

Course Learning Outcomes for Unit I

Upon completion of this unit, students should be able to:

4. Demonstrate research skills using all modalities available for legal issues.
 - 4.1 Identify the various forms of alternative dispute resolution (ADR).

Reading Assignment

Chapter 1: An Introduction to the Fundamentals of Dynamic Business Law

Chapter 3: The U.S. Legal System and Alternative Dispute Resolution

Unit Lesson

Introduction to Business Law

Law—a brief definition: *Business law* is defined law as “the enforceable rules of conduct that govern the actions of buyers and sellers in market exchanges” (Kubasek, Browne, Herron, Dhooge, & Barkacs, 2016, p. 3). Business law intersects with the six functional areas of business. These include corporate management, production and transportation, marketing, research and development, accounting and finance, and human resource management. These are the core activities in business, and the law plays a significant role in all (Kubasek et al., 2016).

Law is dynamic, and in some senses, it is a living thing. This core concept requires understanding of the origins of law. Law embodies fundamental rules of behavior and the institutions of defining, changing, clarifying, refining, redefining, and applying these rules. It is the natural consequence of humans living and working together. For an ordered society to exist, there has to be a way to resolve the inevitable disputes that come up. Law can be seen as the activity of subjecting human conduct to the governance of rules. Business law encompasses the rules of conduct for commercial relationships.

What are the roots of law? At some point in your upbringing, you learned the difference between right and wrong. Your home life and the experiences you had in school, church, and/or in the larger community all impacted your viewpoint on right and wrong.

One way to classify law is private versus public law. *Private law* is for resolution of disputes between private individuals or groups, whereas *public law* addresses disputes between private individuals or groups and their government. Both private and public law are significant for business law.

Another classification is civil versus criminal law. *Civil law* governs the rights and responsibilities either between persons or between persons and their government. *Criminal law* is the body of laws that involves the rights and responsibilities an individual has with respect to the public as a whole. A clear example of the dichotomy was displayed in the O.J. Simpson trial—O.J. was found not guilty in his criminal case for the murders of Nicole Brown Simpson and Ronald Goldman, but he was found to be legally responsible for their deaths in his civil case.

Law evolves. It predates recorded history. In the early days of human existence, laws were created one by one, as disputes arose and were settled. These early laws existed before written law and before courts of law. For thousands of years, societies created and evolved customary legal systems that reflected how a certain group of people treated one another. The customary or private laws of one group of people could vary from those of another group.

Current laws in the United States reflect how society has shifted away from the customary and private law systems to a mixture of customs and ways. This shift resulted in the need for laws to coercively be enforced by the state—by government.

Sources of business law: There are different sources of law in the United States. Law comes from constitutions, statutes or legislative actions, case law or precedent, administrative law, treaties, and executive orders.

Statutory law is law created by a legislative body, either at the federal level or the state level. Common law is judge-made law. If similar cases arise in the future, there is a good chance the court will use the same rule of law generated from those previous cases. This consistency is known as *stare decisis* or “let the decision stand.” As a result, we have *precedent*, and future judicial bodies may refer to the previous similar case and findings.

The U.S. Constitution and federal laws are considered the supreme law of the land. Additionally, each state has its own constitution and laws. The relationship between the federal constitution, federal laws, state constitutions, and state laws is complex. The Supremacy Clause of the U.S. Constitution mandates that all state judges follow federal law when a conflict arises between federal law and either a state constitution or state law. Case law establishes precedent. Generally, courts will adhere to the previous rulings in similar cases, although this is not universally true.

There are over 100 federal administrative agencies that also create law. This will be the subject we address in Unit II. For example, a treaty, such as the North American Free Trade Agreement, is also a source of law. Executive orders come from the President of the United States and are also considered law.

Judicial Process and Alternative Dispute Resolution

General terms: Key terms that must be understood to develop an understanding of business law include plaintiff, defendant, trial courts, appellate courts, questions of law versus questions of fact, complaint, and summons.

