

## A SHORT INTRODUCTION ON SOURCES OF LAW, COURT SYSTEMS AND CASE BRIEFS

Welcome to the Business Law 280! This introduction will give you a head start on reading and understanding cases. Because I expect you to come to your first class having read assigned cases and other material, it will help you to digest the information in this packet before school starts. In addition, please complete the assigned case brief and problem cases assigned as indicated in your syllabus. No one will score them, and they will not count toward any kind of grade, but if you do the exercise, you will have an opportunity to get some early feedback regarding your ability to comprehend cases during our first class together.

This handout covers three basic topics:

- 1) Sources of Law and the Common Law System;
- 2) The Structure of Court Systems; and
- 3) Case Briefs.

### **I. Sources of Law and the Common Law System**

Most of the law that you will read in Business Law 280 comes from one of two sources: **legislatures** and **courts**.

Legislatures (both state and federal) enact **statutes**, which are written rules that govern behavior within society. As societal norms change over time, legislatures may repeal old statutes that no longer seem to further societal interests. Legislatures also frequently enact new statutes, or amend existing ones, to address newly perceived problems. Statutes from a given jurisdiction are collected into a set of books called a **code**, like the “California Code,” for example. In a code, the statutes are organized by topic and are usually designated by “section” numbers. (A section symbol looks like this: **§**). California has 29 codes containing general statutes adopted by the California legislature. An example of a particular code section in California is *Business & Professions Code* §7031 (dealing with unlicensed contractors) or *Penal Code* § 187 (dealing with murder).

Most people know that legislatures pass laws, but few are aware that the judicial branch of government, through the courts, also creates law. This kind of law is called **case law**. One way in which courts create case law is by interpreting statutes. Legislatures cannot always foresee the specific ways in which people and businesses will act in the future. Therefore, they draft most statutes fairly broadly, to cover a spectrum of possible scenarios. This breadth often leads to ambiguities when courts attempt to apply the language of a statute to a situation that has arisen between two specific litigants in a case that is before the court. To apply the statute, the court has to interpret its ambiguous terms. In doing so, courts (that is, the judges on those courts) usually consider the purpose of the statute, the possible meanings of the statutory words, and general issues of fairness. Once a court has interpreted a statute, that interpretation will effectively become part of the law in the court’s jurisdiction.

An important sub-category of case law is **common law**. In a nutshell, common law is judge-made law. It does not stem from statutes at all. Centuries ago, English judges formulated their own rules when deciding the cases that came before them. Eventually, an entire body of these judge-made rules developed, and this body became known as the common law. When the judges encountered issues in new cases, they would refer back to the common law rules from earlier cases involving similar issues. The principle of applying rules from prior cases to new cases with similar issues is called **stare decisis**, which loosely translates as “Let the decision stand.” Stare decisis is the defining feature of the common law system. The rules that emerge from older cases are often referred to as **precedent**.

The British brought the common law system with them to the United States, and this system is still a feature of American law. The following example shows how courts apply precedent in a common law system.

### *Pending Case*

The purchasers of a house are suing the sellers to recover the cost of exterminating termites and of repairing termite damage to the house. The purchasers had never asked the sellers about termites, and the sellers – although they knew about the problem all along – had never disclosed the existence of the termites to the purchasers. The question before the court now is whether the sellers had an affirmative duty to disclose the presence of termites to the purchasers.

### *Precedent Case*

An older case from the same jurisdiction involved the sale of a termite-infested farmhouse. The seller in that case also knew of the termite problem, but when the purchasers asked him about termites, he lied and told them that the farmhouse had no termites and was structurally sound. The court in the farmhouse case held that the seller had a duty to answer the purchasers' question truthfully by disclosing the termite problem. In its written opinion, the court emphasized that fairness dictated that a seller provide truthful information to purchasers when asked. In addition, the court noted that overall efficiency is furthered when a seller of real estate discloses any relevant information that "materially affects the value of the property" because the seller and purchase can then bargain fairly at the outset and avoid getting involved in litigation after the fact.

