

## **BUSINESS LAW II (BLAW 308)**

Professor Young

Spring 2017

Saturday 11:30 a.m. – 2:15 p.m.

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Office: JH 3247

Classroom: JH 1121

E-mail: gregory.young@csun.edu

For email messages, type "BLAW 308" in the reference portion

Office Hours: Saturday 2:15 – 3:15 p.m.

Text: BUSINESS LAW: THE ETHICAL, GLOBAL AND E-COMMERCE ENVIRONMENT, 15<sup>th</sup> ed., Mallor *et al.*

### **Objectives of the Course**

*Learning Goals and Objectives for All Business Law Courses:* Classes are taught using the Socratic method, with its goal of participatory learning and the development of reasoning skills. This active learning process requires students to articulate, develop and defend positions, to think critically and to engage in problem-solving. Students learn to formulate an effective legal analysis by synthesizing information, identifying legal issues, distinguishing relevant from irrelevant facts, using facts and law to support argument, reasoning by analogy and reaching conclusions based on analysis. In addition, students in all courses study ethical issues in a business context, with actual topics depending on course content.

*BLAW 308: Business Law II* (3 units). Study of the role of law in business including the study of legal institutions and their role in facilitating and regulating business. Includes agency and employment law, the various forms of business organizations and securities law.

You will analyze how law applies to factual settings. You will read court decisions, prepare written briefs of the decisions, orally defend your interpretations of the cases, answer hypothetical questions in open class discussion, and write papers in which you analyze contract disputes related to agency and business organizations. You will learn to distinguish the application of rules depending on changing circumstances in various cases and hypotheticals. You will learn to argue alternate sides of a dispute regardless of personal belief. You will learn to identify the functions, policies, and trends in the law, and to consider social, economic and ethical influences on the law.

Exams are composed of one or more essay questions which require you to analyze factual situations, identify legal issues and apply the law in determining the outcome of hypothetical cases.

### **Course topics**

- I. Agency and Employment Law
  - A. Agency
    1. Agency Relationships
      - a. Nature of Agency
      - b. Formation of Agency
      - c. Duties of Agent toward Principal
      - d. Duties of Principal toward Agent
      - e. Termination of Agency
    2. Third-Party Relations
      - a. Contract Liability of the Principal
      - b. Contract Liability of the Agent
      - c. Tort Liability

- d. Criminal Liability
  - B. Employment Law
    - 1. Legislation Protecting Employee Health, Safety and well being: worker's compensation, OSHA, FMLA
    - 2. Legislation Protecting Wages, Pensions & Benefits: Social Security, Unemployment Compensation, ERISA, and FLSA
    - 3. Equal Opportunity Legislation
    - 4. Title VII
    - 5. Employee Privacy
    - 6. Job Security
- II. Business Organizations
  - A. Choosing a Form of Business: Sole Proprietorships, Partnerships, LLPs, Ltd. Partnerships, Corporations, Professional Corporations, LLCs
    - 1. Liability Considerations
    - 2. Tax Considerations
  - B. Partnerships
    - 1. Creation of Partnerships
    - 2. Creation of Joint Ventures
    - 3. Partnership Property
    - 4. Operation of Partnerships
      - a. Fiduciary Duties
      - b. Authority
      - c. Liability for Torts & Crimes
    - 5. Dissolution and Winding Up
  - C. LLCs, Limited Partnerships, LLLPs
    - 1. LLCs: Tax Treatment, Formation, Rights and Liabilities, Dissolution
    - 2. Limited Partnerships and LLLPs: Creation, Rights and Liabilities, General Partners distinguished, Dissolution
  - D. Corporations
    - 1. History and Nature of Corporations
      - a. Forms
      - b. Piercing the Corporate Veil
    - 2. Organization and Financial Structure of Corporations
      - a. Promoters and Preincorporation Contracts
      - b. Incorporation Process
      - c. Finance
      - d. Consideration for Shares
      - e. Share Subscriptions, Issuance, Transfer
    - 3. Management
      - a. Corporate Powers
      - b. Directors' Powers & Duties
      - c. Officers' Powers & Duties
      - d. Managing Close Corporations
      - e. Liability for Corporate Torts and Crimes
      - f. Insurance and Indemnification
    - 4. Shareholders' Rights and Liabilities
      - a. Meetings, Elections
      - b. Fundamental Rights
      - c. Inspection and Information Rights
      - d. Preemptive Rights
      - e. Distributions: Dividends
      - f. Shareholder Direct Suits cf. Shareholder Derivative Suits

- g. Shareholder Liability
- h. Dissolution and Termination
- E. Securities Regulation
  - 1. Definition of Security
  - 2. Registration
  - 3. Insider Trading

### **Class Preparation**

The assignments are listed separately. Normally we complete one assignment each class. Always be one full assignment ahead. If, for instance, we begin but do not finish an assignment, prepare the next full assignment for the next class. Assignments include reading from the text.