Plaintiffs are listed first in a dispute because they are the party that initiates a lawsuit. In criminal cases, this party is the government. The *defendant* is the person who must answer to the suit or charge. A *trial court* is where the plaintiff first files the complaint or summons. At trial, the parties present their cases, calling witnesses for testimony. This is also the time to present and explain any other pieces of evidence that may be pertinent to the case. The jury weighs this evidence and determines what they believe actually happened. The jury is often called the *finder of fact*, meaning they answer questions of fact. The judge controls the activities in the courtroom, including answering questions of law, making decisions, and presenting the final verdict.

An *appellate court* reviews the trial court's application of the law. There is no jury in an appeal, nor do the lawyers present witnesses or, typically, other forms of evidence. Generally, the appellate court will accept the facts as they were revealed in the trial court and make a decision based on the prior record.

Jurisdiction: *Jurisdiction* is the official power or authority to make legal decisions and judgments. There are different jurisdictions with different degrees of power. The jurisdiction of a court has significant implications on the decisions that can be made and which levels of the legal system can be used to conduct or appeal a case. Types of jurisdiction include original, appellate, *in personam*, and *in rem*.

In addition to these distinctions, there is the subject-matter jurisdiction. There are exclusive federal jurisdiction, state jurisdiction, and concurrent federal jurisdiction (i.e., sometimes both state and federal court systems have jurisdiction). Kubasek et al. (2016) stated that there are two types of cases with concurrent jurisdiction:

1. *Federal question cases:* These require interpretation of the Constitution, a federal statute, or a federal treaty.
2. *Diversity-of-citizenship cases:* These occur when the plaintiff and defendant reside in different states, and the amount in controversy is in excess of \$75,000. Diversity must be complete. Defendants have the right to remove cases from state to federal court, such as in *Hertz Corp. v. Friend* (2010).

Threshold requirements for a court case are the three requirements that must be met before a court will hear a case. These are standing, case or controversy, and ripeness. All three must exist before a case can proceed to court.

Settlement: In some situations, legal settlement may be better than undergoing a full trial. The key reasons are expense, stress, privacy, time, finality, and flexibility. Additionally, in a settlement, there may be no verdict of guilty or not guilty because the defendant (person or party on the defensive) may not want a record of guilt. Settling a case is a way to pay for a mistake without having to admit wrongdoing (Shvartsman, 2015).

Alternate dispute resolutions: There are a variety of other options called alternative dispute resolutions (ADRs) that involve the resolution of a dispute by a neutral third party *outside* the judicial setting. The types most commonly used by businesses today primarily include negotiation, mediation, and arbitration. These can have significant benefits in comparison to resolution through the justice system. The benefits can be to save time and money, avoid uncertainty of a jury decision, avoid setting a precedent, maintain confidentiality, and/or to preserve a business relationship.

Arbitration is one of the most frequently used methods of ADR. Often, arbitration is a voluntary process in that parties have a contractual agreement to arbitrate any dispute. In this situation, there is an arbitration hearing before a fact-finder. The decision of the fact-finder is legally binding. This is very court-like, but unlike a judge, the arbitrator takes a much more active role in the hearing than a judge takes in a trial. Also, no official written record of the hearing is kept in most arbitration cases.

A significant business and legal consideration is whether companies should be allowed to include binding arbitration clauses in consumer contracts.

References

Hertz Corp. v. Friend, U.S. 130 S. Ct. 1181 (2010).

Kubasek, N., Browne, M. N., Herron, D. J., Dhooge, L. J., & Barkacs, L. (2016). *Dynamic business law: The essentials* (3rd ed.). New York, NY: McGraw-Hill Education.

Shvartsman, S. (n.d.). To settle or not to settle? That is the question. Retrieved from <http://research.lawyers.com/to-settle-or-not-to-settle-that-is-the-question.html>