

Contents

<i>Acknowledgments</i>	xvii
Introduction	1
1. Reading Facts: The Background of <i>Beastie Boys v. Monster Energy Company</i>	5
A. The Beastie Boys	6
B. Monster Energy Drink Company	8
C. Events in the Spring of 2012	9
D. The Video	9
<i>Problem 1-1</i>	11
E. Using Facts to Persuade	11
<i>Problem 1-2</i>	12
<i>Problem 1-3</i>	14
<i>Estate of Duke</i>	15
2. Procedure: Filing and Responding to a Civil Action	19
A. The Start of a Lawsuit	19
1. Client Intake	20
2. Research	20
3. Demand Letters	21
B. Filing a Complaint	23
C. The Structure of the U.S. Legal System	28
1. The Structure of the U.S. Court System	28
a. Appellate Courts	29
b. Supreme Courts	30
2. Federal and State Law	30
3. Subject Matter Jurisdiction	32
a. Federal Courts: Federal Question Jurisdiction	32
b. Federal Courts: Diversity Jurisdiction	33
c. State Courts: General Subject Matter Jurisdiction	33
d. Applying and Understanding Subject Matter Jurisdiction	33
<i>Problem 2-1</i>	34
<i>Problem 2-2</i>	35

4. Personal Jurisdiction	35
a. General Jurisdiction	36
b. Specific Jurisdiction	36
<i>Problem 2-3</i>	36
<i>Problem 2-4</i>	37
D. Jury or Bench Trial	37
E. Responding to a Complaint	38
1. Answers	38
2. Motions to Dismiss	40
3. Other Options When Responding to a Complaint	40
3. Substantive Law: Constitutions, Statutes, Regulations, and the Common Law	43
A. The United States Constitution	44
1. The Constitution Establishes the Structure of the Federal Government	44
a. Separation of Powers	45
b. Checks and Balances	45
2. The Enumerated Powers of Congress	45
a. The Commerce Clause	46
b. The Patent and Copyright Clause	47
<i>Problem 3-1</i>	47
3. Constitutional Protection of Individual Liberties	48
B. Federal Statutes and Regulations	48
1. Federal Preemption of Inconsistent State Laws	49
a. Express Preemption	49
b. Implied Preemption	49
2. Federal Statutes in <i>Beastie Boys</i> : Copyright and Trademark	50
a. The Copyright Act	50
<i>Problem 3-2</i>	52
b. The Lanham Act	52
<i>Problem 3-3</i>	53
3. The Administrative State and Its Agencies	53
a. Agencies and Separation of Powers	54
b. The Administrative Procedures Act	55
C. State Constitutions	55
D. State Statutes and Regulations	56
1. New York Civil Rights Law Section 51	56
2. A Note on Civil and Criminal Statutes	57
<i>Problem 3-4</i>	58

E. The Common Law	58
1. General Common Law	59
2. Interstitial Common Law	59
3. Precedent	60
a. Following Precedent	60
b. A Note About Common Law Systems	60
c. The Common Law in Action	61
<i>Delan v. CBS, Inc.</i>	61
<i>Loban v. Perez</i>	62
<i>Problem 3-5</i>	64
4. Discovery	65
A. The Discovery Plan	65
1. Initial Disclosures	66
2. Discovery Devices	66
a. Requests for Production of Documents	66
b. Interrogatories	67
c. Requests for Admission	67
d. Depositions	67
e. Deadlines	67
B. Discovery Disputes	70
1. Disputes About the Discovery Process	70
2. Disputes About the Substance of Discovery	71
a. Overbreadth	71
b. Undue Burden	72
c. Privileged Information	72
3. Motions to Compel	72
C. Local Rules and Standing Orders	73
<i>Problem 4-1</i>	74
5. Z-Trip’s Motion for Summary Judgment: A Case Study in Reading and Briefing Opinions, Outlining, and Other Essential Law School Skills	77
A. Filing a Motion for Summary Judgment	77
1. MSJs and Evidence	78
2. Factual Disputes	78
B. How to Read a Case: Judge Engelmayer’s Ruling on Z-Trip’s MSJ	79
<i>Beastie Boys v. Monster Energy Company</i>	79
1. Finding the Rules in a Case	87
a. Rules with Elements	87

