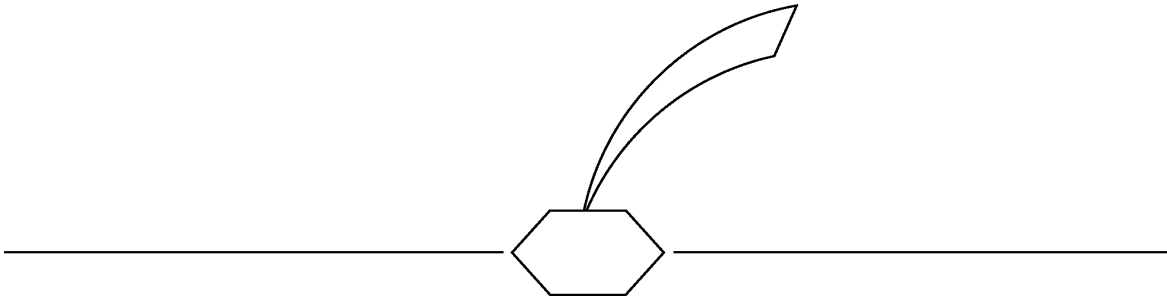


Essentials of Commercial Law

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Test Bank

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The purpose of this manual is to provide a sample test bank for persons who are teaching this course. It is intended that each instructor will supplement these questions with his or her own questions based on state specific considerations and in-class lectures.

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Chapter One

The American Legal System

1. Briefly describe the “common law” system.
The common law system is derived from judicial precedent, rather than being statutorily based. Nowadays, under the American system, it is a combination of statutes and judicial decisions.
2. What is considered to be the supreme law of the land?
The U.S. Constitution.
3. How does precedent affect legal principles?
Precedent works to interpret, refine and modernize general legal principles as legal problems arise.
4. What is the starting point for enacting a statute?
A bill.
5. Indicate the two types of agencies that exist under the heading of the “administrative process.”
Legislative and executive.
6. What is the legal basis of judicial review?
Marbury v. Madison.
7. Explain the function of an appellate court.
To determine whether the law was appropriately applied by the lower court—it reviews the application of law but does not retry facts.
8. Define “legal issue.”
A question of law.
9. How does one seek review by the US Supreme Court?
Petition for certiorari.
10. Define a “case of first impression.”
A legal problem that has never been brought for resolution before this particular court.
11. Who is the “trier of fact?”
The jury, and sometimes the judge.
12. Where are all federal laws published?
United States Code.
13. What is the decision of a trial court called?
Verdict.
14. Define “jurisprudence.”
Wisdom of the law.
15. What is public law?
Statutes that have been passed into law.
16. Explain the process of codification.
Putting all statutes in order by topic rather than by chronology.

17. What is the holding of a court?

The rule of law for which the case stands.

18. Why did the court in *Ragan* find that the issue was moot?

Because the parties settled.

19. What happens if a decision is remanded?

The lower court must redecide the case according to the instructions of the appellate court.

20. Which statute controls the administrative law process?

The Administrative Procedure Act.

Criminal v. Civil Wrongs

1. What is meant by the concept of vicarious liability?
Someone other than the wrongdoer is held legally responsible.
2. Distinguish between contribution and indemnification.
Joint tortfeasors must contribute to the award, whereas with indemnification a person held vicariously liable may seek reimbursement from the actual wrongdoer.
3. How does comparative negligence work?
Each side is held responsible for his degree of negligence.
4. List the intentional torts.
Assault, battery, false imprisonment, trespass to land, trespass to chattel.
5. What is the term that indicates the financial loss for which a party is seeking legal recompense?
Damages.
6. What are the defenses to intentional torts?
Consent, self-defense, privilege, necessity, discipline.
7. Define negligence.
Breach of a standard of care that is the proximate and legal cause of injury to another.
8. What are the defenses to negligence?
Contributory negligence, assumption of the risk, comparative negligence.
9. Define defamation.
A defamatory statement made about another that is published and causes injury to that person's reputation.
10. Indicate two types of nuisance.
Public and private.
11. How is criminal law defined?
Breach of a duty that injures the public at large.
12. List the inchoate crimes.
Solicitation, conspiracy and attempt.
13. Define burglary.
The breaking and entering of the dwelling place of another at nighttime with the intent of committing a crime therein.
14. Distinguish between a misdemeanor and a felony.
Punishment for a felony is imprisonment for more than one year.
15. What is the function of a preliminary hearing?

