LEGAL ENVIRONMENT OF BUSINESS

Lumen Learning

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Licensing

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CHAPTER OVERVIEW

1: The Foundations

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1.1: Rule of Law

LEARNING OBJECTIVES

1. Understand what a rule of law system is.
2. Explore the U.S. rule of law system.

When you hear the term "rule of law," what comes to mind? It may seem like an ambiguous term, but it is used frequently in legal and governance circles. Rule of law is a system of laws under which the people and the government are bound, which allows predictability and restraint of government action.

A rule of law legitimizes the law. It establishes clear rules of behavior, establishes (or captures) precedent, and seriously undermines any defense of ignorance of the law. Moreover, it holds people to the same standards, though in many ancient rules of law, the standards differed depending on the person's classification. For instance, men often had different rights than women. Slaves were a different legal class than those who were free, and indentured servants were often a different classification altogether. When people are held to the same standards, we can see systems of fairness (that is, equal justice under the law) emerging, at least for those within the same class.

The Founding Fathers of the United States did not create our rule of law system out of thin air. Many rule of law systems existed prior to the founding of the United States. The U.S. rule of law system has many similarities with prior rule of law systems from which our Founding Fathers drew their ideas. We can trace elements of our legal genealogy back to ancient Babylon. For example, who has the right to govern, the legitimate sources of law, the organization of government, substantive and procedural legal responsibilities, processes for dispute resolution, and consequences for legal transgressions are all common foci for rule of law systems.

Can you imagine if we had no way to determine these things? Imagine that we did not know who had the legitimate right to govern or that we did not know which sources of law were legitimate. If we did not have a rule of law system that specified and legitimized these and other foundational issues, chaos would rule. There would likely be competing claims of authority between different factions of power if our U.S. Constitution and our state constitutions did not create our systems of government. Likewise, there would be competing sources of law—such as those based on religious texts, or others created by modern human beings—if our constitutions did not legitimize the manner in which laws were to be created. Also, there would be different methods of dispute resolution. Perhaps some people would favor a vigilante system, while others would prefer a procedural system. This type of unpredictability would result in a very unstable society. We should not take the American rule of law system for granted. It provides predictability and stability to our lives.

Rule of law systems establish authority, create expectations for behavior, and establish redress for grievances and penalties for deviance. Governance of conflict and the attainment of peace among the governed are primary goals of rule of law systems. For example, securing peace is a goal within the U.S. rule of law system. The U.S. Constitution's preamble states, "We the People…in Order to…insure domestic Tranquility." We see this same notion in the English Bill of Rights of 1689, though th*e words used are somewhat different.*

According to many rule of law systems, the attainment of peace relies on the establishment of a hierarchical authority structure. This recognition of the right to govern provides legitimacy. For instance, in the Code of Hammurabi and the Magna Carta, these rights are derived from religious authority. In the U.S. Constitution and the English Bill of Rights of 1689, the power is derived from the people.

Note the difference between power and authority. Power is the ability to make someone behave in a predictable manner. Authority draws its strength from legitimacy. Imagine that your friend told you that his mother granted him the right to govern others. Would you believe him? Probably not. Why? Because it is unlikely that you would recognize your friend's mother as having a legitimate authority to bestow the right to govern on anyone, including your friend. Imagine, instead, the governor of your state. You probably recognize the authority of the governor to govern, because you recognize that the people, through representative government, have the authority to elect the governor to do so.

The rule of law of the federal government in the United States is composed of many different sources of law, including constitutional law, statutory law, rules and regulations promulgated by administrative agencies, federal common law, and treaties.

Additionally, within the United States, several state and local jurisdictions exist, each having its own rule of law systems. Moreover, the U.S. system of governance is one of federalism, which allows different rule of law systems to operate side by side. In the United States, these systems are the federal government and the state governments.

Organizational structures for government—including who has the right to govern—are also set out in rule of law systems. For instance, the Code of Hammurabi identified a ruler: Hammurabi himself. The English Bill of Rights of 1689 required representative bodies. The U.S. Constitution organized the U.S. government by creating the legislative, executive, and judicial branches. These models minimally provide order and, in some cases, provide opportunities for the governed to participate in government, both of which create role expectations of the governed.

Notably, even though our Founding Fathers relied on prior rule of law systems when creating our Constitution, they were unable to resolve all challenges that exist when people live together. Today, for instance, one unresolved challenge is reflected in the tension between personal liberty and responsibility to state. We have many individual rights and personal liberties, but as some argue, we do not have many responsibilities to the state. We could have a system that requires greater duties—such as the legal duty to vote, to serve in public office or in the military, or to maintain public lands. Unresolved challenges highlight the fact that rule of law systems are not perfect systems of governance. Nevertheless, these systems create expectations for conduct, without which governance of conflict could not reasonably exist and peace could not be attained.

The U.S. Constitution is the foundation on which the U.S. federal rule of law system rests. It asserts the supremacy of law. “We the people” is a very important part of the preamble, because it confers power on the people as well as on the states. Notably, unlike the Magna Carta and the English Bill of Rights of 1689, it does not focus on individual rights. Of course, the Bill of Rights does focus on individual rights, but those amendments were passed after the Constitution was written. (That is why they are called *amendments* to the constitution.) The U.S. Constitution implemented the supremacy of law using structure and processes. The Founding Fathers were particularly concerned about giving the government the power to do its job without encouraging tyranny. They built in processes to ensure the supremacy of law. Indeed, ours is “a government of laws and not of men,” John Adams wrote in the Massachusetts Constitution. Thomas Paine noted the same sentiment in *Common Sense*, when he wrote, “the law is king.”

