

Business law assignment

[Business](#), [Management](#)



Congress (currently \$75, 000). The so-called citizens may include companies incorporated or doing business in different states or a citizen of a foreign country. However, note that the federal courts traditionally refuse to exercise their diversity jurisdiction over cases involving domestic relations and probate. Diversity Jurisdiction exists only when the amount in controversy is over \$75, 000 and there is complete diversity of citizenship between the parties. For example, diversity Jurisdiction exists when a citizen of Pennsylvania is suing a citizen of Minnesota and claiming \$76, 000 n damages.

In cases with more than two parties, complete diversity requires that there not be colleens of the same state on different side of the litigation. For example, diversity]relocation exists If a citizen of Pennsylvania sues a citizen of Minnesota and a citizen of New York in the same suit, but does not exist if the Pennsylvania citizen attempts to sue a Minnesota citizen and another Pennsylvania citizen. 2. What is the reason for having exclusive federal Jurisdiction in issues such as bankruptcy, copyright and patent and trademarks?

Those cases are heard in federal routs of limited Jurisdiction, such as US Bankruptcy Court, Court of International Trade, etc. , because they primarily involve federal laws. The United States Court of Appeals for the Federal Circuit is the appellate court for patent and trademark cases; bankruptcy cases are appealed in US District Court. Huh Federal Question- Federal courts have Jurisdiction over cases that arise under the U. S. Constitution, the laws of the united States, and the treaties made under the authority of the united States.

These issues are the sole prerogative of the federal courts and include the following types of cases: * Bankruptcy-?? The statutory reoccurred, usually triggered by insolvency, by which a person is relieved of most debts and undergoes a judicially supervised reorganization or liquidation for the benefit of the person's creditors. * Patent, copyright, and trademark cases *

Patent-?? The exclusive right to make, use, or sell an invention for a specified period (usually 17 years), granted by the federal government to the inventor if the device or process is novel, useful, and non-obvious. 2) Copyright-?? The body of law relating to a property right In an original work of authorship (such as a literary, casual, artistic, photographic, or film work) fixed In any tangible medium of expression, giving the holder the exclusive right to reproduce, adapt, distribute, perform, and display the work. (3)

Trademark-?? A word, phrase, logo, or other graphic symbol used by a manufacturer or seller to distinguish its product or products from court? The trial court tries the facts to determine a verdict, the Jury making the decision on facts if the defendant doesn't ask for the Judge to hear the case.

Appeals may begin in the trials court and then move to appeals courts.

Those courts ill initially see written arguments on the legality of the Judges actions and rulings on the law or the prosecutor's, the effectiveness of the defense attorney, maybe even the Jury's conduct, new evidence of innocence (rarely effective claims), and if any of those things changed the outcome of the trial. If a defendant can put an issue into constitutional terms, he can continue in the federal courts, once he's exhausted the state courts.

At some stages, some appeals courts may hear oral arguments from the attorneys or even a hearing with witnesses, but most of it is on paper. Each appeals court can refuse the appeal, send it back for retrial for verdict or sentence only, or back to the lower appeals court for rehearing. But once it's into appeal, the State can also appeal the appeals court rulings before anything else happens, and that makes it different from the trial where the State can't appeal a not guilty verdict. 4. Explain the process that takes place in the pleadings portion of the trial.

Pleading Stage * **Filing a Complaint** – In civil proceedings the complaint is the official engagement of the plaintiff with the defense regarding the proposed “injustice” caused by the defense. This is a formal document submitted by the plaintiff to the court having jurisdiction over the complaint. * **Summons** – Notification by the court in which the complaint is filed as an action being brought against the defense. Service of the summons typically requires a response from the defense within a 30-day period. No response from the defense can trigger a default judgment for the plaintiff. **Motions to Dismiss** – These are the defense's response or answers to the plaintiff's complaint. The responses are typically filed as motions and are intended to dismiss the claims expressed in the complaint. **Motion for Judgment** – Following the defendant's response to the plaintiff's claims, the parties can either choose to settle or request a judgment based on the evidence presented, or the court can decide to continue toward resolving conflict at trial. If there is no judgment made, the case proceeds to the pre-trial stage. 5. What are the differences between conciliation, mediation and arbitration?

Arbitration is a method where the disputing parties involved present their disagreement to one arbitrator or a panel of private, independent and qualified third party “ arbitrators. ” This method is more adversarial. The arbitrator(s) determine the outcome of the case. By employing arbitration, the parties lose their ability to participate directly in the process. In addition, parties in arbitration are confined by traditional legal remedies that do not encompass creative, innovative, or forward-looking solutions to business disputes.

Mediation is a method where a neutral and impartial third party, the mediator, facilitates dialogue in a structured multi-stage process to help parties reach a conclusive and mutually satisfactory agreement. A mediator assists the parties in identifying and articulating their own interests, priorities, needs and wishes to each other. Mediation is a “ peaceful” dispute resolution tool that is complementary to the existing court system and the practice of arbitration.

Conciliation is another dispute resolution process that involves building a positive relationship between the parties of dispute, however, it is Conciliation is a method employed in civil law countries, like Italy, and is a more common concept there than is mediation. While conciliation is typically employed labor and consumer disputes, Italian Judges encourage conciliation in every type of dispute. The “ conciliator” is an impartial person that assists the parties by driving their negotiations and directing them towards a satisfactory agreement.

It is unlike arbitration in that conciliation is a much less adversarial proceeding; it seeks to identify a right that has been violated and searches to find the optimal solution. 6 In a case that involves diversity Jurisdiction, why would one of the parties prefer a state court to a federal court or vice versa? If both parties are diverse, meaning they are residents of different states at the time of the proceedings removal to federal court from state court might be better because there may be bias in the locale where the case is being heard.

