Session 1- May 23, 2017

No Class July 4th

People Vs. Larry Flint

Two Cases posted tomorrow: Briefing next week

5 minutes to talk about what would be in final paper

Majority of Info will come from the Judicial Branch

Superior Court is the highest court in California

U.S. supreme court cases

Marbury vs. Madison

Questions on Test: Common Law definitions from Penal Code. Elements to find someone accountable for actions.

**Assault and Battery- can both be a crime or a torte.**

Assault- placing someone in immediate apprehension of battery.

-reason to believe that they were about to be battered.

\*Ask about mental health

Battery- the unlawful or offensive touching of another.

-actually punching someone.

Criminal Law- Government against a person for a crime.

Civil Law- People suing each other. Sued for a torte.

Robbery- is a crime against person. It is the unlawful taking of an item from another by force or fear.

Burglary- is a crime against a property. The unlawful entry into the dwelling of another with the intent to commit a larceny or felony they’re in.

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SEND JOB INFO (PATHPOINT) TO SHENEKA

Alexander Hamilton

Aid du Camp to George Washington

First Secretary to Department of Treasury

First national election

Thomas Jeffersons Party

Federalists- Alexander Hamilton

Wanted each state to be individual

Wanted industry and infrastructure in a united country

Washington becomes first pres.

John Adams

Articles of Confederation

Federalist Papers that A. Hamilton was foundation for Constitution

**Marbury Vs. Madison**

Marbury- Justice of the Peace- never receives document.

Sues in the Supreme Court- is this legal? Yes? Appointment of Marbury is valid.

The Judiciary Act of 1801 can be appealed to the Supreme Court

\*Rule that came was essentially no and hears cases from appeal.

Is it valid or is it not valid

Judicial Review- That the judicial branch has the right to review cases to determine if it constitutional or unconstitutional.

Stare Decisis- to stand by a decision. Notion that judges will respect and abide by all other judges decisions above them or equal to them (not below them). Finding the rule through application of case law.

Congress can’t give powers out of constitution, which gives more power to Supreme Court.

On blackboard Bill of Rights- important to know and be responsible for the test.

Know the Supreme Court Justices

Know the differences Niel Gorsech and Merrit Garland (I don’t think I spelled this correctly)

Book- read page 639- levels of review/scrutiny. Describes the threshold level for Supreme Court to review cases of constitutionally.

**Strict Scrutiny**- This is the highest level of scrutiny applied by courts to government actions or laws.

* Requires the government to prove that:
* There is a compelling state interest behind the challenged policy, and
* The law or regulation is narrowly tailored to achieve its result.

**Intermediate Scrutiny:**

The next level of judicial focus on challenged laws is less demanding than strict scrutiny. In order for a law to pass intermediate scrutiny, it must: (Professor will post link)

**Rational Basis Review**

\* The government has no legitimate interest in the law or policy; or

\* There is no reasonable, rational link between the interest and the challenged law.

**YouTube**: CrashCourse: The Constitution, the Articles, and Federalism: Crash Course in US History.

Read from book first, then blackboard content.

Chapters 1,2,3, and 5.

Lecture 2- May 30, 2017

The anatomy of a civil lawsuit:

Courts can only hear things if they have the power to do it.

Two separate sets of court system: California Court System and Federal Court System

Federal Courts are courts of limited jurisdiction- Federal question (constitutional claim) or diversity jurisdiction (plaintiff and defendant live in two different states with the added caveat with 75,000 and nothing in common), State courts are courts of general jurisdiction (hear anything except 4 things you cannot file in state courts- bankruptcy court, patent court, tax court, military tribunals)

If you have a case that can be filed a case in both state or federal courts and plaintiff (state court- rules are fast and loose, run up defenses bill and essentially force a settlement and defendant want in federal court (more rules and longer process)

Pendant jurisdiction.

Small Claims- hear cases where controversy is up to 10,000

Superior Court- hear cases above 10,000

-limited civil case: 10,000-24,000

-unlimited civil case 25- and more

1. before you file

A. Where to file:

Jurisdiction:

California Subject Matter Jurisdiction- what type of case a court can hear. COnstituional- Federal. Car Accident- State. whether you are filing state or federal court. Superior (state) or federal)

What state court:

Personal Jurisdiction- **where** the defendant is. Which State.

