

TOPIC 1: LEGAL THEORY & FOUNDATIONS

Overview

This chapter provides an understanding of how law and the legal system establishes the foundation for a functioning economy. It explores how law originates and focuses on key principles that underlie the legal system. Notably, this chapter discusses the concepts of property, ownership, and enforcement of one's ownership rights. This brings into consideration the role the law plays in the economic prosperity of a nation. We introduce the two types of legal systems that exist in the United States — the common law and civil law systems — and explain how the common law system is organized. This includes explaining the difference between public and private law. Lastly, we explore the sources of law and the role that the judiciary plays in the US legal system.

VIDEO LESSON - INTRODUCTION



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TOPIC 1: LEGAL THEORY & FOUNDATIONS - QUESTIONS & ANSWERS

1. What is “law”?

The common understanding of law is that it consists of rules and regulations established and enforced by a governing body. In the United States, the governing body is a combination of federal, state, and local governments. While the above definition is accurate, it is important to understand the source or genesis of societal law. Laws are also commonly understood as manifestations of societal norms or beliefs. That is, if society believes that certain rights or procedures should be in place, the representative lawmakers act to bring about a rule effectuating that societal norm in pursuit of the orderly administration of that society.

- *Note:* In Old England, individuals unable to obtain an adequate remedy at law could petition the King directly for justice. This was known as a court of “equity” or “in chancery”. The King would order an outcome that was fair in light of the absence of a legal remedy. The King was said to act in equity. Equity or the power to do equity still exists in courts today. It exists independently but works in concert with the law to deliver justice.

- **Discussion:** Individuals living in certain parts of the country may be familiar with laws prohibiting the purchase of alcohol on certain days of the year. In the southeastern region of the United States, many local governments prohibit the purchase of alcohol on Sundays. These laws, commonly known as “blue laws”, reflect the local community’s sentiment regarding the sale of a controversial item on a day that is sacred to Christians. Many of these communities have members with religious beliefs other than Christianity (e.g., Judaism, Islam, Buddhism, Hinduism, Universalism, etc.). Nonetheless, the dominant community belief results in a societal norm or belief that becomes law through the actions of the representative government. Take a moment to think about other laws that are a reflection of societal norms. For example, think of the things individuals do every day, such as driving, purchasing property, getting married, entering into contracts. For a more in-depth discussion, ask yourself why do states regulate the trade of securities on public markets?

- **Resource Video:** <http://thebusinessprofessor.com/law/>

2. What is “jurisprudence”?

Jurisprudence generally refers to the ideas or philosophies of law that have developed. Understanding the philosophy behind the existence of law is important for understanding: 1) the justification for legislation, and 2) the judicial reasoning applied when interpreting laws.

- *Natural Law* – This legal philosophy relies on reason drawn from perceived universal moral principles in order to explain laws. It assumes that some values or beliefs are universal due to a common human nature and the ability to reason. Natural law theorists often cite the Declaration of Independence (stating “the separate and equal station to which the Laws of Nature and of Nature's God entitle them”), to support the Founders’ belief in natural law.
- *Positive Law* – This legal philosophy looks at laws as the legal standards of conduct outlined by governments. It does not look at the natural existence of standards leading to law; rather, it focuses on the objectives outlined by the governing body. Rather than occurring naturally, law and the rights resulting therefrom are the result of human

insistence.

- *Historical Law* – This view recognizes law as the embodiment of human cultures and traditions. Like natural law, it focuses on the influence of nature, logic, ethics, and religion on law. It focuses on a historical understanding of right and wrong in society.
- *Sociological Law* – This legal philosophy sees law as an ever-evolving embodiment of societies beliefs. Particularly, it focuses on the interaction between law and societal norms. Law has evolved over time in relation to the influences on society, such as cultural, social, political, and economic factors. In turn, this philosophy recognizes that law and social interaction develop in concert and influence each other. As such, law is only partially distinct from these influences.
- *Legal Realism* – This philosophy goes behind the legal principle to look at what the administrators of law do or are thinking as they carry out their roles. It posits that laws (particularly common law) are subjective. The development of law is based upon the predilections of state and federal lawmakers and judges. As such, legal reasoning is not separate from the ethical, moral, social, and political beliefs of those charged with making and interpreting the law.

