

History of Business Law (Master)
Final Examination

- I. Please read the following text (Excerpt from the Liberties of London (c. 1120), from the *Leges Edwardis Confessoris* (cited [and slightly redacted] here according to: Thorpe, Benjamin [ed.]: *Ancient Laws and Institutes of England*, London, 1840, p. 462, reprinted in: Cave, Roy C.; Coulson, Herbert H.: *A Source Book for Medieval Economic History*, reprint ed., New York, 1965, pp. 199-200) (10 points).

"C.I. Be it known that within the space of three miles from all parts outside of the city a man ought not to hold or hinder another, and also should not do business with him if he wish to come to the city under its peace. But when he arrives in the city, then let the market be the same to the rich man as to the poor.

Concerning Liberty of the Citizens of London.

C.8. And after he [referring here to a free man] has entered the city, let a foreign merchant be lodged wherever it please him. But if he brings dyed cloth, let him see to it that he does not sell his merchandise at retail, but that he sells not less than a dozen pieces at a time. And if he brings pepper, or cumin, or ginger, or alum, or brasil wood, or resin, or incense, let him sell not less than fifteen pounds at a time. But if he brings belts, let him sell not less than a thousand at a time. And if he brings cloths of silk, or wool or linen, let him see that he cut them not, but sell them whole. But if he brings wax, let him sell not less than one quartanum. Also, a foreign merchant may not buy dyed cloth, nor make the dye in the city, nor do any work which belongs by right to the citizens. C.9. Also, no foreign merchant with his partner may set up any market within the city for reselling goods in the city, nor may he approach a citizen for making a bargain, nor may he stop longer in the city."

1. Please summarize this text (2 points).
2. Apparently, this charter served several different interests. Please explain these interests by using this text (3 points).
3. Since the late Middle Ages more and more cities gained legal autonomy. To which extent was this development related to role of markets in the medieval economy? To what extent do such correlations become visible in the present text (3 points)?

4. The emergence of trade fairs correlated with profound changes in monetary and financial services. Please explain the essential aspects of these developments and their legal ramifications (2 points).

II. In the Early Modern Period both the global economy and legal frameworks changed significantly. New global trade networks and empires emerged (8 points).

1. What economic factors became determinants of colonization (2 points)?

2. Please describe and explain the impact of the colonization on company law and the European economy (3 points).

3. Mercantilism and later cameralism emerged as political concepts in the 17th century. Please explain the essential points of these doctrines (3 points).

III. The proliferation of new technology which could replace physical labor with the power of steam led to a new age of profound changes for all parts of society: The Industrialization (10 points).

1. Which stages of industrialization can be distinguished (3 points)?

2. The emergence and the spread of cartels were a typical phenomenon of the industrialization. What reasons have been put forward for and against the existence of cartels (4 points)?

3. The law of unfair competition was also influenced by industrialization. What links to intellectual property law can be identified in historical retrospect (3 points)?

IV. Please read the following text (excerpt from a text of Otto von Gierke (1902) (12 points). Translated from: Gierke, Otto: Das Wesen der menschlichen Verbände. Rede, bei Antritt des Rektorats am 15. Oktober 1902 gehalten, Leipzig, 1902, p. 12, 26, 31; the square brackets contain the original version of the preceding words, to aid your understanding of the text):

"The law attributes personality to associations. Thus, like the individual, it must be a physical-spiritual living entity [*Lebenseinheit*], which has desires and act to achieve what it wants. [...] These are the basic ideas from which the so-called organic theory originated. [...] The organic theory

5 considers the state and other associations as social organisms. Thus, it asserts the existence of aggregate organisms [*Gesamtorganismen*], whose parts consist of humans, above individual organisms. [...]

10 But is it not quite irrelevant how the problem of the juridical person is solved for the jurisprudence as such? [...] Not at all! The entire systematic structure of the law, the form and content of the most important legal concepts and the decision of numerous very practical separate questions depend on the construction of the personhood of associations [*Verbandspersönlichkeit*]. [...] Birth and death of association beings are in the eyes of the law at the same time legal processes, which again cannot be constructed with individual-legal terms and therefore trigger a new world of socio-legal terms. [...]"

1. Please summarize the main themes presented in this text (3 points).

2. Please describe the legal fiction theory (*Fiktionstheorie*) and the legal reality theory (*Realitätstheorie*). Please include the political and socio-economic background of both approaches (4 points).

3. Which tradition is represented in the text given above? Please explain your answer (2 points).

4. The late 19th century witnessed the introduction of a new kind of capital company in Germany and later in other European jurisdictions. Please describe the legal structures of this new type of company and explain how was it connected with concerns about speculation (3 points)?