Venue- Which County.

Concerns the ability of the state court to enter a binding judgment against the defendant.

Minimum Contact: if someone can reasonably suspect being hailed into court. Or if the defendant consents to it (usually strategic)

Trialbywrittendeclaration

Venue(county)all things that have to do with the defendant- Venue is proper when contract is involved

If a client is then there are 3 counties where you can sue in: County where the contract was entered into, where the contract was to be performed, or where the contract was breached.

Real Estate: the general rule is four years for statue of limitations. Contract entered into

Statue of Limitations- how long after an injury occurs or. For fairness of parties involved.

Personal Injury- where the injury happened. After you are hurt (anytime you are hurt) you have to sue within two years.

Government Entities- Have to be sued in the counties they sit. Simi Valley=Ventura County

Judgments in small claims: 10 years for statue of limitations.

Statue of limitations: Tolling pauses the period, or doesn’t start the time. The process starts after incarceration or incapacitation. Infancy- under age of 18.

You can always sue in the county where the defendant resides. (general rule)

You Start a Lawsuit:

Plaintiff that documents the lawsuit is called a complaint- details what was violated, how they wronged you and what you want.

File Complaint:

Doe- John Does and Jane Does- suing Bank of America inc and John Does 1-10

California Allows Fictitious Pleading Process (Doe pleading)

TEST: Service: after you file your complaint, you have to get it to the defendant so they know they are being sued. General rule: person serving has to be over age of 18, and not a part of the complaint. Served personally in California. Outside of California you can use any method that the state allows. Florida allows for mailing the lawsuit.

suing you. Can be compulsory have to be filed against the complaint but must be done immediately (same cause of action/same incident) or permissive for later (not same cause of action/ separate incidents).

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30 days to file an answer. Default locks a defendant to not participate. Important to answer after you are served. If the defendant doesn’t file an answer, they can file other motions before the 30 days (gives time and that plaintiff has no case, legally the plaintiff) Motion to dismiss states that there is no evidence in which relief can be granted.

Course of a lawsuit (youtube?)

Discovery- court powers in either defendant or plaintiff to get information from the other side.

Requesting reproduction of documents, answering questions about the lawsuit, or schedule a deposition (like a court hearing not in a courtroom).

Before the trial:

Course of a trial:

Opening and Closing Statement:

Opening Statement: you don’t argue anything. Make a statement.

Argument: Applying facts to statement.

Presentation of Evidence: Plaintiff goes first. Simple questions to put evidence out there.

Argument (closing statement): As much time to use evidence to say why it was wrong.

Questioning: Will lay foundation before testifying. Witnesses are questioned for background information that will prove knowledge on basis for the trial.

Heresay: generaly not allowed on testimony. Hearing somebody else say. “He said he didn’t have a gun.” Out of court statement offered for the truth of the matter asserted.

Two Parts: 1. Outside of Court. 2. Truth of the Matter Asserted.

Plaintiff in Closing Argument essentially gets the last bite.

TEST

When you lose a case or judgment against you, you file an appeal. The appealte court hears out of appeal. Writs- also heart court of appeal, these are motions filed over the course of a lawsuit. If you want those reviewed, you don’t file for appeal, you file for a writ. If you have a final order, that is what you appeal.

When you file a complaint and you serve it to a defendant they have 30 days to file an answer, if they don’t the plaintiff gets to ask for a default (ask court for whatever you want) a way for defendant to get out of it in Cal (CCP473) sets aside default if there was a mistake, legal error or misunderstanding. 473 is how defendant can get out of a default (being locked out). Can only happen in civil cases, not criminal.

Discovery after case is starting: a formal exchange of information.

Interrogatory: questions in written deposition. Deposition is live.

California Evidence Code 1152: anything that you talk about settlement discussions can never be brought up in court. Any offers can not come up in court. Allows for open discussion that resolves a case quickly.

Subsequent Remedial Measures: Can’t use something that someone should have known. Want them to fix what’s dangerous.

Anything you file with court. Motion to strike from the court- most common is a request for punitive damages (implies intent or malice). Improper use of opening statements.

