ETS: BUSINESS: LEGAL ISSUES

Legal and Regulatory questions will be ten percent (10%) of the test. Out of 120 questions total - that is twelve (12) questions.

There are seventeen (17) potential areas for questions:

1. Courts & Legal Systems
2. Constitutional Law
3. Administrative Law
4. Tort Law
5. Criminal Law
6. Employment Law
7. Antitrust Law
8. Consumer Protection
9. Environmental Law
10. International Law
11. Securities Regulation
12. Contract Law
13. Sales Law (UCC)
14. Business Organizations
15. Agency
16. Intellectual Property
17. Ethics

We will hit the highlights of each of these areas.
Courts and Legal Systems

State Courts:  
- Georgia Supreme Court
- Georgia Court of Appeals
- Local Superior Court (Trial Court)
- Probate, Magistrate, Municipal Court

Federal Courts:  
- U.S. Supreme Court
- Circuit Court of Appeals
- Federal District Court (Trial Court)
- Bankruptcy Court

The Plaintiff begins the lawsuit with a Complaint. The Defendant files an Answer. The parties then engage in written and oral “discovery.” Most cases settle at the close of discovery.

If at the trial either party does not get all it wants, it can appeal.
Constitutional Law

Establishes Three Branches of Government

Supremacy Clause: The Constitution is the supreme law of the U.S.

Commerce Clause: The federal government can regulate interstate commerce

Bill of Rights: First 10 Amendments to the Constitution

1. Freedom of religion
   Freedom of speech
   Freedom of the press

2. Right to bear arms

4. No unreasonable searches or seizures - "probable cause" to get a warrant

5. No double jeopardy

6. Trial by jury of your peers

8. No cruel and unusual punishment

9. Retention of power to the people

10. Reservation of rights to the states
Administrative Law

The legislature may pass laws and then delegate to respective agencies the promulgation of rules and regulations to enforce those laws. The rules and regulations have the same impact and enforceability as the underlying laws.

Exhaustion of Administrative Remedies

Example: Title VII of the Civil Rights Act of 1964 prohibits race discrimination, among other things

The Equal Employment Opportunity Commission is the federal agency that enforces the law

You must file a Charge of Discrimination with the EEOC before you can ever file a lawsuit alleging racial discrimination in employment
Tort Law

Tort: A civil, not criminal, wrong, not a contract, resulting in injury (to a person) or damage (to property)

Note: “Civil” wrong, not criminal, although a civil action can follow a criminal action arising out of the same set of facts

Intentional Torts

Unintentional Torts (Negligence)

- Duty
- Breech of Duty
- Actual Injury
- Casual Connection

Strict Liability Torts - “inherentlly dangerous”

- Risk of Loss - Who buys insurance?
Criminal Law

Civil and Criminal Law Compared

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<th>Civil Law</th>
<th>Criminal Law</th>
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<td>Harm to a Person</td>
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<td>Brought by Person</td>
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<td>Proof: Preponderance of the Evidence</td>
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<td>Remedy: Damages</td>
<td>Remedy: Fine, Imprisonment or Both</td>
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Felonies vs. Misdemeanors

Defenses - attack *mens rea*
## Employment Law

| Title VII of the Civil Rights Act of 1964 | Prohibits discrimination based on race, color, national origin, religion, gender  
Harassment - Individual - Pervasive |
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<td>Age Discrimination in Employment Act</td>
<td>Prohibits discrimination against people over 40 - in hiring or employment</td>
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<td>American with Disabilities Act</td>
<td>Prohibits discrimination against “disabled” - reasonable accommodation required</td>
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<td>Affirmative Action</td>
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Antitrust Law

Sherman Act  - **Section 1**: Per Se violations
              - No Horizontal Restraints
              - No Vertical Restraints
              - Requires “conspiracy”

              - **Section 2**: No Monopolization on attempts to monopolize

Clayton Act  - No price discrimination
              (Robinson-Patman Act)
              - Examines Mergers

FTC Act      - No anticompetitive activities
Consumer Protection

Antitrust Division of The Department of Justice and the Bureau of Enforcement of the Federal Trade Commission enforce laws which enhance the quality and pricing of products in commerce.

Advertising
Truth-in-Lending
Food and Drug (and Cosmetic)
Labeling and Packaging
Magnuson-Moss Warranty Act

Implied Warranty of Merchantability

Implied Warranty of Fitness for a Particular Purpose

Warranty Disclaimers
Environmental Law

National Environmental Policy Act of 1969, enforced by Environmental Protection Agency ("EPA") or state agencies.

Regulated Waste: Industrial; Hazardous; Toxic

Regulated Pollutants: Air; Surface Water; Subsurface Water; Soil

RCRA: Resource Conservation and Recovery Act
- Hazardous waste disposal
- "Cradle-to-Grave" tracking

TSCA: Toxic Substances Control Act
- What is "toxic"? - 75,000 chemicals

CERCLA: Comprehensive Environmental Response, Compensation and Liability Act
- Superfund
- Cost Recovery

SARA: Superfund Amendments and Reauthorization
- Community Right to Know
International Law

Comity: Deference to laws and decrees of another nation.

Exports: Selling to buyers in other countries
- Direct Sales
- Distribution Agreements
- Licensing

Choice of Law

Choice of Language

Most Favored Nation Status: WTO

Foreign Exchange

The U.S. does not tax exports. The U.S. can tax imports, which taxes are called tariffs.

