

<p>1) Question 1: 20 points – 20%</p> <p>'The chief lawmakers in our country may be, and often are, the judges, because they are the final seat of authority.' Discuss whether or not you agree with this statement regarding the role of judges in a common law legal system. In your answer, refer to relevant information in lectures and the readings.</p>	
<p>In common law systems, this statement has much support because judges have developed many of the most important legal principles in areas of the law where statutory law does not apply. Common law principles are generally developed by the judiciary in deciding cases before them, but judges' authority is constrained because they are required to apply pre-existing principles of law that have been established by previous judicial rulings. So the judge today is somewhat of a captive of the judge in the past whose ruling established a principle or rule that all subsequent judges must adhere to. This is <i>stare decisis</i>. However, judges have some discretion to avoid the application of previous judicial rulings by distinguishing the facts of a case today from the facts of an earlier case. This would give the judge some discretion to modify or not apply the legal principle applied in the previous case.</p> <p>Also, judicial authority is constrained by Parliamentary statutes that can eliminate or modify previous principles of law. 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.</p> <p>But Cardozo observed that judges would still apply interpretive techniques that are based on previous decisions of judges in interpreting what statutes mean and whether they apply to a certain set of facts, but judges still have the authority to interpret the statute and its meaning and its scope of application.</p> <p>Historically, the judges were at odds with the Parliament and the King acting in Parliament – Edward Coke who espoused the supremacy of the judges v. Blackstone who espoused the supremacy of Parliament as sovereign in enacting statutes.</p> <p>History of Common Law of England (1713) by Matthew Hale summarises the main principles of English common law that were developed by judges in interpreting cases before them.</p> <p>Judges in common law jurisdictions had much authority to developed legal principles in areas of the law that were not codified. But the judges had to base their decision on precedent, which had binding effect on their decision-making <i>stare decisis</i>.</p> <p>But in practice judges may not feel so constrained by precedent and <i>stare decisis</i> because they could apply earlier principles to a different set of facts that are not similar to previous cases in order to come to a different result.</p> <p>In support of the judge's authority, the Hernandez case showed how the judge can weigh and balance different conflicting legal principles to come to a conclusion that</p>	<p>3</p> <p>1</p> <p>1</p> <p>1</p> <p>1 Extra credit</p> <p>1</p> <p>2</p> <p>2</p>

<p>judge wants to achieve. The judge ultimately decided based on the facts of the case which common law principle applied – waiver, abatement or some other principle derived from fairness and justice.</p>	<p>2</p>
<p>Today international human rights law has modified and limited the application of common law principles by judges even further, through the application of provisions of the European Convention on Human Rights. And Parliament was sovereign in enacting human right norms into domestic law with the Human Rights Act 1998. So the UK Government and Parliament together were able to modify and change certain principles of common law by enacting signing Human Rights treaties and by enacting domestic legislation to implement treaties.</p>	<p>3</p>
<p>On the one hand, the judges interpret and apply the general principles of common law to facts and situations not covered by statutes or treaty. They decide what interpretive techniques to use in applying pre-existing principles to facts of modern disputes. That is a lot of authority. But on the other hand, Parliament and Governments (in signing treaties) can limit the scope of authority of the judges in modifying pre-existing legal principles. But judges interpret the statutes and can limit their application based on principles that judges have decided in pre-existing cases. So at end of the day, the judges have the final say in what the law is.</p>	<p>2</p>
<p>Some common law jurisdictions have constitutions. The principle of judicial review powers the courts to invalidate or strike down legislation enacted by Parliaments that infringes a principle or rule in the constitution. In this situation, courts are ‘the final seat of authority’.</p>	<p>2</p>
	<p>1 extra credit</p>

