Chapter 1: Law and Legal Reasoning

**Law** consists of enforceable rules governing relationships among individuals and between individuals and their society.

- Many different laws affect business decisions. Business decisions must be legal and ethical.

American law has primary and secondary sources.

- **Primary:**
  - Constitution (US and of states)
    - Constitutional law is the supreme law of the land. If a law challenges the constitution, it is declared unconstitutional. Each state has its own constitution.
  - Statutory law (congress, state legislatures, and local government bodies)
    - When a legislature passes a statute, it is included in the federal code of laws.
    - Statutory law also includes **ordinances**—regulations passed by municipal or county units.
    - To have similar laws, NCCUSL drafted **uniform laws** for each state to consider. Only if the state legislature adopts the law, it becomes a part of the statutory law in that state.
    - **UCC**—all 50 states have uniform yet flexible set of rules governing commercial transactions.
  - Regulations (created by administrative agencies e.g Federal Trade Commission.)
    - **Administrative Law** is rules, orders, and decisions of administrative agencies, which are federal, state, or local government agencies that perform a specific function.
    - **Regulations** control everything in business.
    - State and local agencies is created in parallel to the federal agencies.
  - Case law and common law doctrines
    - **Case law** governs all areas not covered by statutory law or administrative law.
    - **Common law**—a body of rules that applied throughout the english realm.
    - **Remedies**—compensation in a form of land, items of value, or money.
    - **Equity**—supplies justice when no other remedy is possible. Remedies in equity include:
      - **Specific performance**: ordering a party to perform an agreement as promised
Injunction: to make a party stop doing something
Rescission: cancellation of a contractual obligation

An agreement is breached when it is not fulfilled.
Judges seek equitable maxims - general statements of equitable rules.

Secondary sources of law are used for guidance and interpretation of primary sources of law. They are legal encyclopedias, treatises, and compilations of law e.g. Restatements of the Law

Stare decisis is a doctrine under which judges are obligated to apply similar measures to similar cases. This helps court be more efficient.

Binding authority is any source of law that a court must follow when deciding a case. This includes constitutions, statutes, and regulations.

Persuasive authority is used in cases of first impression where the case uses court for guidance that is non-binding.

IRAC method of legal reasoning is used to harmonize their decisions.
- Issue - what are the facts and issues?
- Rule - what rules apply to the case?
- Application - how does the rule of law apply?
- Conclusion

Judges affect court decisions: there are no “right” answers.

School of Legal Thought
- Natural law school: assumes a higher or universal law that applies to all human beings.
- Historical school:
  - Legal realism
  - Positivist school

Every law will either be substantive or procedural, civil or criminal.
- Criminal law is wrongs committed against the public as a whole. Criminal acts are defined and prohibited by local, state, or federal government.
- Cyberlaws govern transactions via the Internet.

How to find Primary Sources of Law

Citation is a reference to a publication in which a legal authority can be found. Laws are referenced in codified form and are reported in the US code.

Appellate courts can appeal to an even higher court such as the state supreme court or the United States Supreme Court.

How to Read and Understand case law
- plaintiff/petitioner the party who initiates a lawsuit
- defendant/respondent the party against whom the lawsuit is brought
- appellant/petitioner the party who takes an appeal from one court to another
- appellee/respondent the party against whom the appeal is taken
○ judge/justice is synonyms for judges in courts. All members of the supreme court are Justices.
○ Majority opinion when a unanimous agreement can’t be reached, the judges get together and declare the majority.
○ Concurring opinion a court opinion by one or more judges who agree with the majority opinion but not the legal reasoning behind the opinion.
○ Dissenting opinion an opinion by one or more judges who disagree with the majority’s opinion
○ Plurality opinion an opinion that has the support of the largest number of judges, but less than a majority of them
○ Per curiam opinion unanimous opinion that does not initiate which judge wrote it

● Briefing a case: it is important to know how to display a case with facts and opinions. Some important vocabulary words are:
○ Impetus a stimulus or a spark
○ Cede is to yield or surrender
○ Right of publicity is a person’s right to the use of his or her name and likeness for a commercial purpose.
○ Misappropriation is the use of a person’s name or likeness without his or her consent for a commercial purpose.
○ Substantive law is law that defines the rights and duties of persons with respect to each other.
○ Indicia is a synonym for indications or signs
○ Qualified privilege gives someone a limited right to act contrary to another person’s right without the other person having legal resource for the act.
○ Bona fide means sincerely and honestly
○ Uncontested means unchallenged, evident
○ Affirm means to validate, give legal force to
Chapter 2: Business and the Constitution

America adopted the Articles of Confederation, which allowed the states to govern themselves. This meant that the national government only had limited powers. A **federal form of government** shares sovereign power between national and state governments.

