

<p>1) Question 1 (20%)</p> <p>Natural justice, it has been said, is ‘fair play in action’ and ‘the justice of the common law’; nor do we wait for directions from Parliament. Do you agree with this statement? Why or why not?</p>	
<p>Historically, natural justice principles were discerned by the Chancery Courts in developing the law of equity. Chancery Courts could overrule the King’s courts by applying principles of equity to a dispute to reverse the effect of a legal rule where it was unjust to adhere to it. Parliament was not needed for the application of principles of equity.</p>	2
<p>Also, common law courts respected certain fundamental principles of common law which it was argued (by Lord Justice Coke 1642) could not be overruled by Parliament statute. Certain fundamental principles – trial by jury of one’s peers and no taxation without consent of those who are taxed (Magna Carta 1215) served as a basis for principles of natural justice in the common law.</p>	1
<p>Natural justice principles recognised in the principle of judicial review. Courts can review the legal efficacy of administrative rulings if decisions do not follow correct decision-making procedure <i>or</i> do not make substantive decisions based on a rational reason – manifest unreasonableness principle (Wednesbury standard) Another aspect of natural justice was Lon’s Fuller legal system of rules.</p>	2
<p>According to Fuller, legal rules demand the moral values of <i>justice</i> or <i>fairness</i> > <i>treating like cases differently would be unjust</i> > <i>a valid system of rules</i> – vast majority of its rules satisfy certain procedural safeguards. The moral demands of justice or fairness require, inter alia, impartial enforcement, fair notice etc.</p>	2
<ul style="list-style-type: none"> • ‘Internal morality of law’ – or ‘the morality that makes law possible’ • Procedural in nature – do not impose limits on the content of law 	1
<p>Critique of Fuller:</p> <ul style="list-style-type: none"> • Hart: satisfaction of Fuller’s moral criteria could still result in ‘iniquity’ <i>for example, a moral legal system could still adopt laws allowing slavery</i> 	1 Extra credit
<p>The application of natural justice principles could be constrained or limited by Parliamentary statutes. The important principle of Parliamentary Sovereignty. Parliament can enact statutes in most any area of law to modify or change pre-existing common law principles, including modifying the interpretation or application of natural justice principles.</p>	2

<p>Natural justice could also be based on human rights law and norms. International human rights law as expressed in the European Convention on Human Rights has modified and limited the application of common law principles by judges even further.</p>	<p>2</p>
<p>Judicial recognition of natural law/natural justice principles as reflected in human rights law has been balanced with the principle of Parliamentary sovereignty, as Parliament enacted the Human Rights Act 1998 that incorporates human rights into UK law and requires UK judges to apply human rights to existing principles of common law.</p>	<p>2</p>
<p>It could be said that human rights law represents ‘fair play in action’ and has been incorporated by Parliament into ‘the justice of the common law’. Parliament integrated human rights norms that reflect natural justice principles into the common law. One could argue that best to ‘wait’ for Parliament to give natural justice principles more force.</p>	<p>2</p>
<p>Some common law jurisdictions have constitutions. The principle of judicial review empowers the courts to invalidate or strike down legislation enacted by Parliaments that infringes a principle or rule in the constitution. These principles often derive from principles of natural justice. One could argue then that it is not necessary to ‘wait for directions from Parliament’ in common law systems with a constitution.</p>	<p>2</p>
<p>Dworkin</p> <ul style="list-style-type: none"> Moral appeals or natural justice principles in judicial decisions are based on legal history, tradition, and “moral principles that underlie the community’s institutions and laws”. Not just any moral principle has a ‘necessary’ place in judicial decisions; only those moral principles that form a part either explicitly or latently of the moral traditions of the system are legally legitimate. 	<p>1-2</p>
<p>John Rawls</p> <ul style="list-style-type: none"> Justice as Fairness’ - principles to govern this ‘just society’ are to be arrived from ‘behind a veil of ignorance’, that is, ‘no-one knows his place in society, his class position or social status,, nor does anyone know his fortune in the distribution of natural assets and abilities, his intelligence, strength and the like’. The ‘<i>original position</i>’ Rawls postulates that the choice would be in favour of two principles: (1) ‘the first requires <i>equality</i> in the assignment of basic rights and duties, while (2) holds that social and economic inequalities (ie., wealth and authority) are <i>just</i> only if they result in compensating benefits for everyone, and in particular for the least advantaged members of society’. <i>Difference principle</i> (rejects utilitarianism) 	<p>1 extra credit 1 extra credit</p>

<p>Critical legal studies (ie., MacKinnon)</p> <p>Criticized general principles of justice, fairness and equality – natural law theory’s that each person is owed equal respect in legal rights is a cover to protect existing social and economic inequalities</p>	<p>1 extra credit</p>
<p>Total Points</p>	<p>20</p>

Question 2 (Ashley and Hans – Corporate Law, IP , Contracts): 50 points – 50%	
<ol style="list-style-type: none">1. 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? 2a. 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. 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).	
<p><i>Note these open-ended questions allow for creativity and a variety of responses that are correct, so to the extent the response makes sense, it can garner points as appropriate. Full marks should be given based on the thoroughness of the response, not just how many questions or ideas the student comes up with, but a well-reasoned and logical thought process.</i></p> <ol style="list-style-type: none">1. 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?	Total: 10

