Legal Environment of Business - Notes

Chapter 1

- ➔ Introduction:
  - ◆ One of the most important functions of law in any society is to provide stability, predictability, and continuity so that people can know how to order their affairs. Citizens must be able to determine what is legally right and wrong.
  - ◆ Law consists of enforceable rules governing relationships among individuals and between individuals and their society. Regardless of how rules are created, they all have one feature in common; they establish rights duties and privileges that are consistent with the values and beliefs of their society or its ruling group.
- ➔ 1-1 Business activities and the legal environment
  - ◆ Laws and government regulations affect almost all business activities from hiring and firing to workplace safety, the creation of products, financing, etc.
  - ◆ In today's world of business, knowing what conduct can lead to legal liability is not enough. Development of critical thinking and legal reasoning skills so that they can evaluate how various laws might apply to a given situation and determine the best action.
- ➔ 1-1 a Many different laws may affect a single business decision
  - ◆ Areas of the law that can affect business decision making
    - Contracts, intellectual property, torts, product liability, sales, internet law, social media, privacy, environmental law, and sustainability
- ➔ 1-1 b Ethics and business decision making
  - ◆ Business decision-makers need to consider not just whether a decision is legal, but also where it is ethical
  - ◆ Ethics - the principles governing what constitutes right or wrong behavior
- ➔ 1-2 Sources of American law
  - ◆ American law has numerous sources, often these sources are classified as primary or secondary:
  - ◆ Primary sources of law, or sources that establish the law, include the following:
    - The U.S. Constitution and the constitutions of the various states.
    - Statutory law—including laws passed by Congress, state legislatures, or local governing bodies.
    - Regulations created by administrative agencies, such as the Federal Trade Commission.

        - Case law and common law doctrines.
    - Secondary sources of law are books and articles that summarize and clarify the primary sources of law
        - Legal encyclopedias
        - Treatises
        - Articles in law reviews
        - Compilations of law (restatements of the law)

➔ 1-2 a Constitutional Law

- The federal government and the states have separate written constitutions that set forth the general organization, powers, and limits of their respective governments. Constitutional law is the law as expressed in these constitutions.
    - According to Article VI of the US Constitution, the Constitution is the supreme law of the land. As such, it is the basis of all law in the United States. A law in violation of the Constitution, if challenged, will be declared unconstitutional and will not be enforced, no matter what its source.
    - The Tenth Amendment to the U.S. Constitution reserves to the states all powers not granted to the federal government. Each state in the union has its own constitution. Unless it conflicts with the U.S. Constitution or federal law, a state constitution is supreme within the state's borders.

➔ 1-2 b Statutory law

- Laws enacted by legislative bodies at any level of government, statutes passed by Congress or by state legislatures, make up the body of law known as statutory law. When a legislature passes a statute, the statute ultimately is included in the federal code of laws or the state code of laws
    - It includes local ordinances (regulations passed by municipal or county governing units to deal with matter not covered by federal or state law
        - Commonly have to do with city or county zoning (land use), building and safety codes
- During the 1800s the differences among state laws frequently created difficulties for businesspersons conduction trade and commerce among the states. In order to counter these issues, a group of legal scholars and lawyers formed the National Conference of Commissioners on Uniform State Laws (NCCUSL) in 1892. Its objective is to draft uniform laws (model statutes) for the states to consider adopting (they can deny)

- Only if a state legislature adopts a uniform law does that law become part of the statutory law of that state
- One of the most important uniform acts is the Uniform Commercial Code (UCC) first issued in 1952 and has been adopted in all 50 states, the District of Columbia and the Virgin Islands
    - The UCC facilitates commerce among the states by providing a uniform, yet flexible, set of rules governing commercial transactions.

➔ 1-2 c Administrative law

- A source of American law is administrative law, which consists of the rules, orders, and decisions of administrative agencies
    - An administrative agency is a federal, state, or local government agency established to perform a specific function
- At the national level, the cabinet departments of the executive branch include numerous executive agencies. For example; the FDA works within the HHS. There are also major independent regulatory agencies at the federal level. The president's power is less pronounced in regard to independent agencies, whose officers serve for fixed terms and cannot be removed without a just cause
    - There are also administrative agencies at the state and local levels.

