Chapter 1: Nature and Sources of Law

- Examples of importance of law
  - Considering whether to enter a foreign market
    - Determine whether contracts in nation can be enforced
    - Whether intellectual property (trade secrets, trademarks and patents) can be protected
    - Whether taxation and threat of expropriation present intolerable risks
  - Cendant
    - Lost $14 billion in market cap due to accounting scandal
    - Paid more than $2 billion to settle the case
  - Enron-era scandals
    - Citigroup paid $10 billion to settle claims
  - Microsoft Corporation
    - Paid too little attention to antitrust law in early years
    - Spent tens of millions of dollars defending lawsuits
    - Intel was better prepared
  - IBM
    - Reportedly earns $1.5 billion per year in licensing revenue from patents, trade secrets and other forms of intellectual property
  - Michael Porter, author of *Competitive Strategy*, said “no structural analysis is complete without a diagnosis of how present and future government policy, at all levels, will affect structural conditions
  - George Siedal, author of *Using Law For Competitive Advantage*, said that legal resources can be leveraged into a source of competitive advantage that is sustainable over the long term
  - Rules and Processes
    - **Rule-oriented approach**: views the law as consisting of the rules that are in effect within a state or nation at a given time
    - **Process-oriented approach**: sees the law in a broader light—the processes by which the rules and principles are formulated (rather than the rules and principles themselves)
  - Requisites of a Legal System (CFKR)
    - Relatively certain
      - Certainty about laws over long periods of time
    - Relatively flexible
      - Societal changes occur rapidly and each change presents new legal problems
      - Ex. Technological changes such as self-driving cars
    - Known or knowable
      - Necessary for all persons who need legal advice to have access to experts on the rules
    - Apparently reasonable
      - Rules that reflect and adapt to changing views of morality and justice
      - Ex. Prohibition was unreasonable, betrayed in mass and thus abandoned
  - Federal and State (local) Law
- 50 bodies of contract law in the US, 50 bodies of corporation law... etc.

- **Common Law and Statutory Law**
  - **Common law (case law):** all the rules and principles currently existing in any state, regardless of their historical origin, that result from judicial decisions in those areas of law where legislatures have not enacted comprehensive statutes
    - more flexible, takes into consideration logical factors
      - Ex. Sold cow and then cow died (implied that it should have been alive)
    - Decisions become history
  - **Statutory law (written law):** generally refer to the state and federal statutes in effect at a given time—rules that have been formally adopted by legislative bodies rather than by the courts

- **Precedent**
  - An earlier event or action that is regarded as an example or guide to be considered in subsequent similar circumstances
  - Can be used as persuasive authority
  - Doesn't change slowly—very abrupt
  - Ex. Brown vs. Board of Education

- **Justice:** impartial application of the law to the facts (don't focus on what's fair)

- **Civil Law**
  - Very known—arbitrary limits (ex. Speed limits)
  - Compensate individual parties with money (damages) or injunctions
    - **Damages:** sum of money roughly equivalent to loss
    - **Injunction:** court degree ordering a defendant to do or not to do something
  - **Plaintiffs:** parties bringing the suits
  - **Defendants:** other party with obligations or duties being forced upon them
  - Civil laws spell out rights and duties among existing individuals, business firms and sometimes government agencies
  - Examples: contract law, tort law, and sales law

- **Criminal Law**
  - Comprises statutes by which a state or federal government prohibits specified kinds of conduct and which additionally provide for the imposition of fines or imprisonment on persons convicted
  - Always brought forth by government whose law has been broken
  - **Crimes:**
    - **Felony:** usually defined as a crime for which the legislature has provided a max penalty of either imprisonment for more than one year or death
    - **Misdemeanors:** most often traffic offenses and carry lesser penalties

- **Public and Private Law**
  - **Public law**
    - Everyone has to comply
    - when a law is directly concerned with a government-individual (or government-business) relationship
    - Ex. Criminal law (no murder or steal), constitutional law, administrative law
Private law: primarily concerned with the creation and enforcement of the rights of one individual against another
  - Ex. Contracts, torts

• Law and Justice
  • Judgment: an order requiring A to pay a sum of money to Z equal to the amount of a check, which A might not be able to financially do

• Law and Morals
  • Tort: A wrongful act or an infringement of a right (other than under contract) leading to a civil legal liability
    - Ex. Negligence, assault, battery
  • Law of agency: employers can be held liable if bartender was acting within the scope of his employment at the time of the incident

• Case: Solando vs. Odañels (1977)
  • Issue: Villanueva threatened life of Soldano at a saloon and a patron ran across and asked to use the phone and the bartender refused to give it to him
    - Plaintiff: Soldano's son
    - Defendant: bartender and his employer
  • Rule: trial judge dismissed claim in response to the defendants' motion for summary judgment and the plaintiff appealed
  • Application: Tort Liability
  • Conclusion: It is not a global change in the law, but a logical extension that imposes liability for negligent interference with a 3rd person who the D knows is attempting to render necessary aid—REVERSE AND REMAND FOR TRIAL

• CASE: Tarasoff vs. Regents of University of California (1976)
  • Issue: Therapist was told by his patient that he intended to kill Tarasoff and the therapist predicted that he was violent and he did carry out his threat
  • Rule: the court held the patient-therapist relationship was enough to create a duty to exercise reasonable care to protect others from the foreseeable result of the patient's illness

• Law and Technology
  • Creation of internet and technological advances have changed how business is done and regulated and so laws need to be adapted

• Law and Globalization
  • As business goes global, so does regulation
  • Companies want to protect their intellectual property both within their home country and in others

• CASE: Yahoo! Vs. LA Ligue Contre Le Racisme Et L'antisemitsme (LICRA) (2001)
  • Issue: The French Court found that 1000 Nazi and Third Reich related items were for sale on Yahoo.com and this propaganda was prohibited by French so in May, French court ordered that Yahoo eliminate French citizen's access to any material that sells Nazi objects, eliminate French access to web pages displaying these items, post a warning to French citizens and remove from all browser directors the term "negationist (people who believe that the holocaust did not occur). French ordered penalty of $100,000 each