Extra credit	1
Total Points	20

<p>Question 2 (Alice & Bob – Corporate Law, IP , Contracts): 50 points – 50%</p>	
<p>1a. What are the first considerations Alice and Bob need to decide upon forming a business entity? What additional information do you need; what questions might you have for them?</p> <p>1b. Please describe the different types of entity Alice and Bob may choose from and what they should consider in deciding which entity type to select. Please include as many factors as possible.</p> <p>2a. What questions would you want to ask Alice and Bob in order to make an assessment on their IP protection needs?</p> <p>2b. What are the possible IP protections Alice and Bob need to take in account, and what actions would you recommend they take?</p> <p>3. Which offer has been accepted? Please explain the various communications and the contract elements present (i.e. offer, consideration, counteroffer, acceptance, etc).</p>	
<p><i>Note these open-ended questions (1 a/b & 2a/b) 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> <p>1(a) What are the first considerations Alice and Bob need to decide upon forming a business entity? What additional information do you need; what questions might you have for them?</p> <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>(1b) Please describe the different types of entity Alice and Bob may choose from and what they should consider in deciding which entity type to select. Please include as many factors as possible.</p> <ul style="list-style-type: none"> • Entity types for this answer include any of the following: 	<p>Total: 10</p> <p>Total: 10</p>

<p>Sole Proprietorship Limited Liability Company Partnership General Partnership Limited Partnership Corporation “C” Corporation “S” Corporation (Public) Benefit Corporation</p>	<p>3</p>
<ul style="list-style-type: none"> • Answers should not just be a list of entity types, but should also include a (very brief) description as to each type, or as to why they would recommend an entity type. More weight should be given to the thoroughness given to the types of entities and what students can say about them. Responses can include examples including: • Taxation schemes: (i) pass through taxation (sole proprietorships; limited liability corporations; General and Limited partnerships; S corporations); or (ii) “double” taxation (or corporate level taxation – Partnerships; C Corporation or Corporations); • Liability schemes: individual (sole proprietorship; general partnerships) or corporate level liability (limited liability corporation; limited partnerships; corporations) • Number of business “partners” or leaders of the entity • Number of shareholders • Can include factors listed or previously discussed in (1a) • Other logical conclusions should be awarded +1 if appropriate 	<p>7 (+1 if very detailed)</p>
<p>(2a) What questions would you want to ask Alice and Bob in order to make an assessment on their IP protection needs?</p>	<p>Total: 5</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 Burger Queen have? (Or, “Does BQ 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>Total: 10</p>
<p>(2b) What are the possible IP protections Alice and Bob 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. 	

<ul style="list-style-type: none"> • Students should specifically address (i) the BQ song, and, (ii) the company’s marks and identifiable brand. Both copyright and/or trademark protections are applicable. • 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> • 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. • <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>Extra points: if explanations are very detailed or if thinking outside the box for any response (1a/b; 2a/b) if logical and appropriate to the question.</p>	+ 2
<p>3) Which offer has been accepted? Please explain the various communications and the contract elements present (i.e. offer, consideration, counteroffer, acceptance, etc).</p>	
<p>Students should explain what elements are required to form a valid contract under common law: Offer, Acceptance, Consideration, Mutual Assent (extra points for listing capacity/legality).</p> <p>Generally, the students should identify each communication and explain which element was in question. It does not matter how they have structured it as long as each communication and each element is addressed.</p> <p>Extra points if there is a discussion of common law vs Uniform Commercial Code. UCC can only be used when it is a contract for the sale of goods over \$500. Because this is a contract for services, we will need to analyse the common law elements.</p> <p>June 1:</p> <ul style="list-style-type: none"> - Offer. Alice sends Clara an offer with the key terms of an employment contract: \$100,000/yr salary for one year, renewing each year <p>June 2:</p> <ul style="list-style-type: none"> - Counteroffer. Clara responds accepting the salary but proposing a new term of 3 years. - The mirror image rule means that when you accept an agreement, you're doing so based on the exact terms of the original offer. <p>Clara’s call to Alice. This does not impact the analysis because Alice does not reach Alice. Alice never knows that Clara’s intent was to accept the original offer.</p>	<p>15 pts</p> <p>+1</p> <p>2</p> <p>2</p> <p>2</p> <p>1</p>

<p>June 3 at 1pm:</p> <ul style="list-style-type: none"> - Acceptance. Alice accepts the counteroffer of \$100,000/year with a 3 year term. - Mailbox rule. The Mailbox Rule, which is the default rule under contract law for determining the time at which an offer is accepted, states that an offer is considered accepted at the time that the acceptance is communicated (whether by mail e-mail, etc). 	2
<p>June 3 at 2.30pm: The call from Clara to accept the original offer is ineffective because the counteroffer was already accepted, creating a valid and enforceable contract.</p> <p>Consideration. There is sufficient consideration because Alice and Bob will pay Clara for her services as head chef.</p> <p>Extra points for discussing remedies if Clara refuses to honor the contract.</p>	3
<p>Total Points</p>	50

