

Intellectual Property (IN104)

Fall Semester 2024

Sep. 19, 2024

R1109

Basic Concept of Law

- 1. Law: profession and common knowledge
- 2. Fundamental rights: freedom and equality
- 3. The origin and protection of law
- 4. Legal system and names
- 5. Effect of law
- 6. Civil, criminal and administrative liability
- 7. Application and interpretation of law
- 8. Organizations applying laws and its principles

##

1. Law: professional & common knowledge 1/4

- Friends, A and B, attended Yuan Ze this fall, and leased the same place to live. They **shared rent and utility bills**, which may be a burden to both of them.
- One day, A was on a motorcycle, with illegal right turn, hitting someone at the corner of street and **broke the light of motor. He was injured.**
- B is not a fan of in-store shopping but instead, **online shopping**. He likes the direct delivery to his place or goes to 7-11 to pick up his ordering. One day, he argued with the staff of call center because the delivery failed.
- At the beginning of semester, A missed to register the course of “Intellectual Property” and **filed a complaint to Yuan Ze.**
- One day, B went to police station to report **stolen motorcycle.**

1. Law: professional & common knowledge 2/4

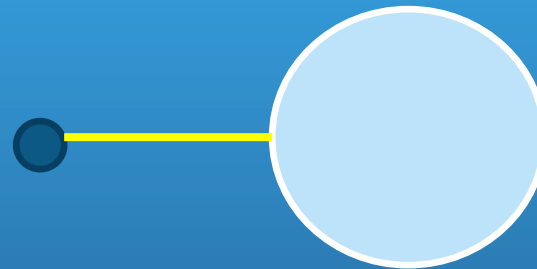
- Legal relationship (I)



individual



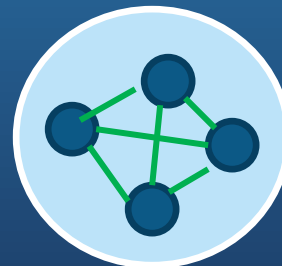
Two parties



Individual
and a group



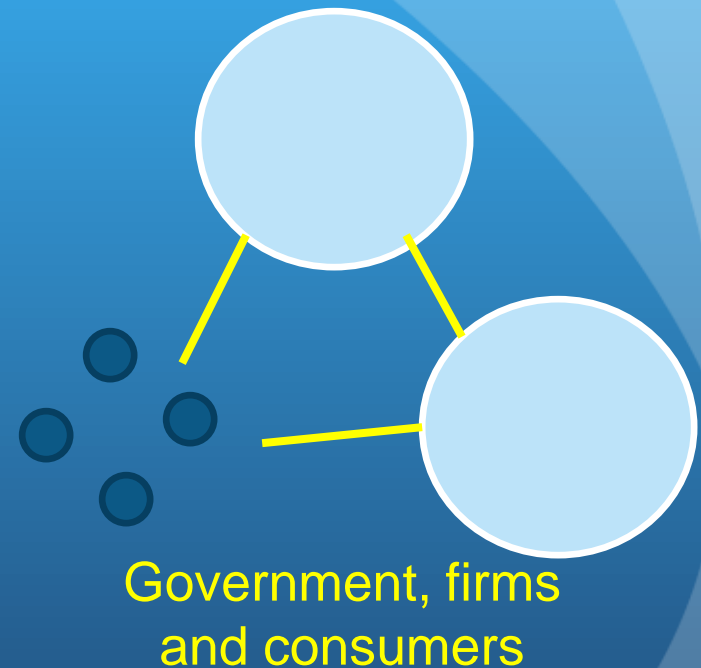
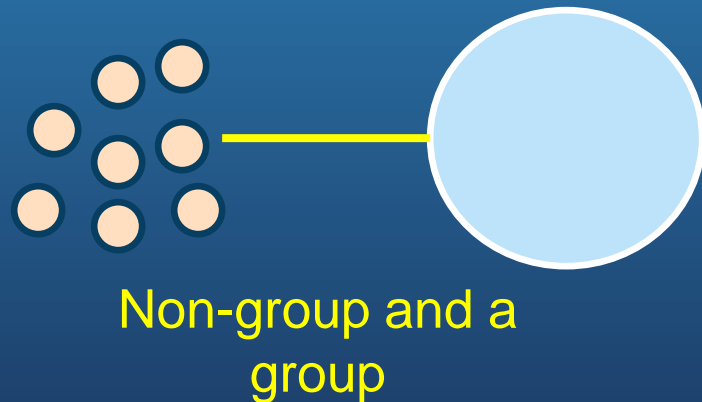
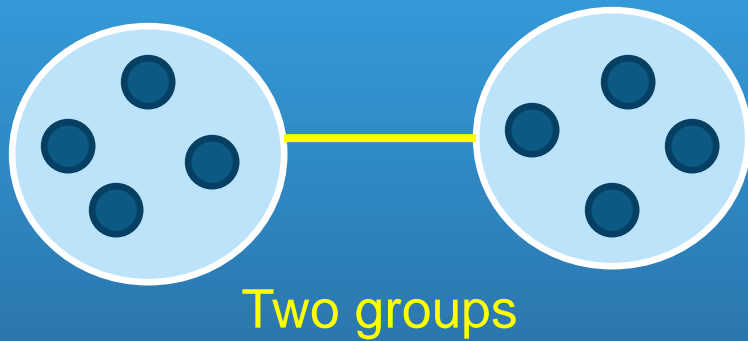
Individual
in a group



