



**History of Business Law (Master)
Final Examination**

- I. Please read the following text excerpt, taken from: H. Gengler, *Codex Juris Municipalis Germaniae*, (Erlangen: F. Enke, 1867), p. 806, reprinted in Roy C. Cave & Herbert H. Coulson, *A Source Book for Medieval Economic History*, (Milwaukee: The Bruce Publishing Co., 1936; reprint ed., New York: Biblo & Tannen, 1965), pp. 118-119; texts modernized by Jerome S. Arkenberg – online: Medieval Sourcebook (<https://sourcebooks.fordham.edu/source/1030donworth-market.asp>) (10 points):

5 In the name of the Holy and Undivided Trinity, Conrad by the grace of God, Emperor Augustus of the Romans. Be it known to all those faithful to God and to us . . . we confirm and corroborate to the said faithful Manigold the power and freedom of holding a market with money rights, thelony [i. e.: market toll], and with all public business in the said place Donauworth, situated in the district of Ries belonging to Count Frederick, but especially of doing business every Saturday just as it was granted to his father by our ancestor. Moreover, mindful of the faithful and devoted service of the said Manigold, we have also granted to him (Manigold) an annual fair for three continuous days, i.e., to be held on the Kalends of May and on the next two days in the said place, commanding firmly by imperial power that all men seeking that fair, going and coming for business, shall always have peace. But if any one trouble any of these men, or, causing trouble, disturb the fair itself, let it be known he will pay such ban as he would have paid if he had molested the fair of Ratisbon or Augsburg. And that this may be more readily believed and diligently observed through the future course of years, corroborating this charter written with our own hand, we have ordered it to be inscribed with the impression of our seal. Seal of Conrad, most invincible and august Emperor of the Romans. Udalric, chancellor, revised this in the place of Archbishop Aribo. Given on the Kalends of February in the year of the Incarnation of our Lord 1030, and also in the year of Lord Conrad, the sixth of his kingdom but the third of his empire. Given most happily at Dortmund.

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1. Please summarize this text (2 points).
 2. Based on this text, please elaborate the basic legal elements involved in the establishment and operation of a market in the European Middle Ages (4 points).
 3. How can it be explained that Manigold needed an imperial privilege to continue the market (1 point)?
 4. Why does the text not contain more detailed rules on trading on the market granted to Donauworth (1 point)?
 5. According to the text, what is the legal difference between a market and a fair and how can this difference be explained (2 points)?
- II. Mercantilism and cameralism were decisive for the development of regulatory concepts for commercial law in early modern Europe (5 points).
1. Please outline the central elements of these two doctrines (3 points).
 2. How can the governmental establishment of colonial companies be placed in the conceptual context of these doctrines (1 point)?
 3. How can the reservations of cameralist authors towards monopolies be explained (1 point)?

- III. During industrialization, stock corporations and the stock exchange became increasingly important for the economic order (10 points).
1. How can the rise of public stock corporations be explained (1 point)?
 2. Which legal problem did the "fiction theory" and the doctrine of real corporate personalities ("reality theory") seek to solve and how (5 points)?
 3. To what extent can the observations on "Modern Corporation and Private Property" (1932) by Berle and Means be interpreted as an observation of a profound change in the property and economic order caused by the rise of the corporation as the dominant organizational form of the economy (4 points)?
- IV. Protection against unfair competition is characteristic of modern business law systems (10 points)
1. Why was protection against unfair competition practices of rather little importance to rulers and governments in the Middle Ages and early modern period (2 points)?
 2. To what extent can we observe the interdependencies between the emergence of the law of unfair competition and the emergence of the protection of immaterial goods (5 points)?
 3. How can it be explained that the protection of competition itself only became the focal point of unfair competition law at a comparatively late stage in time (2 points)?
 4. What role did the issue of consumer protection play in the evolution of unfair competition law in Switzerland (1 point)?
- V. The legal assessment of monopolies, trusts and cartels was not uniform in 19th and 20th centuries (5 points).
1. How can the fundamentally positive assessment of cartels in the Swiss legal tradition of the late 19th century and into the last third of the 20th century be explained (2 points)?
 2. What background can be identified for the US-American regulatory tradition of anti-trust law that began with the Sherman Antitrust Act (1890) and how did this approach manifest itself in the Potsdam Treaty of 1945 (3 points)?