If a case is removed to federal court from state court, the federal courts will follow the state law from where the case originated assuming it's a state issue. This is known as the Erie Doctrine. The other answers regarding this are incorrect. Huh There are several reasons for this! Federal Judges are appointed for their lifetime. State Judges are ELECTED. This means that a State Judge is much more likely to rule for a party from his or her state (as a political move). State processes are often faster and less expensive to litigate.

The winnings at the federal level are usually MUCH larger for the Plaintiff on a Diversity matter because the Amount In Controversy must be GREATER than \$75,000. Previously, Forum Shopping was a problem. When challenging in federal court the procedural and substantive laws are different. Now due to something called the Erie Doctrine, this is MUCH harder. If there is a conflict Procedural Rules, the Federal rules win in a federal court. However, if there is a conflict of substantive law, the STATE law governs. People used to sue in Federal Court for tort actions where their state had put a cap on damages, so that they could get more \$\$\$.

Now, they can't do that. 7. Consider a television or a radio advertisement and indicate how commercial speech is protected to a lesser degree than individual speech in our society. Because commercial speech is less core to the functioning of a free society than political speech 8. What is the difference between substantive and procedural due process? Difference between substantive and procedural due process: A. Procedural due process permits government to take action that may have grave consequences for a errors or group as long as it follows fair procedures.

Example: The Fifth Amended requires that one may not be deprived of life, liberty, or property without due process. B. Substantive due process prevents the government from taking some actions against an individual regardless of the procedural protections provided. Huh Substantive Due Process *

Substantive due process protects substantive rights of individuals including those in the Bill of Rights by requiring the government to afford an individual due process before depriving her of a fundamental right, such as the freedom of speech ere exercise of religion and the right to privacy.

Substantive due process requires Laws that restrict or deprive a person of a substantive rights must serve a compelling government interest, such as public health and safety and prevention of crime. Procedural Due Process *

Procedural due process ensures fundamental fairness in all legal and administrative proceedings. It protects the individual's rights by placing restrictions and requirements on how a government may proceed in an action to deprive him of any right. A person is entitled to notice, and an opportunity to present his case, fore the government may take any action

that adversely affects a right. . In your opinion, how far should freedom of speech go? Should advertisers be allowed to express opinions that disparage competition? Should satire be protected to the degree where it is crude or obscene in some opinions? It should be limited only if it directly threatens life. The prohibition of “ shouting fire in a crowded theatre” is a worthwhile exception. That is the funny thing about free speech, it is either free or it isn't. There is no limit. 10. Several states have enacted statutes allowing for the medical use of marijuana.

The federal government has (thus far) a clear policy against allowing cannabis clubs and the like to distribute the drug. Can the federal government overstep a state initiative? If so, under what authority? The federal government has more power over state government. Amendment 10 – Powers of the States and People. Ratified 12/15/1791. The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people The federal government has the power to create laws over riding the laws of a state.

This was actually the cause of the US Civil War (not slavery). When the US passed laws outlawing slavery, the southern states withdrew from the Union under the slogan, “ State's Rights If that state initiative is in direct conflict with an existing federal law, then yes they can overstep the state under the 9th amendment, which states that in the event of a conflict between federal and state or local law, then the federal law shall supersede. 1 1 . What are the reasons that a court can review and set aside an administrative agency

decision? Give an example of two ways that an agency decision might be overturned.

Agencies can investigate potential violations of the law within their jurisdiction. They may make use of a full range of investigative tools, including inspections, tests, reconsidering and reporting requirements, and others. If agency personnel detect violations of the law, they may be able to take legal action in a manner parallel to that of a prosecutor. Agencies, of course, must follow the law; to the extent that agencies overstep legal boundaries, courts have the authority to set some of which will be discussed in much more detail in subsequent chapters.

But, by way of overview, there are three principal sources of legal restraints on agencies. No single entity – not the President, Senate, House of Representatives, state Governors, nor anyone else – has the power to overturn a US Supreme Court ruling. Supreme Court decisions cannot be nullified by other parts of government. However, if the Supreme Court strikes down a federal law, Congress can always modify the law until it is such that the Supreme Court does not consider it to violate the Constitution, then pass it again. Supreme Court decisions can only be overturned in two ways: Legitimate Methods .

The US Supreme Court reverses a decision on an earlier case by making a contradictory decision on a current case. 2. Congress and the States can overturn a decision by amending the Constitution. Illegitimate Methods (Passive Resistance) 1 . Sometimes the Executive Branch obstructs or fails to enforce a decision. 2. Sometimes Congress rewrites legislation to bring it into

compliance with constitutional guidelines. 3. Sometimes Congress strips the Supreme Court of its appellate Jurisdiction over certain types of cases to deprive them of the ability to overturn a law or policy. 4.

Sometimes states pass laws that clearly violate Supreme Court decisions, forcing someone with standing to challenge the new law's constitutionality. Meanwhile, the law can be enforced even if violates established civil rights. State legislatures do this with the hope of overturning, or slipping around, precedents set by earlier Courts. Contributor's Example Don burns the US Flag on the steps of a state capitol. The state arrests him because the state amended its own constitution to make this illegal. However, the US Supreme Court ruled that flag burning is protected speech, thereby making flag burning lawful under US law.

If the case is appealed to the US Supreme Court, it would rule that the state constitutional amendment violates the US Constitution (which is superior) and strike down the state amendment. The state then writes a law that Don has to buy a permit to burn the flag in any form of protest. The US Supreme Court might uphold that law (if challenged) as long as it fulfills a legitimate government purpose, but does not: 1) discriminate in who the permits are issued to, or 2) make the cost or time involved in issuance of the permit unbearable. Sometimes such laws are deemed unconstitutional, and sometimes not.