Anti-SLAPP motion: When defendant files motion (strategic lawsuit against public participation) meaning to freedom of speech. The 1st amendment right to speech. In cases of liable or defamation, the anti-slapp in essence is a defensive motion to dismiss the claim because it limits public discourse participation and freezes the lawsuit.

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June 6, 2016- Session 3

5 minutes to be very persuasive- how a law becomes adopted in a different country. Why you propose a law and why it’s needed.

Blackboard readings will be case briefings.

Headings include

Facts: (second biggest paragraph or two)

Issues: (can be a sentence)

Analysis: (big)

Conclusion: (what happened)

or

Issue:

Rule:

Application:

Conclusion:

(half a page/page)

1st Amendment: You have a right to speak without being hindered. Granted the government actions.

Speech is speech and anything that you create as an act of expression; dance, song, movement or lack of expression (not saying anything is your freedom of speech)

Freedom of Speech: Free speech is expression without restraint. (Unreasonably)

Freedom of the Press: The press has a right to print whatever they want or speak whatever they want. Only two people is the government by censorship (blocking what you’ve said after you’ve said it) or prior restraint, private actors.

Liability as a press can be defamation.

Defamation: knowing publication to a third party false information about another.

Knowing: False (publish)

Restrictions on Speech by Government to enforce property right: Protect creations of the public

1. Copyright: protects your spoken or written creations. Song

2. Trademark: you have to file to own the right to own it definitively. logo

3. Patent: an engineered creation, something physical that you produce. new device

4. Obscenity: No right to speak obscenities, absolutely none. Justice Potter Steward: I can’t define obscenity but I know it when I see it.

Miller test: 1971- California- Newport Beach- Brochure of pornographic images. Court creates Miller test: The average person applying local communities standard must describe or depict in a obviously. 3 problems: work as a whole must lack serious literary, artistic, political or scientific value. No redeemable act for except for children.

Roe vs. Wade: The United States Supreme court constitution does not expressly have the right to infer the right to privacy. California State constitution inalienable right to obtain or pursue privacy. Roe vs. Wade and other case she was suing a state, based on U.S. constitution (bill of rights) you can’t do this. This allows the bill of rights what the S

**Bill of Rights applies through the states is through the 14th amendment. Basis is the equal protection clause. Citizen or not.**

Hypothetical Short Answer:

**The absolute defense to defamation is truth.**

You have to act with reckless disregard for the truth ^

Slander: spoken.

Liable: written.

Sullivan vs NY Times: For a public figure to pursit defamation against the press they have to prove absolute malice. Show proof they did it on person and intended to do you damage.

Limited Person: A person that’s famous that is known for one thing.

Defamation about that one thing

(Honey Boo Boo, Bernie Madoff) – taking money from you.

Freedom of the Press:

Brandenburg:Speech can only be prevented only if you incite imminent lawlessness.

Shane: Imminence

Elements: Intent, Imminence, and Likelihood.

James Risen case on C-Span:

Shield Laws: discussion at length

They are laws that protect journalists.

June 13, 2017- Session 4

How to do the Essay Question

You have tasked me with determing

Throw points- “Regina wants you to sue Cady and make”- what the client wants

Fact Pattern, Outline and summarize

**Slander**

Issue: The issue here is whether Cady slandered Regina and whether Regina can successfully bring a claim for such against Cady.

Rule: Slander is spoken defamation against a person. Defamation is a false or…

Given the landmark ruling in NY Times v. Sullivan, in order for a public official to be defamed, the plaintiff must prove actual malice.

Application: In the instant matter, Cady exited her vehicle and yelled at Regina, “you’re a terrible person Regina.” No other words were spoken by Cady about Regina.

The words spoken by Cady seem false and defamatory. The facts fail to lend information as to the truthfulness of this statement. Regardless, the matter may be put to rest by applying the Sullivan test regarding actual malice. Thus the test being, whether there is factual basis to assume that Cady acted with reckless disregard for the truth. This can be supported by her further statements and factual mistruths; lies. Thus, it is likely that actual malice will attach.

Cady could raise the absolute defense to slander, that being that the statement is truthful. The facts in this matter warrant further investigation as to the truthfulness.