The U.S. does impose export and import controls on certain products.
Securities Regulation

Securities Act - ‘33 Act
Exchange Act - ‘34 Act

Securities and Exchange Commission - SEC

Reporting Requirements

- Annual Report on Form 10-K
- Quarterly Reports on Form 10-Q
- Interim Report on Form 8-K
- Annual Report to Shareholders for Annual Meeting

Insider Trading Issues - Anything a reasonable investor would want to know in making a decision to buy, sell or hold your company’s stock.
Contract Law

Contract: An Agreement, enforceable in court, by and between two or more parties, with legal capacity, supported by consideration, for each party to do or refrain from doing some legal act, now or in the future.

Two essential parties to a contract:

- Offeror/Promisor
- Offeree/Promisee

Two essential elements to a contract:

- Agreement: An offer and a valid acceptance of that offer
- Consideration: Something of value passing from the offeror to the offeree and also from the offeree to the offeror
Sales Law (UCC)

U.C.C. Article 2 - Sale of Goods
- Sales Contract: A contract for the sale of goods where the ownership of the goods is transferred from a Seller to a Buyer for a price

U.C.C. Article 2.A - Lease of Goods
- Lease Contract: A contract by which the owner of goods, the Lessor, transfers the right of possession and use of goods to another person, the Lessee, in exchange for rental payments

U.C.C. Article 3 - Negotiable Instruments - Financial Documents in Commerce
- In writing
- Signed by the maker or drawer
- Unconditional promise to pay or to order
- State a fixed or determinable amount of money
- Payable on demand or at a definite time
- Payable to order of bearer

FOB Shipment v. FOB Delivery/Risk of Loss
Business Organizations

Sole Proprietorship - Full Control; Full Risk

Partnership - Shared Control; Full Risk
  - Limited Partnership - Limited Risk

Corporation - Shared Control
  - Limited/No Risk
  - Equity Investors/Sell Shares

LLC
  - Limited Liability Company
  - Full Control
  - Limited Risk
Agency

Principal: "Employer"
Agent: "Employee"

An Agent is always liable for his or her actions. Under certain circumstances, the Principal may also be liable for the Agent's actions and owe the Agent a duty to defend and indemnify the Agent.

A disclosed or partially disclosed Principal is liable to a third party for a contract made by an Agent who is acting within the scope of her or his authority.

If the Agent exceeds the scope of authority and the Principal fails to ratify the contract, the Agent may be liable (and the Principal may not). When neither the fact of agency nor the identity of the Principal is disclosed, the Agent is liable, and if an Agent has acted within the scope of his or her authority, the undisclosed Principal is also liable.

Each party is liable for his or her own torts and crimes.

A Principal may also be liable for an Agent's torts committed within the course or scope of employment.

A Principal is liable for an Agent's crime if the Principal participated by conspiracy or other action.
Intellectual Property

Patents: The right to own and practice a "new, novel and non-obvious" invention.

Trademarks: A mark on the actual product to indicate the manufacturer of the product. (Tradename: The name of the company.)

Copyrights: The right to control the reproduction (i.e. copies) of tangible works, including, writings, songs, designs, etc.
Ethics

Deontology: Duty-based ethics often arising from a religious source or sense of duty

Utilitarianism: Ethics based on what achieves the greatest good for the greatest number, even if some are harmed - may require a Risk-Reward analysis

Business Ethics: The application of ethical philosophy in business

Philosophy → Ethics → Business Ethics

Studying Business Ethics helps business people begin to identify ethical issues, recognize the approaches available to resolve them, learn about the ethical decision making process and ways to promote ethical behavior, and begin to understand how to cope with conflicts between personal values and organizational values.
1. Which of the following statements about the tort of negligence is true?

(A) It cannot be used as a basis for liability for defective products.

(B) It is a strict liability tort with no defenses.

(C) It requires proof of some intentional conduct.

(D) It requires proof of breach of a statutory or common-law duty.
2. Which of the following would most likely occur as a result of the United States government’s imposing tariffs on foreign steel imports?

(A) The price of steel produced in the United States would decrease.

(B) The price of imported steel in the United States would decrease.

(C) Government tax revenue would fall.

(D) Employment in the United States steel industry would increase.
3. All of the following are true regarding a seller’s rights to reduce legal liability in the sale of non-consumer goods EXCEPT:

(A) The seller can disclaim consequential damages if it is done clearly and conspicuously.

(B) The seller can limit the remedy available to the buyer if he or she does so clearly and fairly.

(C) The seller can place reasonable conditions on the warranty coverage and a shorter time limit of warranty coverage.

(D) The seller can disclaim all implied warranties by simply stating that there are no implied warranties.
4. Green desires to form a new company to manufacture lawn mowers. Green is concerned about having his personal assets exposed to liability for the new company’s contracts and torts. Furthermore, he wants to retain control over the company’s operations and growth for the next few years. He will need an infusion of equity capital to begin operations. He hopes to take the company public in about five years if it is advantageous to do so at the time. Which of the following types of business associations would be best for Green’s new company?

(A) General partnership
(B) Limited partnership
(C) Member-managed limited-liability company
(D) Corporation
5. When a domestic firm permits a foreign company to manufacture and sell its product in exchange for a fee or royalty, the process is termed

(A) Importing

(B) Exporting

(C) Countertrading

(D) Licensing
6. Family branding refers to a group of

(A) similar brands of products from different makers

(B) different brands of products from different makers within the same industry

(C) similar products sold by small, family-owned firms

(D) different products marketed under a single brand name