Multi-relationship
in a group

1. Law: professional & common knowledge 3/4

- Legal relationship (II)



1. Law: professional & common knowledge 4/4

- **No one can escape from punishment by not knowing the laws**
 - 刑法第16條「除有正當理由而無法避免者，不得因不知法律而免除刑事責任。但按其情節，得減輕其刑。」
- Laws are **social norms** that tell us what we can do and cannot do.
- Laws are similar in nature to social norms such as morals, customs, religions, but are very different in appearance (form of provisions) and effect (coercive force).
 - It's Getting Harder to Spot a Deep Fake Video 

2. Fundamental rights: freedom and equality 1/9

- **Fundamental rights protected under the Constitution**

- **In principle**: All other freedoms and rights of the people that are not detrimental to social order or public welfare shall be guaranteed under the Constitution.

(凡人民之其他自由及權利，不妨害社會秩序公共利益者，均受憲法之保障(憲22))

- **Exception**: Government may establish laws to restrict people from exercising fundamental rights when meeting certain conditions (such as **necessary to prevent interference with freedom of others, avoid urgent danger, maintain social order, or promote public interests**).

(除為防止妨礙他人自由、避免緊急危難、維護社會秩序、或增進公共利益所必要者，不得以法律限制(憲23))。

2. Fundamental rights: freedom and equality 2/9

- **Before the law: Foundation of fundamental rights**
 - First dimension of human rights 
- **Equality: Everyone is equal before the law**
 - People, regardless of **gender, religion, race, class or party affiliation**, are treated equally and have the same protection by law, and they do not enjoy privileges or bear fewer obligations because of their special status.
 - No discrimination* 
 - 20220625US Supreme Court Overturns Roe v Wade
 - 20200919 Supreme Court Justice Ruth Bader Ginsburg dies at 87
 - Affirmative Action
 - 20230630Biden condemns affirmative action ruling* 
 - Left Handed People*


2. Fundamental rights: freedom and equality 3/9

- **Freedoms**: The freedom that people can enjoy within the scope of state's governing power and the right to exclude the state or anyone else from arbitrary interference in accordance the law (*negative right*)
 - **(1) personal freedom**: Except for red-handed offender, judicial/police agencies must follow due and legal procedures before arresting, detaining, interrogating or punishing people. People have the right to refuse illegal arrest detention, interrogation or punishment.
 - How to prevent cyberstalking, report cyberstalkers to FBI*
 - **(2) freedom to live and move**: People have the right to exclude the state or anyone from infringement in accordance with legal procedures (Crim. Law §306 illegal trespassing; §307 illegal search & seizure), and can apply to court for accountability. Choosing where to live or moving elsewhere should be registered at household authority; otherwise admin penalty will be imposed.