The above examples of legal philosophy are commonly recognized examples of the theoretical underpinnings of legal reasoning. Individuals may employ or be influenced by any of these philosophical approaches when confronted with any type of law.

- **Discussion:** Ask yourself, what is the legislatures purpose and beliefs that drove/drive the drafting of the relevant law? Further, what judicial philosophy does an appellate judge employ when interpreting statutes (developing the common law)?
- **Resource Video:** <http://thebusinessprofessor.com/what-is-jurisprudence/>

3. When is a state economically strong or weak and what is the role of law in this determination?

Economists use a number of factors to determine the size and economic strength of a state. The most common of these measures are gross domestic product (GDP) and the purchase power parity (PPP) between currencies. GDP represents "an aggregate measure of production equal to the sum of the gross values added of all resident, institutional units engaged in production (plus any taxes, and minus any subsidies, on products not included in the value of their outputs)." In contrast, PPP normalizes currencies and compares the purchasing power of each at a given point. One other measure of economic productivity is the *per capita* income of the individuals within the state. Taken together, these metrics help leaders or planners take action to maintain or improve conditions within the state. Important for this course, we focus on the role of law in the economic development of a state.

A commonly accepted theory about the economic strength of a nation regards the influence of law and the legal system. Many theorist believe that a strong legal system is the foundation for a functioning economy. That is, a strong legal system, through the clear delineation of individual rights and enforcement methods, provides confidence to individuals when undertaking productive activities. In nations with such a system, individuals will trade or undertake transactions with the confidence that they can enforce their rights against the other party. Not having to take extensive measures to protect her interests lowers transaction costs associated with an activity. The result is more and continued business

relationships.

- *Example:* An individual or business may lend you money without taking physical possession of your belongings to secure payment of the debt. In the event you fail to pay the debt, the lender can use legal channels to recuperate the funds lent. This confidence allows you to possess and make productive use of the property while you are paying for it.
- **Discussion:** How big is the US economy in terms of GDP? Which country has the largest GDP? Which country has the largest economy based upon PPP? Have you ever thought about what is happening when you purchase a share of stock in a corporation? Let's use Apple, Inc. (Apple), as an example. Suppose you go to a stockbroker and request to purchase one share of Apple stock. You are effectively giving over some form of currency in exchange for a piece of paper that says you own a given percentage of the Apple. You may have never seen the Apple headquarters and you may be completely unaware of the assets that Apple owns. Nonetheless, you feel confident in exchange your currency for this certificate of ownership with the understanding that you will be able to enforce any rights granted by that piece of paper. If the share entitles you to vote for corporate directors, you have a means and method of enforcing that right. If the piece of paper entitles you to a dividend from corporate earnings, you can enforce that right against the corporation. A strong legal system provides the security one desires when purchasing an interest of a corporation. In turn, Apple uses your invested funds to trade or undertake transactions. This sort of economic activity strengthens the economy. Would any of this be possible if you and the millions of other owners of Apple stock did not have the confidence to purchase that piece of paper?
- **Resource Video:** <http://thebusinessprofessor.com/law-and-economic-strength/>

4. What is the “rule of law”?

The rule of law is the orderly passage and execution of laws by a governing body. In the United States, a representative democracy, laws exist to serve or represent the interests of the greatest number of people. Enforcement of the law is done to both maintain order within the community and to create a system in which individuals can be productive. An important aspect of the rule of law is that it applies uniformly to all individuals. That is, the law is not applied selectively to some individuals and not others. If laws are applied generally to all individuals, there is little reason or motivation for the use of law to oppress or gain advantage over others. A functioning rule of law system is essential for economic productivity. Again, the just and uniform application of law across the population creates trust and confidence. Individuals can rest assured that their rights will be protected through the elimination of any unfair advantages or disadvantages to individuals under the law.