Conclusion: (tough to prove)

Libel

Issue:

Rule:

Application:

Conclusion:

Battery

Issue:

Rule:

Application:

Conclusion:

Assault

Issue:

Rule:

Application:

Conclusion:

Negligence: lead claim 9/10. The common-law definition: Duty breach causation. (SEE THIS PART ON JUNE 20)

Someone owed me a duty, a reasonable duty, they caused

Reasonable person standard- how a reasonable person would act in similar situations

Breach- did they breach their duty?

Causation: That breach caused the injury.

Watch Band of Brothers

Protected classes at the federal level are different than the state. I.e. more protection in California, San Fran, Los A, state as a whole, then 5-10 federal.

Testable Information:

Section 504: If you get federal money, you have to provide reasonable accomodations (essentially you will set aside a policy to serve actual or perceived disability to receive same accessibilities.

Telecommuting- it’s almost

Test for reasonableness- if you can show nexus with disability and what you are asking for it is reasonable.

Police power is what California uses to create classes.

Civil Rights act 1964- can’t discriminate based on race-

Under that can Age Discrimination Act and Employment Act (age is 40 or older),

Rehab Act of 504

American with Disabilities Act 1990: definition of disability: a mental or physical condition that substantially limits one or more life activities (broad).

9 protected classes at Federal Level

Each has its own Act.

Pregnancy Discrimination (FMLA)

Test Review:

The Test Instructions stay the same

Available Tuesday and Wednesday

Testable:

Protected Classes at the Federal Level are roughly 9, California uses police power to regulate health and safety.

Crime- Criminal Court- prosecuted, (you broke the law) State vs. You

Torte- Things that you sue for

Assault- Placing someone in the immediate apprehension of battery.

Battery- Unlawful or offensive touching of another.

Burglary- Unlawful entry of the dwelling of another with the intent to commit a larceny or felony their in.

Robbery- unlawful taking of an item with force or fear.

Test on what they are and art

Stare Decisis(to stand for a decision)- The notion that laws are created by judicial decisions.

Marbury Vs Madision= Judicial Review- vested them with the responsibility to review federal cases.

Alexander Hamilton

2- Civil Law

Subject Matter Jurisdiction- what types of cases a court can hear.

Personal Jurisdiction- the ability of a court to enter a binding judgment against a person.

Service of Process- Serving a lawsuit to another side. The person who serves it must be over 18 and not a party to the action.

- if you are serving someone out the state, you can use States laws to serve. Allowable methods of service(i.e., mail.)

Venue: County courthouse

General Rule: Venue is ok in any county where defendant resides (crime, action or person, reside).

Personal Injury Case: Sue defendant where they live, the venue can be county where they live or where they were injured.

Contract: Where contract was entered, breached or performed. (proper venue)

Cross Complaints

If I sue you and you want to sue me back:

Compulsory Cross Complaints: if what you are suing for is same action or event, you have to file counter claim in this case or you lose the right to do it. Counterclaim in this case.

Permissive: Anything else you want to sue me for can be done at a later time.

Motion to Strike- most common thing stricken is punitive damages.

AntiSlapp- someone is suing you that is chilling your right to public participation (mostly used in defamation cases) exercising free speech.

Evidence Code Section 1152. Anything discussed in a settlement can’t be used against you at the trial or a later date. Can’t bring up settlement discussions.

Default- locks you out of a case after 30 days if no response- in California (473) 6 months.

Speech (1st Amendment)- Expression without unreasonable restraint.

Slander- spoken defamation

Libel- written defamation

NY vs Sullivan Case- Know important points.

Know the rule that came Brandenburg vs Ohio (test)

Ohio vs Shade (test)

Obscenity (miller test)- Justice Potter Stewered. Don’t know what it is but I know it when I see it. Almost nothing is obscene except for children.

Content Bill of Rights Section second page

Trademarks

Patents

Copyrights

James Risen Video:

What Shield Laws are- laws that protect the journalists

Age Discrimination Act (40)

Rehab Act 1973 section 504- reasonable accommodations

American Disabilities Act 1990- Definition of disability a mental or physical condition that limits one or more life activities.

Negligence

Civil Rights Act (it changes 63, 64, ..)