KEY TAKEAWAYS

Rule of law is a system of published laws under which the people and the government are bound, which allows predictability and restraint of government action. A rule of law system allows people to understand what is expected of them. It provides a system that allows many people with different beliefs and cultures to live together in peace, by providing methods by which conflicts can be resolved. The U.S. rule of law system contains many elements of prior rule of law systems.

EXERCISES

1. View the Code of Hammurabi at http://avalon.law.yale.edu/ancient/hamframe.asp. Scroll down slightly until you see the subheading “Code of Laws.” Find three laws that you believe are similar to laws that we have in the United States.
2. Given the long history of rule of law systems, why hasn’t any rule of law system been developed that resolves all problems? Name three social problems that our rule of law system does not address, or does not address adequately.
3. Are the Ten Commandments a rule of law system? How many of the Ten Commandments are illegal in your state today?
4. What problems would exist without a rule of law?
5. How does the rule of law affect business?

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1.2: The Court System and ADR

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1.3: Reading Criminal Law

Chapter 10: Criminal Law

- Chapter Introduction
- The Nature of Criminal Law, Constitutional Rights, Defenses, and Punishment
- Crime
- Minimizing Corporate Criminal Liability and Losses Attributed to Crime
- Concluding Thoughts

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1.4: Ethics

Chapter 2: Corporate Social Responsibility and Business Ethics

- Chapter Introduction
- What Is Ethics?
- Major Ethical Perspectives
- An Ethical Decision Model
- Corporations and Corporate Governance
- Summary and Exercises

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1.5: International Law and a Global Economy

Chapter 32: Landlord and Tenant Law

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- Types and Creation of Leasehold Estates
- Rights and Duties of Landlords and Tenants
- Transfer of Landlord's or Tenant's Interest
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- Cases
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CHAPTER OVERVIEW

2: Contracts

2.1: Reading Contracts and the UCC
2.2: What is the UCC?
2.3: Contracts Presentation

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2.1: Reading Contracts and the UCC

Chapter 6: Criminal Law

- Chapter Introduction
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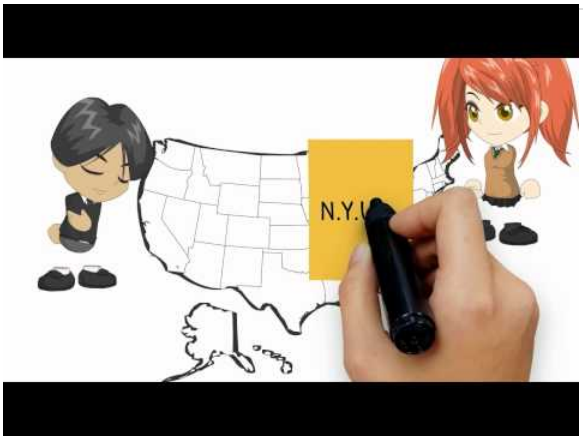

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3: Torts

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3.1: Reading- Torts

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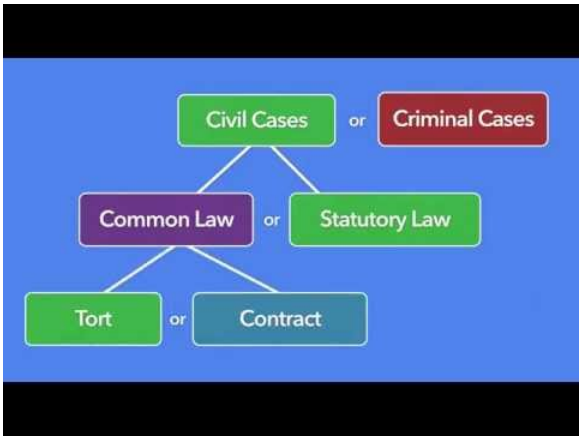

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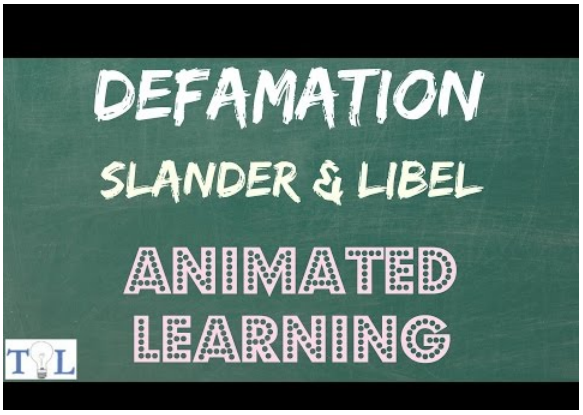

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4.1: Reading Personal Property; Reading- Real Property

Chapter 8: The Property System

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CHAPTER OVERVIEW

5: Creditor-Debtor and Bankruptcy

5.1: Debtor Creditor Relations; Secured Judgments; Creditor Rights; Bankruptcy; Surety Bonds;
5.2: Creditor-Debtor and Bankruptcy

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5.1: Debtor Creditor Relations; Secured Judgments; Creditor Rights; Bankruptcy; Surety Bonds;

Chapter 19: Secured Transactions and Suretyship

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- Summary and Exercises

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CHAPTER OVERVIEW

6: The Business Environment

6.1: Business Organizations; Securities Laws
6.2: Presentations- Module 6

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6.1: Business Organizations; Securities Laws

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- Acquisitions and Mergers under Section 7 of the Clayton Act
- Cases
- Summary and Exercises

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CHAPTER OVERVIEW

7: Agency and Employment

7.1: Principle

7.1.1: Principle/Agent; Employment and Immigration

7.2: Presentations- Module 7

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7.1.1: Principle/Agent; Employment and Immigration

Chapter 18: Partnerships: General Characteristics and Formation

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Chapter 12: Employment Discrimination

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- Overview of Title VII of the Civil Rights Act of 1964
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8.1: Environmental Law; Anti-Trust

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