Law

Overview of the Legal System
Basic Concepts

- Constitutional Law
  - U.S. Constitution—Supreme law of the land
  - States may offer additional protections
Common Law and Civil Law Judicial Systems

- Two types of legal systems: common law and civil law
- Common Law System
  - Developed on a case-by-case basis
  - Legal principles taken from judge’s decisions
  - Often referred to as judge-made law
- Two sources of law in common law systems:
  - Statutory—statutes passed by legislatures
  - Common law—based on precedent
Common Law and Civil Law Judicial Systems

- Civil Law System
  - Codified principles or compiled statutes
  - Bound only by civil code, not by previous decisions
  - Judge applies codified principles to each case

- Main distinction is that judges under common law systems are bound by precedent; judges under civil law systems are bound only by the civil code and not by previous decisions.
Adversarial and Inquisitorial Processes

- *Common* law jurisdictions favor the *adversarial* process.
- *Civil* law jurisdictions favor the *inquisitorial* process.

**Adversarial**
- Parties to the proceeding drive the discovery (evidence-gathering) process.

**Inquisitorial**
- Fact-finding approach places responsibility of discovering evidence on the presiding judge.
The Court System

- **Jurisdiction** is the power of a court to hear and decide a given case.

- **Venue** refers to the geographical area covered by the court.

Three questions to find the proper court:
- Does the court hear this type of case?
- Does the court have authority over the defendant or property?
- Is the claim within the court’s venue?
The Court System

- **State Courts (3- or 4-tier system)**
  - Lower-level trial court
  - Higher-level trial court
  - Appellate court (new trial, fact finding—must send back to trial court)
  - Superior appellate court (Supreme Court)

- **Federal Courts (3-tier system)**
  - District court is the trial court
  - Circuit court is the appellate court
  - Supreme Court

- Every federal district has a U.S. Attorney and Assistant U.S. Attorneys
The Court System

- In federal court, appeals from district court (trial court) heard by U.S. Court of Appeals for the "Circuit" for that geographical area.
- An appeal to the U.S. Supreme Court is accomplished by applying for a Writ of Certiorari.
  - If the Supreme Court "denies Cert.,” the lower court decisions stand.
Sample Prep Question

1. Which of the following types of law is/are created by legislatures?

A. Common law
B. Case law
C. Statutory law
D. All of the above
Correct Answer: C

- In common law countries like the United States, there are two sources of substantive law: statutory law and common law. *Statutory law* includes statutes passed by legislatures (and regulations passed by administrative bodies). The *common law* consists of the usages and customs of a society as interpreted by the judiciary; it is often referred to as *judge-made* law.
2. Which of the following refers to a court's power to hear and decide a given case?

A. Jurisdiction
B. Venue
C. Political domain
D. Res judicata
Correct Answer: A

- **Jurisdiction** is the power of a court to hear and decide a given case; it refers to the subject matter or persons over which lawful authority may be exercised by a court.
- **Venue** is technically an element of jurisdiction. It refers to the physical location where the lawsuit is to be tried.
Sample Prep Question

3. If an appellate state court reviews a decision of a state trial court and finds that a new trial is necessary or that additional factual findings need to be made, which of the following U.S. courts would hear those proceedings?

A. The appellate court
B. The state supreme court
C. Federal district court
D. The trial court
Correct Answer: D

- Appellate courts review trial court decisions. While appellate courts may review issues of law and mixed issues of fact and law, they do not try cases and are not responsible for discovering facts. New trials and issues that require new factual findings will generally be sent back to the trial court that decided the appealed issue. In this case, the appellate state court would send the case back to the trial court.
4. In a jurisdiction that features an inquisitorial judicial process, the parties primarily drive the evidence-gathering portion of judicial proceedings and conduct the questioning of witnesses.

A. True
B. False
Correct Answer: B

- An *inquisitorial* process refers to a fact-finding approach that places the primary responsibility of discovering evidence on the presiding judge. *Adversarial* processes are those in which the parties to a proceeding drive the discovery process (the search for evidence). In adversarial systems, the parties to the litigation gather and present the evidence to the court. They also conduct questioning of fact and expert witnesses.
Law

*Individual Rights During Examinations*
Duty to Cooperate/Employee Rights

- A duty to cooperate exists in every employment relationship
- Contractual Rights
- Whistleblower Protections
- Employee’s Constitutional Rights
  - Fourth—search and seizure
  - Fifth—right to remain silent
  - Sixth—right to attorney
- Constitution does not limit private employers—can’t be sued for violation of constitutional right unless “state action” involved
Employee’s Rights During the Investigation

- Private Action vs. State Action
  - Conducted by private company at the request of the state or federal authorities
  - Begun by a private company—taken over or expanded by state or federal authorities
  - Joint investigations with or aided by state or federal authorities
  - Investigations conducted by a private company that are required by state or federal law
  - Searches or interrogations conducted by outside investigators who are off-duty state, local, or federal authorities
Interviews

- **Miranda Warnings**
  - Custodial setting
  - By law enforcement
Searches

- U.S. Constitution: Fourth Amendment
  - Prohibits unreasonable searches and seizures—must be “state action”
  - Protects government employees from unreasonable workplace searches
- *Katz v. United States*
  - “Protects people, not places”
  - “Reasonable expectation of privacy”
Searches