- **Discussion:** Imagine a society where the law applies differently to different individuals because of status, wealth, demographic characteristics, etc. For example, Tom could enter into an agreement with Anna and blatantly breach that agreement with no repercussions or method for Anna to enforce her contractual rights. In contrast, if Anna were to breach the agreement, Tom could seek redress and Anna could suffer negative repercussions under the law. This is a common occurrence in countries with weak rule-of-law systems. In such countries, individuals in power manipulate the law to the advantage of certain individuals or classes of people over others. In the business context, such occurrences result in a lack of confidence by those disadvantaged individuals in taking part in commercial activity. Looking back on the history of the United States, can you think of examples of movements to strengthen the rule of law? *Hint:* Look up the Civil Rights and Women's Suffrage Movements.

- **Practice Question:** Jane is a diplomat. She is participating in a presentation to a judicial figure in a rebuilding Middle-Eastern country. When explaining the role of each branch of government in the United States, the judicial official asks the following questions. “The Supreme Court may do away with a law that it believes treats certain people unfairly? What if the President wants to continue to enforce that law? How can a court with nine members order the commander of the military to do something?” Can you respond to these questions in a way that summarizes the US system’s dependence upon the rule of law?
- **Resource Video:** <http://thebusinessprofessor.com/what-is-the-rule-of-law/>

5. What is “property law” (or property rights)?

Most people understand property to be a physical item. The definition of property, however, is far broader than something that you can see or hold in your hand. Property is, more precisely, an individual’s rights with regard to something in existence. Property includes all of the commonly understood rights associated with physical or intangible things, such as: the right of possession (to the exclusion of others), the right of use, the right to sell or transfer, or the right to destroy.

- **Example:** The writer of a book can hold the book in her hands. The book is a form of property. The owner of the copyright possesses the exclusive right to sell or license those rights to third parties for use or production. She also has the ability to prevent others from copying, selling, or licensing that book. The copyright extends far beyond the physical book to include the content within the work. In this sense, it is more of a right to something that has been created, rather than the possession of a physical asset.
- **Discussion:** Try comparing the concept of property (or those rights you possess in something in existence) to any form of ownership interest in property. Is your home or car property? Is your pet property? Is a stock certificate in Apple, Inc. property? Is a patent on a new invention property? Is a secret recipe property? Is an easement on someone else’s land property? Is a membership to a gym property? Is a stream running through your back yard property? Is the server space dedicated to hosting your website a form of property?
- **Resource Video:** <http://thebusinessprofessor.com/what-is-property/>

6. What is “ownership”?

Ownership is a concept closely related to property. It is the legally recognized and enforceable rights that a person has to property. This concept is important because it is possible to possess property and not own it. For example, you find a valuable item on the side of the road and you cannot determine the owner. You possess the property, but you do not own it. Likewise, it is possible to own property and not possess it. Think of a situation in which you lend one of your physical possessions to a neighbor. Your neighbor has possession of the property, but you retain ownership. Ownership of property (or the bundle of rights that is property) is a form of legally provided assurance. The legal system affords the owner a claim of right that cannot be infringed upon by others without violating the law. Violating or infringing upon one’s property rights allows the property owner to use legal channels to enforce her rights (e.g., the police or court system).

- **Note:** Within the legal system, property is often classified based upon who owns it. For example, property may be “public property” (resources owned by the government) or “private property” (resources owned by an individual

or entity). This classification will be important later when discussing the extent of property rights.