To determine whether there is sufficient evidence to have a trial.

16. What pleas may an accused enter?

Guilty, not guilty, nolo contendere.

17. Explain the concept of probation.

A person is sentenced to report to a probation officer rather than go to jail.

18. What is a motion?

A request to the court.

19. Distinguish between procedural and substantive law.

Substantive law is the actual legal rule; procedural law is the process for seeing that those rules are followed.

20. What is an express warranty?

A specific guaranty made verbally.

Contracts And The Law Of Sales

1. Which law governs sales of goods between merchants?
The UCC.
2. Does the UCC cover contracts for personal services?
No.
3. List the six basic elements of a valid contract.
Offer, acceptance, consideration, capacity of the parties, legality of the subject matter, intent.
4. What is the mirror image rule?
For contracts under the common law, the acceptance must exactly match the terms of the offer.
5. How does an output contract work?
The manufacturer agrees to sell all of his product to the buyer at a set price per unit.
6. Define consideration.
A benefit conferred or a detriment incurred at the request of the other party.
7. How does the Statute of Frauds impact the law of contracts?
It requires certain contracts to be in writing to be enforceable.
8. What is a third-party beneficiary?
A person not a party to the contract for whose benefit the contract was created.
9. Distinguish assignment from delegation.
Assignment is a transfer of contractual rights; delegation is the assistance of someone to perform a contractual duty.
10. What are the contractual rights of an incidental beneficiary?
None.
11. What is meant by a “rule of construction?”
Doctrine that the court applies to interpret agreements.
12. Distinguish between a condition and a covenant.
A condition is a fact or event, the happening or nonhappening of which creates or extinguishes an absolute duty to perform, and a covenant is that absolute duty.
13. Indicate three types of conditions that may appear in a contract.
Precedent, concurrent or subsequent.
14. What is an equitable remedy?
A nonmonetary contractual award.
15. Explain how liquidated damages work.

If a contract contains a liquidated damages clause because the eventual injury is too difficult to ascertain, in case of breach, the injured party will receive the amount of these specified damages.

16. What are the four types of warranties that exist under the UCC?
Express, merchantability, fitness for a particular use, title.

17. Distinguish a material from a minor breach.
A material breach goes to the heart of the contract, whereas a minor breach does not negate the contract purpose.

18. Define “accord and satisfaction.”
An agreement to settle a contractual dispute.

19. How many methods exist to discharge a contractual obligation?
Eight.

20. What is the effect of a waiver on a contractual obligation?
The party to whom the duty is owed gives up the right to the performance.

1. What is a negotiable instrument?
A cash substitute.
2. Distinguish a note from a draft.
A note is a two-party instrument; a draft is a three-party instrument.
3. Who is considered to be a holder?
Any transferee of a negotiable instrument.
4. What is a restrictive endorsement?
An endorsement that limits further transfer, such as "for deposit only."
5. What are the rights of a holder in due course?
The HDC has rights against the entire world and is only subject to real defenses.
6. Explain the shelter rule.
A transferee takes the rights of the transferor.
7. What is the liability on a negotiable instrument of an accommodation party?
He is only liable in the capacity for which he signed.
8. What are the presentment warranties?
Good title, no material alteration, no claim against the instrument.
9. What is the effect on a note of an alteration made by a meddling stranger?
It has no effect.
10. What is a bearer instrument?
An instrument that may be transferred by anyone in possession of it.
11. What does it mean to endorse an instrument?
To transfer it.
12. Which section of the UCC governs commercial paper?
Article 3.
13. Define negotiation?
Transfer.
14. What are the requirements to create a negotiable instrument?
A writing, signed by the maker or drawer, containing an unconditional promise to pay a sum certain to order or bearer on demand or at a specified date.
15. How many ways may be used to discharge a negotiable instrument?
Eight.
16. Define presentment.
Bringing the instrument to receive payment.

17. What is meant by dishonor?

Refusal to pay on an instrument.

18. Why is the concept of commercial paper important to business enterprises?

Because it is a cash substitute used to facilitate commerce.

19. What is an allonge?

A separate paper used for endorsements.

20. Distinguish between a transfer and a presentment.

A transfer merely negotiates the instrument, whereas presentment terminates the instrument.