b. Rules with Factors	88
c. Tips for Understanding Rules	89
2. Identifying a Case’s Holding and Reasoning	89
a. Discussion Questions Point You in the Right Direction	90
C. Briefing a Case	91
1. The Anatomy of a Brief	91
2. A Sample Brief: Judge Engelmayer’s Decision	92
<i>Problem 5-1</i>	93
<i>Beastie Boys v. Monster Energy Company</i>	94
D. Outlining	95
1. The Value of Outlining	95
2. Outlining Strategies	97
3. Outlining Timing	97
E. Exams	97
1. A (Very!) Simplified Exam Question	98
2. Issue Spotting	98
3. IRAC	98
4. Dissecting an Answer	99
a. IRAC Revisited	99
b. The Importance of Spotting Relevant Issues	100
c. Know Your Rules	100
d. Analogizing and Distinguishing in Your Analysis Section	101
e. Don’t Stress about the Conclusion	101
6. Reading and Using Cases in Practice	103
A. How Lawyers Read a Case	104
<i>Wow & Flutter Music v. Len’s Tom Jones Tavern, Inc.</i>	104
1. The Case Caption and Citation	105
2. Positive and Negative Authority	107
3. Analogizing and Distinguishing Cases	107
4. Mandatory and Persuasive Precedent	108
a. <i>Stare Decisis</i>	108
b. Persuasive Authority	108
c. Precedential Value	109
5. Holding and <i>Dicta</i>	109
B. Case Analysis	110
<i>Problem 6-1</i>	111
<i>The New Kids on the Block v. News America Publishing</i>	111
<i>Tiffany Inc. v. eBay Inc.</i>	115

7. Statutory Interpretation	119
A. The Primacy of Statutory Text	119
1. Defined Terms	120
2. Dictionaries	121
3. Canons of Construction	122
B. Falling Back on Legislative History	123
<i>Problem 7-1</i>	124
8. Pre-Trial and Trial	127
A. Pre-Trial	127
1. Evidence	128
a. Relevance	128
b. Federal Rule 403	129
c. Hearsay	129
<i>Problem 8-1</i>	130
2. Expert Testimony	130
<i>Problem 8-2</i>	130
3. Jury Selection	131
<i>Problem 8-3</i>	132
B. Trial	133
1. Opening Statements	133
2. Direct Examination and Cross-Examination	135
a. Direct Examination	135
b. Cross-Examination	136
3. Closing Arguments	137
4. Jury Instructions	139
<i>Problem 8-4</i>	139
5. The Verdict in <i>Beastie Boys</i>	140
9. Post-Trial	145
A. Post-Trial Motions in <i>Beastie Boys</i>	145
1. The Beastie Boys' Motion for a Permanent Injunction Against Monster	145
<i>Problem 9-1</i>	146
2. The Beastie Boys' Motion for Attorneys' Fees	146
3. Monster Files a Notice of Appeal	147
B. The Beastie Boys and Monster Reach a Post-Verdict Settlement	147

10. The Road Ahead: Law School, the Bar Exam, and Practice	149
A. A Brief History of Legal Education	149
1. The Apprenticeship Model of Legal Education	149
2. Christopher Columbus Langdell, Architect of the Law School Model	150
a. The Case Method	151
b. The Socratic Method	151
3. Law School Today	152
a. The First Year of Law School	152
b. The Second Year of Law School The Law Review	153
c. The Third Year of Law School	154
B. The Bar Exam	154
1. A Brief History of the Bar	155
2. Today's Bar	156
3. Bar Review Classes	156
4. Taking the Bar	157
C. Law Practice	157
1. Clerking	157
2. "BigLaw"	157
3. Practicing Law in Mid-Size and Small Firms	158
4. Practicing Law in Government	158
<i>Answers to Problems</i>	161
<i>Appendix A: The Parties' Civil Case Management Plan</i>	169
<i>Appendix B: The Statement of Facts from Z-Trip's MSJ</i>	173
<i>Appendix C: The Injunction Ruling</i>	175
<i>Appendix D: The Attorneys' Fees Ruling</i>	181
<i>Index</i>	187