➔ 1-2 d Case law and common law doctrines

- The rules of law announced in court decisions constitute another basic source of American law. These rules include interpretations of constitutional provisions, of statutes and caged by legislatures and of regulations created by administrative agencies
- Case law (the doctrines and principles announced in cases), governs all areas not covered by statutory law or administrative law and is part of our common law tradition

➔ 1-3 The common law tradition

- Colonial heritage has made American law based on the English legal system, which is still relevant in order to understand today's legal system (judges apply common law when deciding cases)

➔ 1-3 a Early English courts

- After William the Conqueror conquered England in 1066 they began to unify the country under their rule. One of the establishments was the king's courts or curiae regis.
    - Kings courts sought to establish a uniform set of customs and it evolved to become the common law (a body of general rules that

applied throughout the entire English realm and later into the 13 colonies

- Early on the king's courts could grant only very limited kinds of remedies (the legal means to enforce a right or redress a wrong).
    - If one person wronged another in some way, the king's courts could award as compensation one or more of the following: land, items of value, or money.
    - The courts that awarded this compensation became known as courts of law, and the three remedies were called remedies at law. Today, the remedy at law normally takes the form of monetary damages (an amount given to a party whose legal interests have been injured). This system made the procedure for settling disputes more uniform.
- When someone could not obtain a remedy in a court of law, they asked the king for relief, decided by an adviser of the king (chancellor). The formal chancery courts or courts of equity were established later on.
    - Equity is a branch of law that seeks to supply a remedy when no adequate remedy is available
    - Became known as remedies in equity, they included specific performance (perform an agreement), an injunction (cease engaging in activity/undo wrong), and rescission (cancellation of an obligation)
    - As a general rule, today's courts, like the early English courts, will not grant equitable remedies unless the remedy at law—monetary damages—is inadequate.
- In creating appropriate remedies, judges are quieted by equitable maxims, propositions or general statements of equitable rules (list in the chapter)
    - Terms: laches (used as a defense), defense (argument raised by the defendant (the party being sued) indicating why the plaintiff (suing party) should not obtain the remedy sought), petitioner (party bringing the lawsuit), respondent (the party being sued), statutes of limitations (usually how cases are solved)

➔ 1-3 b Legal and equitable remedies today

- ◆ Two distinct court systems arouse from medieval England, courts of law and courts of equity. They have different sets of judges and granted different types of remedies. Now a party can request both legal and equitable remedies in the same action.

- Exhibit 1-3:

Procedure	Action at Law	Action in Equity
Initiation of lawsuit	By filing a complaint	By filing a petition
Decision	By jury or judge	By judge (no jury)
Result	Judgment	Decree
Remedy	Monetary damages or property	Injunction, specific performance, or rescission

➔ 1-3 c The doctrine of Stare Decisis

- One of the many features of the common law is that it is judge-made law. The body of principles and doctrines that form the common law emerged over time as judges decided legal controversies.
- Judges had to be careful with new cases because they knew that their decisions would make a new law. Each interpretation became part of the law on the subject and thus served as a legal precedent (a decision that furnishes an example of authority for deciding subsequent cases involving identical or similar legal principles or facts)
- In early years common law had no places where court opinions or decisions could be found. By the 14th-century portions of the most important decisions from each year were being gathered together and record in Year Books, which became useful references for lawyers and judges
    - In the 16th century they were discontinued, now cases are published or “reported” in volumes called reporters or reports
- The practice of deciding new cases with reference to former decisions, or precedents, became a cornerstone of the English and American judicial systems. The practice formed a doctrine known as stare decisis, “to stand on decided cases.”
    - Under this doctrine, judges are obligated to follow the precedents established within their jurisdictions (geographic area in which courts have the power to apply the law
- Stare Decisis has two aspects: 1) a court should not overturn its own precedents unless there is a compelling reason to do so. 2) Decisions made by a higher court are binding on lower courts.
    - It helps the courts to be more efficient because, if other courts have analyzed a similar case, their legal reasoning and opinions can serve as guides. It also makes the law more stable and predictable.
- Precedents that must be followed within a jurisdiction are called controlling precedents. Controlling precedents are a type of binding authority. Binding

authority is any source of law that a court must follow when deciding a case. Binding authorities include constitutions, statutes, and regulations that govern the issue being decided, as well as court decisions that are controlling precedents within the jurisdiction. The United States Supreme Court case decisions, no matter how old, remain controlling until they are overruled by a subsequent decision of the Supreme Court or changed by further legislation or a constitutional amendment.