二、基本權利的價值—自由與平等 3/9

- 自由權：人民在國家統治權所及範圍內可享有的自由，並可排除國家或其他任何人不依據法律任意干涉的權利（消極的權利）
- (一)人身自由：除現行犯外，司法或警察機關必須依據正當、合法程序，才能逮捕、拘禁、審問或處罰人民。人民對於非法的逮捕、拘禁、審問或處罰，有權加以拒絕。
- (二)居住與遷徙自由：人民有排除國家或其他任何人不依法律程序侵犯的權利（刑法306侵入住宅罪、307違法搜索罪），並可向法院聲請追究責任。但選擇或遷移居住處所仍須依法向戶政機關辦理登記，否則有行政上處罰。


2. Fundamental rights: freedom and equality 4/9

- **(3) Free speech, lecturing, authoring and publishing:** When Exercising right to free speech, you must not maliciously slander, insult others, spread inappropriate pornographic information, or incite others to violate the law.
 - [How Facebook Addresses Misleading and Harmful Communication](#)
- **(4) Secret communication:** Person have the right to exclude state or anyone infringes upon without legal procedures, and gov't or others must seize, inspect or monitor the contents of secret communications in accordance with the law (such as prosecutors to investigate crimes)
 - [How China targets VPNs and censors the global web](#) 
- **(5) Freedom to religion:** state must keep neutral on religion
 - [France's top court overturns burkini ban after worldwide attention*](#)
 - [What You Need To Know About The Burkini Ban](#)



二、基本權利的價值—自由與平等 4/9

- **(三)言論、講學、著作及出版自由**：行使言論自由權不得惡意誹謗、侮辱他人、散播不當色情資訊、或煽動他人觸犯法令。
- 202104【公視主題之夜Show】假新聞 
 - 節目：<https://www.youtube.com/watch?v=wddOg2i6SUQ>
- **(四)秘密通訊自由**：人民有權排除國家或其他任何人不依法律程序侵犯的權利，而政府或他人須依法才可扣押、檢查或監聽秘密通訊的內容（如檢察官為偵查犯罪、父母為教育未成年子女）。
- 20200917法務部推「科技偵查法」遭批侵人權牴觸憲法 
- **(五)宗教信仰自由**：國家對宗教須採取中立的態度。
- 法國禁穿「布基尼」反熱賣 法院推翻禁令 

2. Fundamental rights: freedom and equality 5/9

- **(6) right to assembly:** A person has right to exclude the state from illegal dismissal of assembly. Any protest march or sit-in, based on consideration of traffic or other's right, may apply for permission from local authority in advance.
 - Human Right # 20 The Right To Public Assembly 
- **(7) Other freedoms and rights that are not harmful to social order or public interest of other rights**
 - Right to name/right to publicity, privacy/personal data, environment protection
 - **Grand Justice Interpretation No. 603:** "Fingerprint" is a significant personal data protected by information privacy. It is unconstitutional that the Household Register Law provides those who do not press fingerprints shall not obtain ID card without any purposes .
 - The "Right to be Forgotten"

二、基本權利的價值—自由與平等 5/9

- **(六)集會結社自由**：人民有不受國家或他人違法侵害、違法解散集會結社之自由。對於遊行或靜坐之集會，基於可能干擾交通或他人權利考量，依集會遊行法規定須向主管機關申請許可。
 - 20221204白紙革命效應 武漢群眾推圍籬喊解封 
- **(七)不危害社會秩序或公共利益的其他自由和權利**
 - 姓名權/肖像權、隱私權/個人資料保護、環境保護權
 - 釋字第603號解釋，指紋是重要的個人資訊，也受資訊隱私權的保障，戶籍法對不依規定按捺指紋的人不發給國民身分證，形同強制按指紋才核發身分證，卻沒有規定這種作法的目的何在，並不符合憲法保障隱私權意旨
 - 20210121數位身分證突喊卡 擬待專法制定後再上路 

2. Fundamental rights: freedom and equality 6/9

- **Beneficial Right: The right of people to actively request the gov't to perform certain actions in order to enjoy specific benefits (*positive rights*)**
 - **(1) Right to economic benefits**
 - **Right to live:** people have right to resist threat from living and life, and have right to claim minimal guarantee on living standard; the state has duty to make people have medical treatment and education. “**Minimum wage**” is an example.
 - **Right to work:** people have right to work and run a business. The state has duty to provide occupational training, introduction and unemployment insurance.
 - **Right to property:** except for legal restrictions, property acquired by the people in accordance with the law can be freely used, profited (such as rented) or disposed of (such as sold). State may provide compensation before expropriating or restricting people's use, income or disposal of their own property. **[Constitutional basis of the IP system]**