*Briefs:* There are cases and problem cases which must be briefed in writing. A "case" is a court case which is contained in the text. A "problem case" is an end-of-chapter case, which, again, must be briefed. These problem cases are also actual court cases, but do not include the court's decisions - that will be your job to analyze. When a case problem contains questions, simply ignore them, and instead brief the case. If you have questions about the assigned material, please ask. Finally, there are periodic assignments that you find or research a topic. In that case, you will turn in the result of your search.

You will be called on at random throughout the semester to read your briefs and problems in class. You will not be graded on the briefs or problems. These are learning tools, not finished product. However, if you are unprepared or absent, this will affect your grade as discussed below. It is your responsibility to be prepared for every class. If you are absent, it is still your responsibility to be prepared. Once during the term you may give me a note at the start of class stating that you are unprepared and no negative mark will be made. You must be present in class to give such a note - it is not available as an excuse for an absence.

### **Recording of Class Material and Use of Electronic Devices**

You may not record the class. **USE OF CELL PHONES, SMART PHONES, AND PDAS ARE STRICTLY PROHIBITED. IF YOU BRING THEM INTO THE CLASSROOM, THEY MUST BE SET TO THE "OFF" POSITION (NOT "SILENT" OR VIBRATE, BUT "OFF") AND PUT AWAY. YOU MAY NOT BRING ANY ELECTRONIC DEVICES INTO THE CLASSROOM ON DAYS ON WHICH AN EXAM IS SCHEDULED.**

### **Attendance and Class Notes**

Class attendance and participation is vital to your success in this class. Having taught this class on a number of occasions, I can tell you that there is a direct correlation between class attendance and participation and the grade that you earn. Failure to attend class or leaving class early will likely have an adverse effect on your grade in the course.

You will be responsible for everything covered in class. Accordingly, you are encouraged to take copious notes. I will not give you my notes so there is no need for you to ask for them. The purpose of the course is for you to learn the material. Taking your own notes is a significant part of that learning process.

*Written Assignments ("WA"):* You will turn in assignments that are listed as "WA" in class. As with case briefs, these assignments are credit/no credit. You may not use your "note" for such assignments.

## Briefing Cases

To brief cases, case problems and questions, use the following "IRAC" format:

*Issue:* What question must be answered in order to reach a conclusion in the case? This should be a legal question which, when answered, gives a result in the particular case. Make it specific (e.g. "Has there been a false imprisonment if the plaintiff was asleep at the time of 'confinement'?") rather than general (e.g. "Will the plaintiff be successful?") You may make it referable to the specific case being briefed (e.g. "Did Miller owe a duty of care to Osco, Inc.?" ) or which can apply to all cases which present a similar question, (e.g. "Is a duty owed whenever there is an employment relationship?") Most cases present one issue. If there is more than one issue, list all, and analyze all issues raised.

*Rule:* The rule is the law which applies to the issue. It should be stated as a general principal, (e.g. A duty of care is owed whenever the defendant should anticipate that her conduct could create a risk of harm to the plaintiff) not a conclusion to the particular case being briefed, (e.g. "The plaintiff was negligent.")

*Application:* The application is a discussion of how the rule applies to the facts of a particular case. While the issue and rule are normally only one sentence each, the application is normally paragraphs long. It should be written debate - not simply a statement of the conclusion. Whenever possible, present both sides of any issue. Do not begin with your conclusion. The application shows how you are able to reason on paper and is the most difficult (and, on exams, the most important) skill you will learn.

*Conclusion:* What was the result of the case?

With cases, the text gives you a background of the facts along with the judge's reasoning and conclusion. When you brief cases, you are basically summarizing the judge's opinion. With case problems, the editors have given you a summary of the facts of an actual case, but have not given you the judge's opinion. Your job is to act as the judge in reasoning your way to a ruling, again using the IRAC format.

Most briefs are one page long. They must be brought to class on the day they are to be discussed. Once an assignment has been discussed, you no longer need to bring it to class. Since the briefs are not normally turned in, they may be either handwritten or typed.

## Exams and Grading

There will be one midterm and a final. The final exam is cumulative and will be given on the last day of class. The grade allocation is as follows:

Midterm: 40% of course grade

Final exam: 60% of course grade

Your grade is affected by whether you have been prepared when called on for case briefs and completed the written assignments. As noted above, you may give a note once during the term stating that you are unprepared, and no negative mark will be made. However, if you are called on and have not given an "unprepared" note or are absent you will receive an "unprepared" mark. If you are absent when called on you are "unprepared." One such mark will be dropped from consideration in grading. Any unprepared marks beyond that will cause your final grade in the course to be reduced by 0.1 for each such mark. Your note applies only to the case briefs and problem cases – not the written assignments ("WA") that are turned in. Failure to turn in such an assignment by the start of class results in an "unprepared," thus, it is possible to earn more than one "unprepared" in a single class day.

