



Prof. Dr. Kern Alexander and Prof. Dr. Elisabetta Fiocchi Malaspina

Fall Semester 2022

Principles of Common Law

6 January 2023

Duration: 120 minutes

- Please check at receipt of the exam the number of question sheets. The examination contains 3 pages and 3 questions.

Notes on solving the questions

Your answer must contain a discussion and analysis of the main legal (and related policy issues) based on information from lectures and readings. Exam points will be awarded for identifying the main issues and providing the relevant analysis.

Note: You should address as many of the relevant issues and/or concepts raised as possible. However, you will not receive full points simply for copying information off the lecture slides. Please make an effort of analysis, comparison and criticism to achieve full points.

Notes on marking

- When grading the exam each question is weighted separately. Points are distributed to the individual questions as follows:

Question 1	20 points	20 %
Question 2	50 points	50 %
Question 3	30 points	30%
...
Total	100 points	100 %

We wish you success!



1) (20%)

Natural justice has been described as ‘fair play in action’ and ‘the justice of the common law’; nor does it wait for directions from Parliament. Do you agree with this? Why or why not?

2) (50%)

Please read all of the questions thoroughly before beginning to write your response as the questions may build off of one another.

- (1) Ashley and Hans have decided to go into business together opening a “Fondue Chalet” in the United States. Currently, Ashley lives in Los Angeles, California and Bob lives in Zurich, Switzerland. You are acting as their U.S. corporate attorney and are tasked with helping them establish a business entity.

What are the first considerations Ashley and Hans need to decide upon forming a business entity? What additional information do you need; what questions might you have for them?

- (2) Ashley and Hans successfully opened Fondue Chalet in sunny California, and within a few months decide to open multiple locations. There are no known competitors in the fondue market yet in California. You are acting as their intellectual property attorney and are tasked with protecting all of Fondue Chalet’s current IP.

- a. What questions would you want to ask Ashley and Hans in order to make an assessment on their IP protection needs?
- b. What are the possible IP protections Ashley and Hans need to take into account, and what actions would you recommend they take? (To answer this question, assume Ashley and Hans operate as a standard sit-down restaurant, with a limited, but unique, menu, various business marks, and an identifiable brand. Additionally, they have a very catchy company song that plays on tv and radio commercials.)
- c. Ashley and Hans have additionally developed a line of “Fondue Chalet” Home Fragrance products. While they describe the products as “decadently reminiscent of the Swiss alps and a warm creamy gruyère” the general opinion has noted an essence of old gym socks. Regardless of the appeal, can they trademark their line of Home Fragrances, why or why not?

- (3) Hans, while still struggling to learn English, takes pride in the cheese he serves and thinks Ashley is choosing low quality cheeses. He takes over and orders 600 kilos of



“gruyère” from the finest cheese monger he can find, in Wisconsin. Thrilled to receive such a large order, “Let It Brie” (LIB) delivers the order early, 600 kilos of sliced, sandwich ready, gruyère cheese. Furious, Hans phones LIB explaining he runs a Fondue Chalet and needs finely grated fondue gruyère, not sandwich slices, and ships back the cheese - with extra expense as it must remain refrigerated. LIB argues it has never had an order for fondue cheese, and only sells wheeled or sliced cheese. LIB refuses to take back the cheese or replace it (they don’t have the means to grate it) and respond that they fulfilled the contract with 600 kilos of “gruyère”.

Hans now seeks your legal advice as he thinks he is owed the cost of the return shipment as well as damages for the delay and hassle of having to newly order gruyère suitable for his fondue.

Briefly describe the legal issue(s) you must present to Hans, and, in your opinion, what Hans may be entitled to based on the facts above (IRAC).

3) (30%)

Illustrate the main objectives of the Law of Property Act (1925) (15%) and explain the following provision (15%):

“Law of Property Act 1925, s.1

(1) The only estates in land which are capable of subsisting or of being conveyed or created at law are;

- (a) An estate in fee simple absolute in possession;
- (b) A term of years absolute [...]