- **Discussion:** What would you do if someone were to break into your house and take some of your physical assets? Most people answer, “I would call the police”. This is an example of using the legal system to enforce your property rights. The law allows for the ownership of those rights. Now, what would you do if someone borrows and alters a piece of machinery that you own and it no longer works? What would you do if you wish to sell one of your physical assets, but the sale falls through because someone has erroneously filed a notice of lien (ownership interest) indicating that they have ownership rights to the property? What would you do if someone distributed pictures of you to advertise her product or began earning money by playing a song you wrote? Each of these questions offers unique situations where the legal system recognizes your ownership and protects your property rights.
- **Resource Video:** <http://thebusinessprofessor.com/purpose-of-ownership-rights-in-property/>

7. Why would a system establish ownership of property rights?

There are numerous theories regarding the reason or justification for the legal system recognizing property ownership rights. Some theories adopt a pessimistic view of human nature and the intentions of those to exclude others from their resources. Other less cynical theories attribute ownership rights with incentivizing individuals to undertake activities that benefit society at large. That is, ownership of property incentivizes individuals to increase productivity and create new resources, which ultimately benefits society.

- **Discussion:** These theories underlie two contrasting, yet common, forms of government: Communism and Capitalism. Communism centralizes control of property in the governing body. For example, Cuba is a communist state that is familiar to most Americans. In Cuba, the government retains membership of land and industry. How do you think this form of government affects individual and business productivity? The United States, in contrast, is a capitalist system that seeks to promote or incentivize private wealth among individuals. How do you think this form of government affects individual and business productivity? Take some time to think about these two forms of government and how their concept of property ownership differs.
- **Resource Video:** <http://thebusinessprofessor.com/justification-for-recognizing-property-rights/>

8. How does law or the legal system protect or promote property rights?

The Constitution (and all amendments thereto) provides the basic structure for the Federal Government. It also delineates the rights of all US citizens. These rights can be viewed as a form of property that is protected against government infringement. The structural provisions of the Constitution allow for the establishment of a legal system that further protects and promotes individual rights. The federal, state, and local governments create and enforce laws that flow from these protections.

- *Criminal law* - Seeks to protect the property of individuals from harm by others.

- *Example:* Think of your state's criminal statutes regarding theft and vandalism.
 - *Contract law* - Allows for the formalization of relationships between individuals.
 - *Example:* A breach of contract actions allows individuals to enforce the rights established through contract.
 - *Tort law* - Allows for the remediation of or recover for harm to property suffered due to the actions or inactions of others.
 - *Example:* Individuals can sue others for intentionally or negligently harming them or their property.
 - *Property Law* - Allows for the recognition of ownership rights. Also, the legal system affects property rights through the recognition of business entities. Business entities are organizational forms that have an existence separate and independent from the owners or employees of the entity. Allowing the formation of entities to carry on commercial activity has a wealth-spreading effect that allows individuals to more effectively undertake commercial activity.
- **Discussion:** Can you think of specific examples of how executive actions, criminal laws, tort laws, contract laws, or laws of business entities serve to protect property rights?
 - **Resource Video:** <http://thebusinessprofessor.com/why-does-the-legal-system-promote-property-rights/>

9. What are the “common law” and “civil law” systems?

Two legal systems exist within the United States, the common law system and the civil law system. Forty-nine of the fifty US States exclusively follow the common law system. Louisiana is the one US state that recognizes common law and civil law systems. Despite the dominance of the common law system within the United States, it is important to understand the civil law system - as many foreign legal systems are based in civil law.