- Occasionally, courts must decide cases for which no precedents exist, called cases of the first impression. In deciding cases of first impression, courts often look at persuasive authorities (legal authorities that the court may consult for guidance but that are not binding on the court. The court may consider precedents from other jurisdictions.
    - The court might look at issues of fairness, social values and customs, and public policy (governmental policy based on widely held societal values). Today, federal courts can also look at unpublished opinions (those not intended for publication in a printed legal reporter) as sources of persuasive authority.

➔ 1-3 d stare decisis and legal reasoning

- Judges rely on legal reasoning to dispute and apply laws based on facts and circumstances of the case. As a student, you will need to give legal reasons for a decision made in a court.
    - Basic steps in legal reasoning:
        - Issue-what are the key facts and issues?
        - Rule-what rule of laws applies to this case?
        - Application-how does the rule of law apply to the particular facts and circumstances of this case?
        - Conclusion-what conclusion can be drawn?
    - In a court of law, there is no one “right” answer, there is no good or bad person. Judges have personal morals and beliefs that can factor and shape their legal reasoning.

➔ 1-3 e the common law today

- Common law doctrines and principles govern only areas not covered by statutory or administrative law. Courts interpret statutes and regulations. The courts in interpreting statutory law often rely on the common law as a guide to what the legislators intended.
- It is not the judge’s job to make the laws but to interpret and apply them, creating laws is the function of the legislative branch of government. It is because of this flexibility that different courts can, and often do, arrive at different conclusions in cases that involve nearly identical issues, facts, and applicable laws.

- The American Law Institute (ALI) has published compilations of the common law called Restatements of the Law, which generally summarize the common law rules followed by most states. There are Restatements of the Law in the areas of contracts, torts, agency, trusts, property, restitution, security, judgments, and conflict of laws. The Restatements, like other secondary sources of law, do not in themselves have the force of law, but they are an important source of legal analysis and opinion. Hence, judges often rely on them in making decisions.

➔ 1-4 schools of legal thought

- How judges apply the law to specific cases including disputes relating to the business world depends in part on their philosophical approaches to law, the study of law or jurisprudence involves learning about different schools of legal thought and how the approaches to law characteristic of each school can affect judicial decision making.

➔ 1-4 a the natural law school

- According to the natural law theory, a higher or universal law exists that applies to all humans. Each law should reflect the principles inherent in natural law, if not then it loses its legitimacy and does not need to be obeyed (natural rights/human rights). It dates back to Aristotle (384-322 BC) who distinguished between natural law and the laws governing a particular nation.
- The overall idea of human rights is unfortunately not a steady and agreed upon one

➔ 1-4 b the positivist school

- Positive law or national law is the written law of a given society at a particular time. It applies only to citizens of that nation or society and those who follow legal positivism believe that there can be no higher law.
- According to the positivist school, there are no natural rights, rather human rights exist solely because of laws, if laws are not enforced anarchy will result.
- The law is the law and will be obeyed until changed (In an orderly manner a legitimate lawmaking process)

➔ 1-4 c the historical school

- The historical school of legal thought emphasizes the evolutionary process of law by concentrating on the origin and history of the legal system. They look at the past in order to discover what the principles of contemporary law should be.
- The legal doctrines that have withstood the passage of time—those that have worked in the past—are deemed best suited for shaping present

laws. Followers of the historical school are more likely than those of other schools to strictly follow decisions made in past cases.

➔ 1-4 d legal realism

- In the 1920s and 1930s, a number of jurists and scholars, known as legal realists, rebelled against the historical approach to law. Legal realism is based on the idea that law is just one of many institutions in society and that it is shaped by social forces and needs. Because the law is a human enterprise, this school reasons that judges should take social and economic realities into account when deciding cases.
- Legal realists also believe that the law can never be applied with total uniformity. strongly influenced the growth of what is sometimes called the sociological school, which views law as a tool for promoting justice in society. Generally, jurists who adhere to this philosophy of law are more likely to depart from past decisions than are jurists who adhere to other schools of legal thought.