The grade reached after averaging the assignments and exams will be the minimum grade you can receive in the course. Plus/minus grading is used. At the professor's sole and reasonable discretion, your course grade may be raised based on classroom participation and improvement. One way to increase participation is to bring news articles related to topics studied in the class.

### **Make up Exams**

I do not give make up exams. If you miss the midterm with a University approved excuse (i.e., illness with a physician's excuse, etc.), we will count your final exam as 100% of your final grade. If you miss the midterm without a University approved excuse, you will receive a grade of zero.

### **General Instructions on Taking Exams**

Answer each question fully, clearly, and in the order given. Mere conclusions receive no credit. You should:

- Discuss the issue.
- Define and discuss any principles of law, legal theories, etc., relevant to the question.
- Fully apply the given facts to the legal principles on which you rely. Do not ignore any facts, even if they do not support your conclusions. Do not assume that I know that you know something - tell me in your exam what you know, defining every legal term used.
- The actual conclusions you reach could be the least important part of your answer - but you must base your conclusions on complete and intelligent applications of the facts to the legal principles involved.
- If further facts could affect the outcome of the problem, state with particularity what they are, and how they could affect the outcome.
- You may either use the "IRAC" format or write in straight paragraph form. Students earning higher grades tend to use essay format that incorporates the IRAC process. Discuss the issues involved, the applicable legal rules, and an application of the law to the facts to reach your outcome. Discuss all issues - some questions have more than one issue.
- If you need scratch paper to make notes, use your exam itself. Although you must turn it in, it will not be graded. .

#### **Caution:**

- Use non-erasable dark blue or black ink for your essays. Do not use white-out or tear pages out of your blue book.
- Bring one large bluebook to the midterm. Bring two large bluebooks to the final. Do not write your name on the bluebook - they will be exchanged in class. When you get the bluebook in class that you will use for your exam, write your name on the inside back cover of the bluebook. Do not write your name elsewhere on the bluebook. The purpose of this requirement is to ensure blind grading. Write on every line of the blue book. Write on only one side of each page; however you may use the facing page to insert information. Write your name on the exam itself. When you complete the exam, place the exam inside your bluebook and turn in the whole as a package. Failure to follow all of these directions will cause a 0.1 reduction in your exam grade. Failure to return the exam itself will result in a grade of "F" for the exam and may be referred to the Dean's office for further proceedings.

**Assignments**  
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<b>Date</b>	<b>Class topics</b>	<b>Work due</b>
January 21	Introductory lecture	None
January 28	Agency	Read ch. 35: brief Eisenberg, Sanders, PC <sup>1</sup> 1, 3, 4, 5, 6 & 9
February 4	Employment Law	Read ch. 51. Brief Darco, Beaver, Henry, Gaskell, & Fleck, PC 2, 3, 4, 6, 10 & 11
February 11	Third-Party Relations of Principal and Agent	Read ch. 36. Brief Opp, Work Connection, Treadwell, Interbank Funding, & Milan
February 18	Business Organizations & Partnerships	Read ch. 37: brief <i>Southex</i> , <i>McGregor</i> , and <i>McCormick</i> , ef PC 2, 3 & 7,
February 25		Ch. 37: brief 8, 9, 10 Read ch. 38. Brief Spector, NBN, and Ederer, PC 4 Review for Midterm
March 4		Midterm (Covering Chapter 35, 36, and 51 only)
March 11	Partnerships	Ch. 38: brief PC 5, 7 & 10 Read ch. 39. Brief Schwartz, PC 1
March 18		Ch. 39: brief 4, 6 & 8 Read ch. 40: brief <i>Katris</i> , <i>Garrison- Ashburn</i> , <i>Moser</i> , and <i>Man-O-War</i>
March 25		No class-Spring break
April 1	Partnerships, LLCs, LLPs, LPs, Corporations	Ch. 40: brief PC 2, 3 & 8 Read ch. 41: brief Ryan

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<sup>1</sup> “PC” refers to the problem cases at the end of each chapter. Ignore any questions given by the editors. Instead, these should follow IRAC format, with your analysis based on readings.

April 8	LLCs, LLPs, LPs, Corporations	Ch. 41: PC 4, 8 & 9 Read ch. 42: brief <i>Smithstearn Yachts, Christmas Lumber</i> , PC 3, 5; Ch. 42: PC 9, & 10
April 15		Read ch. 43: brief <i>Brehm, Guth, and Coggins</i> PC 1
April 22		Ch. 43. PC 3 & 7
April 29		Read ch. 44. Brief Dodge, Zapata, <i>Brodie</i> , and <i>Montgomery Cellular</i>
May 6		Review

Final exam (cumulative) will be given on the date, time and at the place indicated on CSUN website