- *Civil Law System* - The civil law system is “code-based”. The law-making body seeks to address specific areas of law through statute or codified rules. When a case comes before a court, the judiciary is charged with interpreting the codified rules when applying those rules to the facts of the case. This process is similar to that of the common law system. The difference lies in the effect of the judiciary's interpretation of the law. While the court's decision may be influential in future cases, its reasoning and interpretation of the law have little legal effect outside of the respective case. The judicial interpretation does not constitute “precedent” that binds the court (or any subordinate courts) in future trials.
- *Common Law System* - The common law system, in contrast, centers on the judicial interpretation of statutes. That is to say, courts interpret statutes to determine the intent of lawmakers in passing the law. This interpretation guides how the statute is to be applied in a given context. Appellate review of legal cases provides opportunity for the judiciary to write opinions explaining how the law should be applied. These opinions serve as precedent for the court and any subordinate courts within that jurisdiction. In Latin, this is known as “*stare decisis*” or “let the decision stand”. The court's interpretation becomes the common law in that jurisdiction. In this way, the court

develops a body of common law that applies alongside the statute.

- **Discussion:** What do think are some of the advantages of the civil law system? What about the common law system? Try to identify some countries follow a common law system similar to that of the United States? Try to identify some countries that follow a civil law system similar to that of Louisiana.
- **Resource Video:** <http://thebusinessprofessor.com/common-law-vs-civil-law-systems/>

10. What is the difference between “public law” and “private law”?

The distinction between public law and private law concerns who the law directly governs or affects.

- **Public Law** - Public law consists of laws aimed at regulating the function of society. The main areas of public law are constitutional law, administrative law, and criminal law.
 - **Constitutional law** - Centers on the determination of whether government action (either federal or state) somehow interferes with the rights granted to individuals under the Constitution.
 - **Administrative law** - Concerns the laws and procedures developed by administrative agencies to regulate a particular subject matter.
 - **Criminal law** - Concerns the rules prohibiting bad acts that the state directly enforces against individuals.
- **Discussion:** How does an appellate court protect the constitutionally granted rights of individuals against infringement? Try to think of examples of how federal and state administrative agencies enforce laws? Who brings charges against an individual who violates a criminal statute?
- **Private Law** - Private law concerns the legal relationships between individuals. The main areas of private law are property law, contract law, and tort law.
 - **Property law** - Centers on the ownership rights of individuals with regard to tangible or intangible assets.
 - **Contract law** - Regards the ability of individuals to form and enforce agreements.
 - **Tort law** - Protects the rights of individuals against infringement by other individuals.
- **Discussion:** How is it possible that individuals can have rights in things to the exclusion of others? What are some examples of property rights? What allows individuals to enter into business transactions with others? What is the effect if the parties have no confidence in the other party complying with their obligations under an agreement? What is the effect of being able to enjoy one’s right with or without fear of infringement by others?

- **Practice Question:** Richard has a business and needs capital for expansion. He decides to sell an interest in his business to public investors to raise capital. He realizes that his company's performance may not be attractive to most investors, so he alters his financial statements to drastically inflate its apparent profits. Richard sells shares of his business to investors for a total of \$100,000. In doing so, he fails to follow federal and state securities filing and disclosure laws. If the Securities and Exchange Commission brings a civil action against Richard, is this an example of public or private law? Is it a public or private action if the investors bring a legal action against Richard to recover their invested funds?
- **Resource Video:** <http://thebusinessprofessor.com/public-law-vs-private-law/>

11. What is “civil law” and “criminal law”?

Do not be confused by the various uses of the word civil within the legal system. Civil law may refer to a system of law, but it generally refers to civil actions — which are legal actions between individuals. In this case, it means suing or bringing a lawsuit against an individual, a business, or a governmental body. Criminal law, in contrast, refers to the rules and procedures for enforcing those rules prohibiting “bad acts” of individuals within the governing body's jurisdiction. While civil actions seek compensation for losses or an order from the court restricting certain conduct, criminal actions seek to punish individuals for violating a criminal law. Often, an individual's actions will subject her to a criminal prosecution by the government as well as a civil action by an injured party.

