intentionally harming employee or grossly negligent you can sue for tort (but you HAVE to show employer was reckless)

Rule of law-our system is based on liberty and freedom, rights and responsibilities; law is supreme-decisions are made by law and applied without discretion; **NO ONE IS ABOVE THE LAW**

5 principles of law:

1. the law is not in law books-the law is living
2. the law is not a secret
3. the law has no simple answers
4. the law is a battleground for political conflict-what's right or wrong, people make the decision
5. people make the law