- **Enumerated powers** means the congress can exercise the powers that the constitution grants it.
- Each US state government has inherent **sovereignty**: power to govern itself.
- As a result, states also have **police powers**: the ability to regulate certain affairs within their borders.
- **Privileges and Immunities Clause**: article IV of the US Constitution states that citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.
  - The state may not treat citizens of other states differently from citizens of its own state without substantial reason that is substantially related to the purpose of the rule.
- One state needs to honor another state’s laws. **Full faith and credit clause**.
• **Separation of Powers** is America’s three separate branches: Legislative (creates laws) executive (enforces laws) and judicial (interprets laws).
  - **Checks and balances** allow each branch to limit the action of two other branches. For example:
    - Congress can enact a law, president can veto that law.
    - President responsible for foreign affairs--required to have consent from the Senate
    - Congress determines jurisdiction of courts, president appoints judges with consent of the Senate.
• **Commerce Clause** regulates commerce with foreign nations, and among the several States and the Indian Tribes. This clause prevents states from establishing laws and regulations that would interfere with trade and commerce among the states.
  - Gibbons v Ogden defined congressional power to regulate interstate commerce.
  - Interstate commerce and intrastate commerce as long as the intrastate commerce at issue “substantially affects” interstate commerce. Supreme court expanded the clause to purely intrastate business wickard v filburn
• **Dormant** commerce clause is when state regulations interfere with interstate commerce. If a law substantially interferes with interstate commerce, it will most likely get shot down EG all cars should be electronic.
  - Family winemakers of california vs jenkins
• Article IV of the US constitution referred to as the **supremacy clause** provides that the constitution, laws, and treaties of the United States are “the supreme law of the land”
• **Preemption**- when a federal law takes precedence over conflicting state or local laws
  - Taxing has to be uniform across all the states. Congress can not violate the bill of rights.
  - Legislature can go around some constitution laws: although everyone has the right to bear arms, they don’t have the right to carry a concealed weapon or a machine gun.
  - Freedom of speech is the basis for our democratic government.
• **Symbolic speech** is given substantial protection by the courts.
  - Some laws are content-neutral. Stripping and dancing naked is allowed, but generally public nudity is not.
  - Some speech is **unprotected**: fighting words, defamatory speech, and speech that violates criminal laws.
• **Compelling government interest** is when the government’s interest is balanced against the individual’s constitutional right to free expression.
• Government agencies can not unconstitutionally restrict commercial speech. You can’t threaten someone.
• **Filtering software** must be installed in school libraries and computers to keep children from adult content or websites with certain **meta tags**.

**Freedom of Religion**
• The two laws that say the government can not establish or prohibit religion is the establishment clause and the free exercise clause.
• A **search warrant** is required to search or seize private property, however it is not required when searching or seizing potentially contaminated food.
To obtain a search warrant, an officer must convince the judge that they have a **probable cause**.

- The fifth amendment states that no person can be witness against himself. The **due process clause** has two aspects - procedural and substantive. It applies to corporations and individuals alike. **Substantive due process** focuses on the content of the legislation rather than the fairness of procedures.

- **Equal protection clause** means that the government cannot enact laws that treat similarly situated individuals differently.
  - If a law or action prohibits or inhibits some persons from exercising a fundamental right, the action will be subject to “strict scrutiny”
  - Intermediate scrutiny is applied in cases involving discrimination based on gender or legitimacy
  - A classification will only be considered valid if there is a rational basis.
Chapter 3: Courts and Alternative Dispute Resolution

Federal- adjective. Pertaining to or of the nature of a union of states under a central government distinct from the individual governments of the separate states, as in federal government; federal system.

- **Judicial review** is when the judicial branch decides whether the other two branches of government’s actions are constitutional.
- **Jurisdiction** means the power to speak to the law. Defendants have right to defend themselves.
  - **In personam jurisdiction** is jurisdiction over property
  - **In rem jurisdiction** is property over a thing
- **Long arm statute** is when a court can exercise personal jurisdiction over certain out-of-state defendants based on activities that took place within the state.
- There are courts of limited and unlimited jurisdiction.
  - E.g. a **probate court** is a state court that handles only the disposition of a person’s assets and obligations after that person’s death
  - **Bankruptcy courts** handle only bankruptcy proceedings which are governed by federal bankruptcy law.
  - A court subject-matter jurisdiction can be limited by the following:
    - The subject of the lawsuit
    - The sum in controversy
    - Whether the case involves a felony or a misdemeanor
    - Whether the proceeding is a trial or an appeal
- The difference between **courts of original jurisdiction** and **courts of appellate jurisdiction** is that original is heard for the first time.
- Trial courts are known by several names (district court)
- Federal courts have subject-matter in two situations:
  - when the **federal question** is involved. If a plaintiff’s cause is based on the US constitution, a treaty or a federal law, a federal question arises. A federal question has the federal court apply federal law.
  - when there is **diversity of citizenship** which involves both of the following:
    - The plaintiff and defendant being residents of different states
    - The dollar amount in controversy must exceed $75,000
- **Exclusive vs concurrent jurisdiction**
  - Federal courts have **exclusive jurisdiction** for federal crimes, bankruptcy, patent and copyright, and admiralty law. That is when cases can only be tried in federal courts.
  - **Concurrent jurisdiction** exists when both federal and state court have the power to hear a case.
  - Jurisdiction in cyberspace is difficult to determine whether contacts are sufficient for a court to exercise jurisdiction if a defendant’s only contacts with the state are through a Web site.