- **Discussion:** What are some types of criminal activity that are also civil causes of action? Can you think of any examples of criminal prosecutions that resulted in acquittal in a criminal trial but resulted in liability in a civil lawsuit?
- **Practice Question:** Anne-Marie is generally a likable person. One day while hanging out with her friends, she gets into an argument with Wilson. During the argument, he says some very offensive and slanderous things about Anne-Marie. Unwilling to take Wilson's verbal abuse, Anne-Marie sprays him in the face with a can of mace that she carries in her purse. Wilson falls to the ground in pain. Some bystanders see Wilson in pain and call the police and rescue squad. It turns out that Wilson suffers severe damage to his sight because of the caustic spray. Because of the incident, Anne-Marie ultimately serves 30 days in jail and is forced to pay a judgment to Wilson for \$50,000. Is Anne-Marie's punishment a result of criminal law, civil law, or both?
- **Resource Video:** <http://thebusinessprofessor.com/civil-law-vs-criminal-law/>

12. What is “substantive law” and “procedural law”?

A substantive law defines a legal relationship or prohibits certain conduct. That is, it says what you can or cannot do. For example, a state that says, “though shalt not steal”. This would be a substantive law. Procedural law, on the other hand, dictates how the substantive law is administered or carried out. For example, a state statute reads, “an individual has 30 days to file a response to a civil complaint.” This is a procedural law dictating how to carry out a civil action.

- **Discussion:** What type of law says that you cannot intentionally take someone else's property? What type of law

says that you have to file a legal action, if at all, within 2 years of learning of the tortious conduct (legal violation)?

- **Resource Video:** <http://thebusinessprofessor.com/substantive-and-procedural-law/>

13. What are the sources of federal, state, and local law?

The Constitution is the supreme law of the land. Congress passes federal acts made up of statutes that are published in the Federal Code of Statutes. Federal agencies pass administrative regulations as the procedural rules for executing the statutes. These regulations are published in the Code of Federal Regulations. Congress authorizes treaties with foreign nations and the President issues executive orders that also have the force and effect of law. State legal systems are quite similar to the federal legal system. State law is derived from the State's Constitution. State legislatures pass statutes and administrative agencies adopt regulations to carry out these statutes. States authorize local governments to pass local ordinances and to enforce state law. In state and federal systems, the judiciary provides appellate opinions that have the same legal force in that jurisdiction as the laws being interpreted. In terms of legal priority, federal law is superior to state law, and state law is superior to local law. The state may regulate any area of law not specifically reserved to or preempted by federal law. State constitutions specifically designate the areas of law that localities can regulate.

A list may help you to visualize the hierarchy of federal, state, and local laws:

- US Constitution and Amendments
- Federal Statutes & Common-Law Interpretations
- Federal Regulations
- Treaties & Executive Orders
- State Constitutions
- State Statutes & Common-Law Interpretations
- State Regulations
- Local Ordinances

- **Discussion:** What are some areas of federal law? What are some areas of state law? Can you think of some areas of law that are regulated by both state and federal governments? Can you think of a situation in which state and federal laws conflict? (Hint: Think about employment law and immigration law.)
- **Resource Video:** <http://thebusinessprofessor.com/sources-of-federal-state-and-local-law/>

14. What is the role of the judiciary in the legal system?

The judicial branch is charged with adjudicating disputes under the law and reviewing the laws passed by the legislative branch and executed by the executive branch. Below is a step-by-step synopsis of the role played by the judiciary in the legal system and an introduction to how the judiciary is a check on the power of the legislative and executive branches:

- **Step 1: Trial Court** - Federal and state trial courts serve as the mechanism for enforcing the law. The government enforces criminal laws against individuals (including businesses) and individuals enforce their rights against other

individuals. The trial judge enforces the procedural laws governing the trial process (such as the timing and presentation of evidence) and instructs the jury on the substantive law to be applied in a case. The jury is the fact-finder and determines a defendant's guilt or liability. In some trials the judge will also serve as fact finder.

- *Note:* Some courts do not allow parties a jury trial. Also, a defendant may choose to forgo the right to jury trial and have the judge act as fact finder.

