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BUSS 211 NOTES

CHAPTER 1, 3, 4, 5, 7 MIDTERM NOTES

Public law: includes those laws enacted by some authorized governmental body

Private law: on the other hand, is developed between two individuals

Criminal law: a wrong against society

(violation of) Civil law: a wrong against another person or persons.

Substantive laws: are those that give rights and responsibilities

Procedural laws: provide the means for enforcing substantive rights

Common law: common set of laws for governing

Statutory law: which is passed by some governmental body and written in some form

Equity: is a body of law that attempts to do justice when the law does not provide a remedy

Injunctions: prohibiting certain conduct or ordering certain acts

Jurisprudence: wisdom of the law

Trial Court: is the place in the judicial system where the facts of a case are presented

Appellate court: reviews the conduct during the trial of the judge, the lawyers, and the witnesses

Judicial review: is what the appellate court does

Appellate brief: serves as a summary of the major points that occurred during the trial

Oral argument: is a summary of the points that have been made in each party’s brief

Dissenting opinion: which is the judge’s explanation for a vote different from that of the majority

Reversible error: one that might have affected the outcome of the case or influenced the decision made

Precedent: which is examining all prior cases in the same area to judge the new case

Plaintiffs sue defendants, defandants = respondents.

Judges: control the proceedings in a case

The party that appeals is the appellant or petitioner, the one not appealing is called the appellee or respondent

JURISDICTION: the authority or power of a court to speak the law. Some courts can handle traffic violations…etc. you need two things for determining which court can be used

1. Subject matter
2. In personam jurisdiction, controls which of the federal district courts will decide the case

The Federal Court System can hear 3 types of cases. The trial court of the federal system: their subject matter jurisdiction is limited

1. Jurisdiction when the united states is a party
2. Federal jurisdiction for a federal question
3. Jurisdiction by diversity
   1. Diversity of citizen ship: excess of 75,000 $
   2. Concurrent jurisdiction: 2 courts have jurisdiction to hear a case
   3. Exclusive jurisdiction: means that only one court has the authority to hear a case

Original jurisdiction: when one state is suing another state

Small claim courts: in which civil cases with minimal damages claims are tried

In rem jurisdiction: gives the court authority over the person because the person owns a thing in the state

Volunteer jurisdiction: usually involves contracts

Minimum contacts: is a fairness standard that determeines that those defendants have some contact with the state.

Long arm satutes: gives courts the power to extend their arms of jurisdiction into other states.

Alternative dispute resolution: offers parties alternative means of resolving their differences outside actual courtroom litigation.

Arbitration: an enforceable clause in consumer and commercial contracts

Binding arbitration: means that the decision of the arbitrators is final

Nonbinding arbitration: is the preliminary step to litigation, if one of the parties is not satisfied with the result in the arbitration.

Mediation: is a process in which both parties meet with a neutral mediator

Minitrail: th parties have their lawyers present the strongest aspects of their cases to senior officials from both companies in the presence of a neutral advisor

How does a lawsuit start?

1. The complaint (petition)
   1. There are class action suits, are typically filed by a group of plaintiffs
   2. Derivative suit: shareholders sue a corporation
   3. Injunctions: court orders requiring the defendant to stop doing the act complained of
2. The summons: legal document telling the defendant the suit and explains the defendants rights under the law.
3. The answer:
   1. The parties positions are found in the pleadings, the complain is the pleading, the defendants position is found in the answer.

MOTIONS

Motions are requests to the court that it take certain action

Motion for judgement on the pleadings: is that the plaintiff has no cause of action even if everying the plaintiff alleges is true. Annoying example

Motion to dismiss: can be filed any time during the proceedings but usually is part of the defendants answer, such a motion can be based on the court’s lack of subject matter or in personam jurisdiction.

Motion for summary judgment: has 2 requirements, Summary judgment is appropriate when :

1. The moving party is entitled to a judgment under the law
2. No issues of fact remain disputed

Aka summary judgement means we agree on the facts we just are in question about which law applies

Discovery: The court supervised process of gathering evidence

Request for admissions: asks the other side to admit a certain fact

Despositions: oral testimony of parties or witnesses

Request for production: requires the other side to produce requested documents

Peremptory challenge: which excuses the juror

Opening statement: summarizes what that party hopes to prove and how it will be proved

Burden of proof: controls who has the responsibility for proving what

Police Power: is the states’ power to pass laws that promote the public welfare and protect public health and safety

Balancing Test: that police power is only upheld only so long as the benefit achieved by the satute does not outweigh the burden imposed on interstate commerce,

Standards for taxation of business

1. The tax cannot discriminate against interstate commerce
2. The tax cannot unduly burden interstate commerce
3. A sufficient nexus between the sate and the business being taxed must be established, the business must have some activity in the sate
4. Finally, the tax must be apportioned fairly

Commercial speech: communication used to further the economic interests of the speaker

Eminent domain: the right of a governmental body to take title to property for a public use

Procedural due process: is a right that requires notice and the opportunity to be heard before rights or properties are taken away from an individual or business

Substantive law: consists of rights, obligations and behavior standards

Substantive due process: is the right to have laws that do not deprive businesses or citizens of property without justification

14nth amendment: grants citizens the right to the equal protection of the law.

Disparate treatment: justified only if some rational basis for it is determined

Common law: we rely on our courts to interpret and apply our more general statutes

Sovereign Immunity: is based on the notion that each country is a soverign nation. This status means that each country is an equal with other countries, each country has exclusive jurisdiction over its internal operations, laws, and people, and no country is subject to the jurisdiction of another country’s court system unless it so consents.

Expropriation: the effect of nationalization is that the private property of citizens and businesses in that country is taken by the government

Repatriation: is the process of bringing back to your own country profits earned on investments in another country.

Forum non conveniens: is a principle of US justice under which cases that are brought to the wrong court are dismissed