1. What is an estate in land?
An interest in realty, either a freehold or a leasehold.
2. Distinguish between a freehold and a leasehold.
A freehold is held for an indefinite period of time, whereas leaseholds are created by contract for a definite period of time.
3. List the five types of multiple ownership of property that may exist.
Tenancy in common, joint tenancy, tenancy by the entirety, community property, tenancy in partnership.
4. What are the four unities?
Requisites to create a joint tenancy: time, title, interest and possession.
5. Define “fixture.”
Personalty permanently attached to realty.
6. Explain the concept of ameliorative waste.
An improvement to property that changes its character for which the common law provided remedies for the remainderman.
7. What is meant by the term “conveyancing?”
Transferring an interest in realty.
8. Explain the doctrine of equitable conversion.
Once a contract for the sale of land has been entered into, the risk of loss passes from the seller to the buyer.
9. What is an encumbrance on property?
Any right that interferes with the total and free use of the property by the titleholder.
10. How does adverse possession work?
A person controls openly, notoriously and adversely to the interest of the true owner for a statutory period of time, after which the interloper may be granted title to the property.
11. Which warranties appear on a general warranty deed?
Seizin, right to convey, against encumbrances, quiet enjoyment, warranty and further assurances.
12. What is a quitclaim deed?
A document that transfers whatever title the transferor has, making no warranties with respect to that title.
13. What methods are used to record titles to realty?
Block and lot and tract.
14. What is the purpose of title insurance?
To protect the buyer if the transferred title turns out to be defective.

15. Who are the parties to a lien?

A creditor and a debtor.

16. When does the holdover doctrine apply?

When a tenant remains in possession of a lease after the lease has expired.

17. What is meant by constructive eviction?

When the landlord makes the leased premises too uncomfortable for the tenant to remain in possession.

18. Explain the concept of an easement.

Someone having the right of use or passage over another's property.

19. What is a real covenant?

An absolute duty with respect to land use that runs with the land.

20. Define "mortgage."

A security interest on a loan.

1. Define personal property.
All nonreal property.
2. What are the two categories of personal property?
Tangible and intangible.
3. Briefly explain a copyright.
A governmental grant of exclusive use given to an author or creator of a work of art for the creator's life plus 75 years.
4. What is a bailment?
A right of possession in personal property.
5. How does a bailment differ from a pledge?
With a pledge the bailee gives money for the right of possession; a pledge is a form of a bailment.
6. How does accession work?
The value of property increases by work performed by someone other than the owner which is not intended as a gift.
7. Distinguish accession from confusion.
With accession the property is improved; with confusion two identical items of property are commingled.
8. How is a common carrier defined?
One who transports goods or people for profit.
9. What is the liability of an innkeeper for the personal property of its guests?
Insurer liability.
10. Define "lien."
Right to retain property by a creditor until a debt is paid.
11. For how long may one hold a patent?
Twenty years.
12. True or false: A mark may exist forever.
True.
13. Give three examples of tangible personal property.
A watch, a notebook and a car.
14. How does the concept of "public domain" apply to intellectual property?
Once the idea is in the public domain, the creator no longer has the right of exclusive use.
15. Define "royalty."

Payment made for the use of intellectual property.

16. What is a “mark?”

A word, symbol or group of words that distinguish a product or service.

17. What types of use to the property may a bailee possess?

Express, implied and incidental.

18. Does leaving a car in a parking lot constitute a bailment?

No.

19. Why is commercial paper considered intangible personal property?

Because it is something of little intrinsic value that represents something of greater value.

20. Under the modern trend of the law, what is the bailee’s liability with respect to the bailed property?

Ordinary care.

1. Explain the master-servant relationship.
A servant is one who is employed to render services of any type, otherwise than in the pursuit of an independent calling, who is controlled by the master who employs the servant.
2. Define an independent contractor.
Someone who is hired solely for the results to be accomplished.
3. How does the principal-agent relationship differ from the regular master-servant relationship?
The agent has the authority to contractually bind the principal to third persons.
4. What is the legal term for a master's obligation for his servant's acts?
Respondeat superior.
5. True or false: negligent hiring is an example of vicarious liability.
False.
6. Is a master generally liable for his servant's intentional torts?
No.
7. How is a principal-agent relationship created?
By agreement, by ratification or by estoppel.
8. What types of authority are included in actual authority?
Express and implied.
9. Give another name for ostensible authority.
Apparent authority.
10. Explain the concept of self-dealing.
A fiduciary is precluded from making a profit that should go to the other person.
11. True or false: a person is never legally responsible for the acts of an independent contractor performed on his behalf.
False.
12. How does the concept of vicarious liability affect commercial transactions?
Most businesses use the services of agents and servants to transact business.
13. Why were worker compensation laws enacted?
To counteract the effect of the fellow servant exception doctrine.
14. How may a principal-agent relationship terminate?
By a specific termination date, by the death or destruction of the subject matter, by the death or insanity of the parties, or by act of the parties.
15. Differentiate between renunciation and revocation.