The court in the pending case noted the considerations of fairness and efficiency that had driven the outcome in the precedent case. Based upon these considerations, the court held that even though the purchasers in the pending case had not asked if the house had termites, the sellers still had an affirmative duty to disclose the termite problem because it materially affected the value of the house. Thus, this new holding extended the seller's duty that had been established in the precedent case.

The common law system provides a certain measure of consistency in the law, which permits people to predict the legal outcome of a given situation. To the extent that a court has already decided a similar case, businesses (and their lawyers) can use this case to predict the probable outcome of a new case or the legality of a proposed action. Using precedent to advise clients about new situations generally involves drawing analogies (or distinctions) between the facts of a precedent case and the facts surrounding the new situation. For example, a lawyer in the jurisdiction where the termite cases were decided should probably counsel a client to disclose the presence of a rotten foundation to potential purchasers of the seller's house. The common law appears to require sellers to disclose serious defects like termite infestations to purchasers, and a rotten foundation is at least as serious as an infestation of termites. How about the presence of rats? How about ghosts? How about a noisy neighbor?

## **II. The Structure of Court Systems**

The United States has a federal system of government, which means that it has both a national government and a set of state governments. The national government, usually referred to as the "federal" or "United States" government, has a legislative branch called **Congress** (composed of the House of Representatives and Senate), an executive branch (led by the President) and a judicial branch (the highest court of which is the United States Supreme Court). Each state also has its own government with a state legislature, a state executive (led by a governor), and a state judicial branch. In California, for example, the state legislature is composed of the California State Assembly (80 members) and the California State Senate (40 members), the state executive is Governor Jerry Brown

and the state judicial branch consists of the California Supreme Court, and lower appellate courts and trial courts.

In the federal judicial branch and in most states, courts are organized in a three-tiered system. The lowest tier consists of **trial courts**. In the federal system, these courts are known as “district courts” whereas in California, these courts are generally known as “Superior Courts.” Almost all cases begin by being filed in a trial court. When a trial court makes a final decision in a case, the losing party will sometimes appeal. In an appeal, the case moves up to a court in the middle tier, an **intermediate appellate court**. A state system may have one or more courts at this level. The federal system has many intermediate appellate courts. The job of an appellate court is to look back over what happened in the trial court and determine whether the trial court judge applied the law correctly in the case. Appellate court judges usually put their decisions into writing, called opinions. Most of the cases you will read for class will be appellate **opinions**. In the course of explaining whether the trial judge correctly interpreted the law, an appellate judge, in his or her written opinion, will often explain complicated points of the law in some detail. Therefore, you can learn a great deal about the law and how it applies by reading appellate opinions. In addition, appellate opinions create **precedent**. When an appellate opinion establishes a particular rule, the many trial courts under that appellate court will have to follow that rule in future cases.

The third and highest tier of the court system is occupied by the United States Supreme Court in the federal system and by the Supreme Court of California here in our state system. Both of these courts are appellate courts. Litigants can sometimes appeal the opinion of an intermediate appellate court to these highest appellate courts. The job of these high courts is to look back at how the trial court and the intermediate appellate court interpreted the law to determine whether either or both of them were correct. High courts generally issue written opinions, and the legal rules established in these opinions bind all of the courts in their respective federal or state system.

Thus, through the appellate process, a case can travel up the three-tiered system, from a trial court, to an intermediate appellate court, to the highest appellate court. In turn, the binding effect of the rules established by a court’s opinion travels down the system. For example, when an intermediate appellate court establishes a rule, the set of trial courts directly below it must follow that rule. When the highest appellate court establishes a rule in an opinion, all of the intermediate appellate courts and trial courts below it must thereafter follow that rule.

### **III. Case Briefs**

You now know why you will be reading many appellate judges’ opinions (or “cases”) to learn business law. Taking notes on a case in the form of a case brief is a tradition that will help you understand cases as you read them and will also provide you with ready-made study materials that boil each assigned case down to its key concepts.