- **Residences**—private
- Business premises—some areas private as related to government searches
- Discarded trash—not protected
- Public places—not protected
- Information stored by third parties—generally not protected
- Contents of containers, packages—private
- Mail sent through USPS—protected
Searches

- **Warrant**
  - Must be supported by “probable cause” and “particularly” describe the place and things to be searched

- **Exceptions to the Fourth Amendment Warrant Requirement**
  - Search incident to arrest
  - Search of motor vehicle
  - Exigent or emergency circumstances; (“hot pursuit”)
  - Border, customs, prison searches
Exceptions to Warrant Requirement

- Workplace search by government employer
  - “Reasonable under all circumstances”
- Consent searches
  - Valid unless obtained by deceit, bribery, or misrepresentations
  - No warning required
  - “Implied” consent—boarding airplane, entering building
- Evidence in “plain view”
Common Law Protections

- Invasion of Privacy: (1) Intrusion upon Seclusion
  - An intentional intrusion
  - Into an area where an individual has a reasonable expectation of privacy
  - Highly offensive to a reasonable person

- Invasion of Privacy: (2) Public Disclosure of Private Facts
  - Makes public statements about another party’s private life that are not of public concern—statements are true
Common Law Protections

- Intentional Infliction of Emotional Distress (Outrageous Conduct)
  - Extreme and outrageous conduct
  - Intended to cause severe emotional distress
  - Employee actually did suffer emotional or mental distress as a result of the employer’s conduct

- Defamation
  - Untrue statement of fact
  - Communicated (published) to third party
  - Unprivileged occasion
  - Statement damaged the subject’s reputation
Common Law Protections

- **False Imprisonment**
  - Restraint by one person of the physical liberty of another without consent or legal justification

- **Spoliation of Evidence**
  - Destroying evidence or making it unavailable
Reducing Expectation of Privacy

- Written policy stating company may gain access to and search all work areas and personal belongings, including desks, file drawers, lockers, briefcases, handbags, pockets, and personal effects
- Retaining a key to all desks, lockers, etc.
- Requiring employees to provide keys to all personal locks
Sample Prep Question

1. Gold and Jones are both employees of the Smithstone Corporation. Management tasked Gold with investigating Jones after receiving an anonymous tip that Jones was guilty of misconduct. During the course of his investigation, Gold discovered that Jones was cheating on his wife. He then went on to share this true information with several of their coworkers who were not involved with the investigation. Under these facts, Jones may be able to sue and recover against Gold for:
Sample Prep Question

A. Intentional infliction of emotional distress
B. Defamation
C. Invasion of privacy
D. None of the above
Correct Answer: C

- There are two relevant forms of invasion of privacy: (1) intrusion upon seclusion and (2) public disclosure of private facts. Giving unreasonable publicity to true, but private, information about an employee can give rise to a claim for public disclosure of private facts. The need to communicate information about the employee must be balanced against the intrusion into the employee’s privacy.
Sample Prep Question

2. Which of the following statements about consent searches and the Fourth Amendment to the U.S. Constitution is NOT correct?

A. The government does not need a warrant to perform a search if a person with proper authority consents to a search.

B. To constitute an effective waiver of Fourth Amendment rights, an individual’s consent to a search or seizure must be voluntary.

C. Even if obtained by bribery, deceit, or misrepresentation, consents to search constitute a valid waiver of Fourth Amendment rights.

D. Government agents do not have to warn subjects that they have a right to refuse to consent to searches.
Correct Answer: C

- Consent is a recognized exception to the warrant requirement. Individuals are always free to waive their Fourth Amendment rights. If a subject consents to a search or seizure by a government agent, this eliminates the need for a warrant. But to constitute an effective waiver of Fourth Amendment rights, an individual’s consent to a search or seizure must be voluntary.

- Consents to searches by government agents obtained by deceit, bribery, or misrepresentations are generally held to be involuntary and, therefore, do not waive the consenting parties’ Fourth Amendment rights.

- Government agents do not have to warn subjects that they have a right to refuse to consent to searches.
Sample Prep Question

3. Smith, a CFE, works for the ABC Company, a publicly traded U.S. company. One day, a Federal Bureau of Investigation agent asks Smith to search Green’s personal belongings for evidence of securities fraud, even though no warrant has been issued. Smith seizes and searches Green’s personal tablet. Based on these facts, which of the following is the MOST ACCURATE statement regarding Green’s rights under the Fourth Amendment?
Sample Prep Question

A. The search did not violate Green’s Fourth Amendment rights because ABC Company is not a government agency.

B. Green’s rights were likely violated because all publicly traded companies are considered “state actors” under the Fourth Amendment.

C. Green’s Fourth Amendment rights were likely violated because Smith conducted the search at the request of federal authorities without a warrant.

D. The search did not violate Green’s Fourth Amendment rights because the Constitution never applies in the workplace.
Correct Answer: C

- The following examples could be considered to involve state action:
  - Investigations conducted by a private company but at the suggestion or request of the state or federal authorities
  - Investigations begun by a private company that later are taken over or expanded by state or federal authorities
  - Joint investigations with or aided by state or federal authorities
  - Investigations conducted by a private company that are required by state or federal law
  - Searches or interrogations conducted by outside investigators who are off-duty state, local, or federal authorities