A principal revokes whereas the agent renounces.

16. Give two examples of a principal-agent relationship.

Senior law partner and a law associate; landlord and management agent.

17. What is meant by a “frolic of his own?”

A servant engaging in personal activities rather than furthering the master’s business.

18. What is the purpose of indemnification?

To compensate a person who was held vicariously liable

19. What damages may be recovered under a theory of authority by estoppel?

Only actual loss.

20. Generally, is a servant a fiduciary for the master?

No.

Business Organizations

1. Define “sole proprietorship.”
A business owned and managed by just one person.
2. List three benefits of operating a business as a sole proprietorship.
Ease of formation, total management control, total financial benefit.
3. What is the potential detriment of operating a business as a sole proprietorship?
Unlimited personal financial liability.
4. Which law governs general partnerships?
Uniform Partnership Act
5. List the partnership rights.
Right to manage and control, right to the assets, right to the income and profits.
6. Explain confession of judgment.
Agreeing to liability without defending an action.
7. How does a limited partnership differ from a general partnership?
Limited liability for the limited partners and regulatory requirements.
8. What are blue-sky laws?
Security laws.
9. Distinguish domestic from foreign corporation.
A domestic corporation is formed in the state in question; a foreign corporation is formed in any other state.
10. Briefly explain the concept of a corporation.
It is an artificial entity owned by shareholders and managed by a board of directors, formed under state law.
11. Who manages a corporation?
The board of directors.
12. How are corporate shareholders identified?
By holding share certificates.
13. Which type of corporate shares is entitled to vote?
Common stock.
14. What is a limited liability company?
A business that is not a corporation that provides limited liability for its owners.
15. True or false: LLCs may be managed by members.
True.

16. What are articles of organization?

The document that must be filed to create an LLC.

17. Explain the concept of the business judgment rule.

A director is not liable for loss if he or she adheres to the fiduciary standard of using the judgment of the ordinarily prudent businessperson.

18. What is the nature of a partner's liability for a breach of contract?

Joint.

19. Briefly explain the concept of piercing the corporate veil.

The court will attach the personal assets of a shareholder if he or she does not maintain the corporation as a separate legal entity.

20. In your opinion what is the greatest advantage of operating a business as a corporation?

Thought question—no specific answer.

Employment Law

1. Explain the concept of employment at will.
An employee or employer may come and go at will with no liability.
2. When was the Social Security Act enacted?
1935.
3. What is meant by being fully insured under the SSA?
Having worked for 40 quarters and contributing to the fund.
4. Which statute governs minimum hours and wages?
The Fair Labor Standards Act.
5. Which categories of employees are exempt from the provisions of the FLSA?
Executives, administrators, outside salespersons and professionals.
6. What is the purpose of the Equal Pay Act?
To provide equal pay on a gender neutral basis.
7. Define “equal work” under the Equal Pay Act.
Work requiring the same skill and expertise.
8. Why was ERISA enacted?
To protect workers’ pension funds from mismanagement.
9. What is the fiduciary standard for fund managers under ERISA?
The reasonably prudent investor.
10. What are the protected categories under Title VII?
Race, color, sex, religion and national origin.
11. Which agency administers Title VII?
The Equal Employment Opportunity Commission.
12. Which types of sexual harassment are recognized under Title VII?
Quid pro quo and hostile work environment.
13. What is a BFOQ?
A bona fide occupational qualification, an employer defense to a charge of unlawful discrimination under Title VII.
14. Which persons are protected under the ADEA?
Persons over the age of 40.
15. Does the Pregnancy Discrimination Act apply to fathers?
Yes.
16. What is meant by a disability under the Americans with Disabilities Act?
A physical or mental impairment that affects one or more major life functions.

17. Explain the concept of “reasonable accommodation.”

Under the ADA an employer must make reasonable changes to allow a disabled person to work.

18. Which employers are subject to the provisions of the Family Medical Leave Act?

Those with over 50 employees.

19. To which law does the concept of “undue hardship” apply?

The ADA.