Natural Law School	One of the oldest and most significant schools of legal thought. Those who believe in natural law hold that there is a universal law applicable to all human beings.
Positivist School	A school of legal thought centered on the assumption that there is no law higher than the laws created by the government.
Historical School	A school of legal thought that stresses the evolutionary nature of law and looks to doctrines that have withstood the passage of time for guidance in shaping present laws.
Legal Realism	A school of legal thought that advocates a less abstract and more realistic and pragmatic approach to the law and takes into account customary practices and the circumstances surrounding the particular transaction.

➔ 1-5 classifications of law

- The law may be broken down according to several classification systems. One system, for instance, divides law into substantive law and procedural law. Substantive law consists of all laws that define, describe, regulate, and create legal rights and obligations. Procedural law consists of all laws that outline the methods of enforcing the rights established by substantive law. (Note that many statutes contain both substantive and procedural provisions.)
- Other classification systems divide the law into federal law and state law, private law (dealing with relationships between private entities) and public law (addressing the relationship between persons and their governments), and national law and international law.

- ➔ 1-5 a civil law and criminal law
  - ◆ Civil law: spells out the rights and duties that exist between persons and between persons and their governments, as well as the relief available when a person's rights are violated. Typically, in a civil case, a private party sues another private party who has failed to comply with the duty.
  - ◆ Criminal law: is concerned with wrongs committed against the public as a whole. Criminal acts are defined and prohibited by local, state, or federal government statutes.
- ➔ 1-5 b cyber law
  - ◆ The use of the Internet to conduct business has led to new types of legal issues, so this means traditional laws are tampered with for the situation
  - ◆ The term cyberlaw refers to the emerging body of law that governs transactions via the internet.
    - an informal term used to refer to both new laws and modifications of traditional laws that relate to the online environment.
- ➔ 1-6 how to find primary sources of law
  - ◆ A citation identifies the publication in which a legal authority (statute or court decision) can be found
- ➔ 1-6 a finding statutory and administrative law
  - ◆ Frequently laws are referred to in their codified form (which they appear in the fed and state codes). When Congress passes laws, they are collected in a publication titled United States Statutes at Large. When state legislatures pass laws, they are collected in similar state publications.
  - ◆ The United States Code (U.S.C.) arranges all existing federal laws by broad subject. Each of the fifty-two subjects is given a title and a title number.
    - Each title is subdivided into sections. A citation to the U.S.C. includes both title and section numbers. Thus, a reference to "15 U.S.C. Section 1" means that the statute can be found in Section 1 of Title 15.
  - ◆ State codes follow the U.S.C. pattern of arranging law by subject. They may be called codes, revisions, compilations, consolidations, general statutes, or statutes, depending on the preferences of the states.
    - In some codes, subjects are designated by a number. In others, they are designated by name.
  - ◆ Rules and regulations adopted by federal administrative agencies are initially published in the Federal Register, a daily

publication of the U.S. government. Later, they are incorporated into the Code of Federal Regulations (C.F.R.).

➔ 1-6 b finding case law

- There are two types of courts in the United States, federal courts and state courts. Both systems consist of several levels, or tiers, of courts. Trial courts, in which evidence is presented and testimony was given, are on the bottom tier. Decisions from a trial court can be appealed to a higher court, which commonly is an intermediate court of appeals or appellate court. Decisions from these intermediate courts of appeals may be appealed to an even higher court, such as a state supreme court or the United States Supreme Court.
- Decisions from state trial courts are typically filed in the office of the clerk of the court, where the decisions are available for public inspection.
- State court opinions appear in regional units of the West's National Reporter System, published by Thomson Reuters. Most lawyers and libraries have these reporters because they report cases more quickly and are distributed more widely than the state-published reporters. In fact, many states have eliminated their own reporters in favor of the National Reporter System.
- After appellate decisions have been published, they are normally referred to (cited) by the name of the case and the volume, name, and page number of the reporter(s) in which the opinion can be found. The citation first lists the state's official reporter (if different from the National Reporter System), then the National Reporter, and then any other selected reporter. (Citing a reporter by volume number, name, and page number, in that order, is common to all citations.
    - Note that some states have adopted a "public domain citation system" that uses a somewhat different format for the citation.
- Federal district court decisions are published unofficially in the Federal Supplement. opinions from the circuit courts of appeals (reviewing courts) are reported unofficially in the Federal Reporter
- Many court opinions that are not yet published or that are not intended for publication can be accessed through Thomson Reuters Westlaw, an online legal database.

➔ 1-7 how to read and understand case law