

HOW TO USE THIS STUDY GUIDE

Professor Gladwin provided the topics that we should study with the corresponding page number for the textbook. Below each topic are notes that I compiled from the textbook (including charts that I scanned) and from his lectures. Anything that is highlighted in yellow is a topic that appeared on his test. On the last page of my notes I typed up some of the questions that I remember were on the test and I also included information about the test, such as the number of questions and the types of questions. Hope this helps! ☺

Chapter 1 Law and Legal Reasoning

Sources of American Law (pgs. 3 & 6)

- **Primary sources of law:** sources that establish the law; binding
 - 1) **Constitutional Law:** the U.S. Constitution and constitutions of states
 - 2) **Statutory Law:** laws enacted by legislative bodies at any level of government, such as statutes passed by Congress, state legislatures, or local governing bodies
 - 3) **Administrative Law:** regulations created by administrative agencies (i.e. Food and Drug Administration)
 - 4) **Case Law & Common Law Doctrines:** rules of law announced in court decisions; judge-made law
 - Include interpretations of constitutional provisions, statutes enacted by legislatures, and of regulations created by administrative agencies
 - Today it is called case law - doctrines and principles announced in cases; governs all areas not covered by statutory and administrative
- **Secondary laws:** books and articles that summarize and clarify the primary sources of law (ex. Encyclopedias, treatises, articles in law reviews, and compilations of law); not binding

3 Classifications of Law

- 1) **Substantive Law:** law that defines the rights and duties of individuals with respect to each other, as opposed to procedural law, which defines the manner in which these rights and duties may be enforced
Procedural Law: rules that define the manner in which the rights and duties of individuals may be enforced
- 2) **Civil law:** the branch of law dealing with the definition and enforcement of all private or public rights, as opposed to criminal matters
Criminal Law: law that defines and governs actions that constitute crimes. Generally, criminal law has to do with wrongful actions committed against society for which society demands for redress

- 3) **Cyberlaw:** informal term used to refer to all laws governing electronic communications and transactions, particularly those conducted via the Internet
- New form of law; it will always be catching up to technology

State and Local Agencies and Federal Agencies (pg. 5)

- o **State and Local Agencies**
 - Commonly created as a parallel to a federal agency (i.e. state pollution-control agency created as parallel to Environmental Protection Agency)
 - Fed. agency regulations take precedence over conflicting state regulations
- o **Federal Agencies:** at the national level, the cabinet departments of the executive branch include numerous executive agencies (ex. The U.S. Food and Drug Administration is an agency within the U.S. Department of Health and Human Services)
 - Executive agencies are subject to the authority of the president, who has the power to appoint and remove their officers
 - There are also independent regulatory agencies at fed. level (i.e. Federal Trade Commission & SEC)
 - President's power is less pronounced
 - Officers serve fixed terms & can't be removed without just cause

Remedies in Equity - when/when not authorized/granted (pgs. 7 & 10)

- o Remedy at law: a remedy available in a court of law. Money damages are awarded as a remedy at law
- o **Remedies in Equity:** a remedy allowed by the courts in situations where remedies at law are not appropriate
 - Remedies include *specific performance*, *injunction*, and *rescission*
 1. *Specific performance:* involves ordering a party to perform an agreement as promised
 2. *Injunction:* an order to a party to cease engaging in a specific activity or to undo some wrong or injury
 3. *Rescission:* the cancellation of a contractual obligation
 - Courts will not grant equitable remedies unless the remedy at law - monetary damages - is inadequate
 1. Ex. Ted forms contract to buy parcel of land, seller breaches, Ted sues for down payment he made on land but he wants more - he wants the court to order the seller to perform the contract - in other words he wants the court to grant the equitable remedy of *specific performance* because monetary damages are inadequate in this situation

Equitable Maxims - focus on numbers 4,5,6 in chart (pg. 7)

- o **Equitable maxims:** propositions or general statements of equitable truths
- o CHART ON PG. 7
 - 4. *Equity will not suffer a wrong to be without a remedy.* (equitable relief will be awarded when there is a right to relief and there is no adequate remedy at law.)
 - 5. *Equity regards substance rather than form.* (Equity is more concerned with fairness and justice than with legal technicalities.)
 - 6. *Equity aids the vigilant, not those who rest on their rights.* (Equity will not help those who neglect their rights for an unreasonable period of time.)

Stare Decisis and Common Law Tradition (aspects of State Decisis) (pgs. 8 & 10)

- o **Stare decisis:** a common law doctrine under which judges are obligated to follow the precedents established in prior decisions
 - Latin phrase meaning “to stand on decided cases”
 - Judges are obligated to follow the precedents established within their **jurisdictions** (geographic area in which a court or courts have the power to apply the law)
 - Stare decisis has 2 aspects:
 1. A court should not overturn its own precedents unless there is a compelling reason to do so
 2. **Decisions made by a higher court are binding on lower courts**
 - Makes law more stable and predictable
 - Helps courts to be more efficient
- o **Binding authority:** any source of law that a court must follow when deciding a case
 - Constitutions, statutes, regulations that govern the issue being decided, and court decisions are controlling precedents within the jurisdiction
 - Supreme Court case decisions remain controlling until they are overruled by a subsequent decision of the Supreme Court

Civil and Criminal Law (pg. 13)

- o **Criminal Law:** concerned with wrongs committed *against the public as a whole.*
 - o state is moving party (ex. the case against Dalvin Cook); only government is plaintiff