20. Is employment discrimination only governed by federal law?

No.

1. Which law governs bankruptcy in the United States?
The Bankruptcy Code.
2. Where are bankruptcy proceedings held?
Bankruptcy court.
3. Which section of the bankruptcy law is referred to as “straight bankruptcy?”
Chapter 7.
4. What is voluntary bankruptcy?
When the debtor invokes the protection of the bankruptcy court.
5. Who oversees the debtor’s property during the bankruptcy proceedings?
The US Trustee.
6. What document is used in bankruptcy court to include persons who wish to participate in the proceedings?
Notice of appearance.
7. What is the term used to transfer a matter from one court to another?
Removal.
8. Under which chapters must a debtor file a plan to satisfy the debts?
Chapters 11, 12 & 13.
9. What is a “mailing matrix?”
A list of all creditors and amounts owed.
10. What is a “reaffirmation?”
A statement by the debtor that he intends to repay the debt despite the bankruptcy proceedings.
11. What is a “debtor in possession?”
A debtor who retains control over an income-producing asset during the bankruptcy proceedings.
12. What is a “disclosure statement?”
A document filed indicating all of the debtor’s assets.
13. What is involuntary bankruptcy?
When a debtor’s creditors force the debtor into bankruptcy court.
14. Explain the purpose of a proof of claim.
To verify the debt owed.
15. Define “cash collateral.”
Income derived from property held by a debtor in possession.

16. What is the purpose of a creditors' meeting?

To consolidate all claims and determine the payout.

17. Which section of the bankruptcy code calls for a liquidation?

Chapter 7.

18. True or false: bankruptcy proceedings are handled in state bankruptcy courts.

False.

19. Define "statement of intent."

Document indicating the wishes of the debtor with respect to the property.

20. Under which chapter do corporations reorganize?

Chapter 11.

1. Who creates administrative agencies?
The legislature or the executive.
2. Which statute governs the operations of administrative agencies?
The Administrative Procedure Act.
3. What two functions are performed by administrative agencies?
Rule making and adjudication.
4. What is an administrative rule?
Standard of conduct enunciated by an agency.
5. Where are the notices of a federal agency published?
The Federal Register.
6. When may a person seek judicial review of an agency action?
When administrative remedies have been exhausted.
7. Define ultra vires.
Beyond the scope.
8. Who presides over an agency adjudication?
Administrative law judge.
9. Do constitutional safeguards apply to administrative adjudications?
Yes.
10. How does an administrative adjudication commence?
Pleading or petition.
11. What is the purpose of discovery?
To find out what evidence the other side has.
12. What is the purpose of a pre-hearing conference?
To limit triable issues.
13. What type of review is judicial review?
Appellate.
14. May a court retry facts during judicial review?
No.
15. Briefly discuss why administrative law is important for commercial enterprises.
Because vast areas of commerce are governed by administrative agencies.
16. What is an enabling statute?
The law that creates the administrative agency.

17. True or false: notice is always required for an administrative action.
False

18. Define “responsive pleading.”
Document used to answer an allegation.

19. What is meant when a statute is called “vague?”
It fails to establish specific standards that can be enforced.

20. True or false: The APA applies to all agency proceedings.
False—only federal agencies.

1. Which articles of the UCC deal with banking?
Articles 3 and 4.
2. Define “properly payable.”
Payable any time the customer has sufficient funds in the account.
3. Explain the concept of “honor” as used in banking.
Making payment on a draft.
4. True or false: A bank is not liable to the customer for alterations made by someone authorized by the maker.
True.
5. For how long is an oral stop payment order valid?
Two weeks.
6. What is meant by presentment?
Asking the drawee for payment on the draft.
7. What is meant by a wrongful dishonor?
When a drawee refuses to honor a draft without a lawfully valid reason.
8. What is a depository bank?
Where the customer has an account.
9. Define “intermediary bank.”
Any bank other than the drawee or depository bank involved in the collection process.
10. What is the function of the presenter bank?
The intermediary bank that presents the draft to the drawee.
11. True or false: A bank is liable to its customer if the customer makes out a check to an imposter.
False.
12. True or false: A customer is under a legal obligation to check his bank statement for errors.
True.
13. Define “fictitious payee.”
Person the drawer knows does not exist.
14. May a drawee revoke after final settlement?
No.
15. Why is the UCC concerned with the banking process?
Because banking involves commerce and the UCC is designed to facilitate commerce.