<p>Question 3a (Fiocchi Malaspina): 30 points – 30%</p>	
<p>After having discussed generally the difference between common law and civil law, trace the origin of the common law system, make comments on the writ below, explaining what is a writ and its different types.</p> <p><i>“Henry, by the Grace of God, King of the English [...] to the Abbott of Thorney, greeting. I order you to do full right without delay to Richard Fitz Adam concerning one virgate of land in Twyell, which he claims to hold from you by the free service of five shillings a year, and of which Roger de Bachelor deprives him. And unless you do it, the sheriff of Northampton shall do it, that I hear no further complaint thereof for lack of justice. Witness Ranulf de Glanvill. At Geddington”.</i></p> <ul style="list-style-type: none"> • Common Law: not codified law (exceptions: statutes); role of judges: higher judicial discretion, set precedents; No clear separation between public and private law; no clear separation between substantive law and procedural law; Adversarial system. Civil Law: Codified law; role of judges: lower judicial discretion; Separation between public and private law; Separation between substantive law and procedural law; Inquisitorial system • 1066: Battle of Hastings/William the Conqueror (1028-1087): The entire territory of the kingdom belonged to the king; Separation between royal and ecclesiastical jurisdiction, Centralisation of administration: territorial partitioning and organisation and centralisation of justice: writ-system and royal Courts • Royal courts/Curia Regis: King’s Court administered all of the King’s financial legislative and judicial affairs: Court of Exchequer: responsible for fiscal and financial matters; Court of Common Pleas: responsible for disputes between private parties, which did not involve a direct interest of the King (as for example a title to land); Court of King’s Bench: criminal, feudal and civil cases • Comments on the Writ: it shapes a Writ of right, command (<i>I order you to do full right without delay</i>) of the king (<i>Henry, by the Grace of God, King of the English</i>), directed to the relevant person (<i>abbot of Thorney</i>); containing a brief indication of a matter under dispute (<i>one virgate of land in Twyell, which he claims to hold from you by the free service of five shillings a year, and of which Roger de Bachelor deprives him</i>); instructing the addressee to call the defendant into his court and to resolve the dispute in the presence of the parties (<i>I order you to do full right without delay to Richard Fitz Adam [...] And unless you do it, the sheriff of Northampton shall do it, that I hear no further complaint thereof for lack of justice. Witness Ranulf de Glanvill. At Geddington</i>). 	<p>5</p> <p>3</p> <p>4</p> <p>8</p>

<ul style="list-style-type: none"> • Writ (breve/formal action) = a formal written order from the Royal Chancery that directs a form of legal action. Royal courts could only act on the basis of the writs. Writ comparable to actio: Law could only be enforced if there was an action for it. • Types of writs: Writ praecipe quod reddat: “command that he render.” it was a writ that directs a defendant to return certain property; Writ of debt: directs debt repayment. A writ which lies where the party claims the recovery of a debt, i. e. a liquidated or certain sum of money alleged to be due to him; Writ of the covenant: issued to a person who claims damages as a result of a breach of a promise under seal or other covenant; Writ of trespass: 13th century; a principal instrument for obtaining retribution from the person who had committed a tort; Presupposed an act of violence against a person, movable or real possession; Based on proof submitted to the jury for deliberation; Granted the right of demanding compensation from the king’s judges for the damage inflicted 	<p>4</p> <p>6</p>
<p>Extra points:</p> <ul style="list-style-type: none"> • English legal history (Magna Carta, Act of Supremacy, Act of Habeas Corpus; Bill of Rights); William Blackstone • Other differences between common and civil law (property law, trust law, international law) • “The rigidity” of the writ-system, the establishment of the Court of Chancellor, equity law • Rule of precedent/stare decisis • Judicature Act 1873/1875 	<p>+ 5</p>
<p>Total Points</p>	<p>30</p>