- *Step 2: Appellate Court* - Once a trial jury renders a verdict and the trial is complete, the parties have the opportunity to file an appeal. An appeal will generally allege the trial court's erroneous application of procedural or substantive law or that the law applied in the case is unconstitutional. The appellate court will review the request for appeal and decide whether the case merits review. If the appellate court opts to review the case, any opinion rendered by the court becomes precedent for the court and all subordinate courts in that jurisdiction. If the court determines that a law was applied incorrectly or that it violates a party's constitutional rights, the case (or part of the case) may be overturned and remanded to the trial court. The parties may then retry the case, applying the appellate court's interpretation of the law.
 - *Note:* The appellate court may modify the trial court's judgment or sentence without remanding the case.

- *Step 3: Supreme Court* - The US Supreme Court has "original" and "exclusive" jurisdiction to hear any disputes or controversies between states. It has original, but not exclusive, jurisdiction to hear: cases where ambassadors, public ministers, or consuls of foreign states are a party; disputes between the US Government and a state government; and actions by a state against citizens of another states. In this role, the Supreme Court serves the function of a trial court. In practice, the Supreme Court rarely exercises its original jurisdiction. Rather, it primarily serves as the appellate court for all Federal Circuit Courts of Appeal and any state supreme court. The US Supreme Court will only hear appeals of state supreme court decisions that allegedly violate the appellant's constitutional rights. In most states, the state supreme court acts as a second level of appeal and hears cases appealed from the intermediate state appellate court. Some states do not have an intermediate appellate court. In such cases, the state supreme court acts as the appellate court for all trial court decisions. The state supreme court (state cases) or US Supreme Court (federal cases) may direct that a trial court decision be appealed directly to it. This procedure skips the appellate court stage.
 - *Note:* The state supreme court determines if a state law violates individual rights under the US Constitution or the state's constitution. If either State or Federal Supreme Court finds a law or application of a law to be unconstitutional, it can remand the case back to the subordinate appellate court for continued review or overturn the case (or part of the case) and remand it back to the trial court.

The judiciary ensures that the laws passed by the legislative branch do not run afoul of the rights granted to individuals under the Constitution. Further, it checks the execution of those laws by the executive branch. A law that is found to be unconstitutional is struck down. Congress may then go through the process of drafting a new law. Likewise, if an executive action is deemed unconstitutional, the executive must develop a new manner of executing the law that falls within the guidelines of the court's decision.

- **Discussion:** Can you think of any laws that have been overturned by the state or US Supreme Courts? What constitutional right(s) did the court find that the law violated?

- **Practice Question:** What is the role of the trial court? What is the role of the appellate court? What is the authority of the US Supreme Court to hear cases?
- **Resource Video:** <http://thebusinessprofessor.com/role-of-the-judiciary-in-the-legal-system/>

15. What effect does the legal recognition of business entities have on the conduct of business?

Business entities exist pursuant to state laws recognizing their existence. They are efficient mechanisms through which to carry on business. They allow for greater economic productivity and this provides an overall benefit to society. The business entity is generally considered to be separate being from its owners or employees. The concept is commonly known as “corporate personhood”. Businesses have rights similar to those of individuals that cannot be infringed. Likewise, businesses cannot infringe upon the rights of others without facing criminal or civil liability. A business acts through its agents (owners, directors, employees, etc.) and can enforce its rights or be found liable or guilty in civil or criminal proceedings. Because of the unique nature of business entities, the government undertakes considerable efforts to prevent the use of business entities to harm individuals. Much of the material covered in this text focuses on the laws and regulations that the government uses to control the activity of businesses and the individuals associated with those businesses.

- **Discussion:** What rights do businesses have that are similar to those of humans? What are some of the laws that just apply to businesses? How can business entities cause harm to the economy? What role did businesses have in the financial collapse of 2008? What role did individuals have in the collapse?
- **Resource Video:** <http://thebusinessprofessor.com/legal-system-allows-for-business-entities/>