When briefing a case, your goal is to reduce the information from the case into a format that will provide you with a helpful reference in class and for review. Most importantly, by “briefing” a case, you will grasp the problem the court faced (the issue); the relevant law the court used to solve it (the rule); how the court applied the rule to the facts (the application or analysis); and the outcome (the conclusion). You will then be ready to not only discuss the case, but to compare and contrast it to other cases involving a similar issue. Before attempting to “brief” a case, read the case at least once.

**Follow the “IRAC” method in briefing cases:**

#### ***Facts\****

Write a brief summary of the facts as the court found them to be. Eliminate facts that are not relevant to the court’s analysis. For example, a business’s street address is probably not relevant to the court’s decision of the issue of whether the business that sold a defective product is liable for the resulting

injuries to the plaintiff. However, suppose a customer who was robbed as she left its store is suing the business. The customer claims that her injuries were the reasonably foreseeable result of the business's failure to provide security patrols. If the business is located in an upscale neighborhood, then perhaps it could argue that its failure to provide security patrols is reasonable. If the business is located in a crime-ridden area, then perhaps the customer is right. Instead of including the street address in the case brief, you may want to simply describe the type of neighborhood in which it is located.

### ***Procedural History\****

What court authored the opinion: The United States Supreme Court? The California Court of Appeal? The Ninth Circuit Court of Appeals? A federal district court? (Hint: Check under the title of the case: The Court and year of the decision will be given). If a trial court issued the decision, is it based on a trial, or motion for summary judgment, etc.? If an appellate court issued the decision, how did the lower courts decide the case? In the case of the assaulted customer, perhaps the federal district court (a trial court) is ruling on the business's motion for summary judgment against the customer.

### ***Issue***

What is the question presented to the court? Usually, only one issue will be discussed, but sometimes there will be more. What are the parties fighting about and what are they asking the court to decide? For example, in the case of the assaulted customer, the issue for a trial court to decide might be *whether the business is liable for negligence when it failed to provide security patrols.*

### ***Rule(s)***

Determine what the relevant rules of law are that the court uses to make its decision. Use building blocks for writing the rule of law, consider: (i) elements; (ii) definitions; (iii) exceptions to the general rule; (iv) limitations to the rule; and (v) defenses. These rules will be identified and discussed by the court. In the case of the assaulted customer, there may be more than one relevant rule of law to a case. For example, if the business argues that the customer assumed the risk of harm by wearing a large and expensive purse, the relevant rules of law could be the 4 elements of negligence, and the definition of "assumption of risk" as a defense. Don't just simply name the cause of action, such as "negligence," as a rule of law. What elements of the rule must the court apply to the facts to determine the outcome?

### ***Application (Analysis)***

This is the most important portion of the brief. The court will have examined the facts in light of the rule, and probably considered all "sides" and arguments presented to it. How courts apply the rule to the facts and analyze the case must be understood in order to properly predict outcomes in future cases involving the same issue. What does the court consider to be a relevant fact given the rule of law? How does the court interpret the rule: for example, does the court consider monetary costs of providing security patrols in weighing the burden of preventive measures? Does the court imply that if a business is in a dangerous area, then it should be willing to bear a higher cost for security? Resist the temptation to merely repeat what the court said in analyzing the facts: what does it mean to you? Summarize the court's rationale in your own words. If you encounter a word that you do not know, use a dictionary to find its meaning.

### ***Conclusion***

What was the final outcome of the case? In one or two sentences, state the court's ultimate finding. For example, *the business did not owe the customer a duty to provide security patrols. Therefore, the district court granted defendant's motion for summary judgment.*

\* "Facts" and "Procedural History" may be combined in your case brief and are for case briefs only. You are not required to summarize all of the relevant facts and the procedural history on exams. As we will discuss in class, you will discuss relevant facts in the **Application** section of your essay exam answers.