<ul style="list-style-type: none"> • Answers should include some or all of the following: Location; ownership structure; tax considerations and personal liability. The bulk of the answer should rest in this vein of questioning. From class slides: What rules apply?; What does that mean for founders' goal?; Who is responsible and for what?; What obligations do they have?; Who has what rights? • Additional questions may include: how many people will own the business; how the business will be run; what types of services and products will be provided; how (corporate) action is taken by the entity; where are they located (and the appropriate local laws); how they plan to raise money; etc. 	
<p>(2a) What questions would you want to ask Ashley and Hans in order to make an assessment on their IP protection needs?</p>	<p>Total: 20</p>
<ul style="list-style-type: none"> • The responses can be very broad – the questions can be anything related to learning about the Company's IP. Examples could include variations of the following: <ul style="list-style-type: none"> ○ What IP does Fondue Chalet have? (Or, "Does FC have... [a logo, a mascot, a font, a slogan, and theme song, [x]]?") ○ What IP do they want to protect? Why? What value does it have? What is the risk of not protecting it? Who might want (to use) their IP? ○ Where (all) are they operating? ○ What IP do they currently have or use? ○ What IP may be forthcoming? ○ Etc. 	<p>5</p>
<p>(2b) What are the possible IP protections Ashley and Hans need to take in account, and what actions would you recommend they take?</p> <ul style="list-style-type: none"> • Answers should discuss any of the following, the more the better: Trademarks, Copyrights, and Trade Secrets. • Students should specifically address (i) the FC song, and, (ii) the company's marks and identifiable brand. Both copyright and/or trademark protections are applicable. • Students can discuss numerous possibilities for protection, most importantly: logo and brand trademarks, "smell" trademarks, the possibility of recipe (or other) trade secrets, copyright for list of ingredients, copyright for advertising or marketing, etc. Other ideas or protections can be awarded full points if the reasoning is plausible. 	<p>7</p>

<p><i>Patents generally should not be discussed other than to distinguish them as they are invention protections, and likely not applicable in this response.</i></p> <p>(2c) ... can they trademark their line of Home Fragrances, why or why not?</p> <ul style="list-style-type: none"> Smell trademarks should be discussed based on class discussions. Students should include some consideration of the following tests: <i>According to the U.S. Patent and Trademark Office, “sense” marks can only be eligible for trademark protection if they meet two tests: (i) They do not have any utilitarian functionality with respect to the product; and (ii) They must have been promoted for a sufficient period of time that consumers view them as a source identifier - also known as consumer “secondary meaning.</i> <p>(3) 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).</p> <p><i>Legal issues should include the following points, and should be in the IRAC style (5 pts for IRAC).</i></p> <ul style="list-style-type: none"> Discussion of: FRIGALIMENT IMPORTING CO., Ltd., v. B.N.S. INTERNATIONAL SALES CORP. Language: Trade usage, definition, meaning Intent Sophistication of the Buyer/Seller Good faith Performance (Partial, Full) Mitigation Timing of the Shipment Expense of shipment and return costs 	<p style="text-align: center;">7</p> <p style="text-align: right;">Total: 20</p> <p style="text-align: right;">5 IRAC</p> <p style="text-align: right;">15 analysis</p> <p style="text-align: right;">TOTAL SCORE: 50</p>
<p>Extra points: if explanations are very detailed or if thinking outside the box for any response, or if logical and appropriate to the question.</p>	<p style="text-align: right;">+ 2</p>

Question 3 (Fiocchi Malaspina): 30 Points – 30%	30 Points
<p>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 [...].”</p> <p>The Law of Property Act (1925) is part of the Six Acts of Parliament which:</p> <ul style="list-style-type: none"> - Consolidated earlier piecemeal changes in the law, - Brought it all together as a body of law, and - Made substantial changes to the common law of property. <p>The Acts tried to achieve two main objectives:</p> <ul style="list-style-type: none"> - First, reducing the number of legal estates and interests in land - Second, introducing a system of compulsory registration of titles. <p>Particularly through the LPA 1925:</p> <ol style="list-style-type: none"> 1. Land must be freely alienable – that is, it must be possible to transfer it (and interests in it) to others. 2. Land must be capable of fragmentation of ownership for both family reasons and commercial reasons - that is, it must be possible to create numerous different interests in land in favour of others. <p>Before the LPA 1925, there were several types of Estates (fee simple, fee tail, life estate). After the LPA 1925, Estates were reduced to only two legal estates: The first legal estate is the <i>Fee simple absolute in possession</i> or freehold estate. - Freehold estate means that:</p> <ol style="list-style-type: none"> a) Ownership is not liable to end upon any person’s death, with the expiration of time, or on the failure of a particular line of heirs; b) The owner’s rights are not conditional or liable to terminate on the occurrence of any event; c) The owner’s rights are immediate, thus future interests do not qualify, but possession need not imply actual physical occupation. <p>The second estate disciplined in the LPA 1925 is the <i>term of years absolute</i>, or leasehold estate. According to the LPA 1925 term of years absolute means a term of years, taking effect either in possession or in reversion whether or not at a rent, subject or not to</p>	<p>10</p> <p>5</p> <p>15</p>

another legal estate, and either certain or liable to determination by notice, or any other event except the death of any person.	
<p>Extra points:</p> <p>Quia Emptores, 1290, prohibition of subinfeudation</p> <p>Blackstone</p> <p>Land Registration Act of 1925 and 2002</p> <p>Fee simple, fee tail, life estate and their definitions</p> <p>Property in common law and civil law</p> <p>Division of property into two categories: real property and personal property</p>	+ 5
Total Points	30