二、基本權利的價值—自由與平等 6/9

- **受益權**：人民為享有特定利益而積極向政府請求做成一定行為的權利（積極的權利）
 - **(一)經濟上的受益權**
 - **生存權**：人民有權抵抗對自己生計、生命上的威脅，且有權向國家主張政府有義務保障人民生活符合最低生活標準，國家也有義務保障人民就醫、就學等方面獲得妥善照顧。勞基法的「基本工資」即為最佳例證。
 - **工作權**：人民有按自己意志維護合法工作、經營事業的權利，國家有義務提供職業訓練、職業介紹與失業保險制度。
 - **財產權**：人民依法取得的財產，除法律特別限制外，可以自由使用、收益(如出租)或處分(如賣掉)；國家必須依法給予補償後，才有權徵收或限制人民使用、收益或處分自己的財產。【智慧財產權制度在憲法上的依據】

2. Fundamental rights: freedom and equality 7/9

- **(2) Right to administrative benefits**
 - **Right to petition and administrative appeal**
 - Petition: a person expresses his will to competent authority (administrative or legislative bodies) regarding the public policy, public interest or individual rights.
 - Appeal: a personal seeks relief from original or superior authority about an administrative sanction damaging his rights or benefits.
- **(3) Right to judicial benefits: right to litigation (court) on civil, criminal and administrative affairs**
 - **Right to litigation**: a relief measure for erosion of fundamental rights and fulfilment of fundamental rights.
 - “Where there is a right, there is a relief.” (有權利即有救濟)
 - People can sue others or gov’t and ask for recovering rights or damages or criminal punishment when the life, body, freedom or property is harmed by other’s improper or illegal invasion.
- **(4) Right to national education:**
 - 人民有受國民教育的**權利與義務**（憲21）。

二、基本權利的價值—自由與平等 7/9

• (二)行政上的受益權

• 請願權與訴願權：

- 請願是指人民對國家政策、公共利益或個人權益的維護，向主管事務的民意機關或行政機關表達自己意願的行為。
- 訴願是指行政處分損害到人民權利或利益時，人民有權向原處分機關或上級機關請求救濟(還我一個公道)的方法。

• (三)司法上的受益權：訴訟權—民事、刑事及行政訴訟權

- 訴訟權是對基本權利遭受侵害的人提供救濟的途徑，進而促成基本權利得到完整實現，即所謂「**有權利即有救濟**」。人民的生命、身體、自由、財產等憲法上所保障的權利，一旦遭受他人不當或違法的侵害時，可依法提起民事訴訟、刑事訴訟及行政訴訟等，向私人或政府機關請求恢復權利或請求賠償，或請求國家對犯罪人追訴處罰。

• (四)教育上的受益權—接受國民教育的權利

- 為提升全民教育程度與素質，憲法第21條規定：「人民有受國民教育的**權利與義務**。」

2. Fundamental rights: freedom and equality 8/9

- **Political right: People have right to participate in national policy and future development based on the concept of “Popular sovereignty” (主權在民)**
 - **(1) Right to participate in political activities**
 - Right to election (vote), recall, initiative and referendum
 - initiative and referendum (創制與複決) is an urge and reconsideration for the legislative power
 - Amendment 1(1): 我國人民就立法院所提之**憲法修正案或領土變更案**，應投票複決。
 - Referendum Law (公民投票法) 行使創制複決權之程序規定。
 - **Cannot propose the cases of budget, tax, investment, salary for public servant and personnel**
 - **(2) Right to have public works**
 - Right to take exams to become public servants

二、基本權利的價值—自由與平等 8/9

- 參政權：基於「主權在民」理念，國家政策與未來發展人民皆有參與的權利。
 - (一)參與政權活動的權利
 - 選舉權、罷免權、創制權、複決權。
 - 創制權與複決權是對立法權的督促與再決定。
 - 憲法增修條文第1條第1項明定我國人民就立法院所提之**憲法修正案或領土變更案**，應投票複決。
 - 公民投票法針對人民行使創制、複決權事項及程序詳細規定。
 - 預算、租稅、投資、薪俸及人事事項，不得作為公民投票的提案。
 - (二)參與治權活動的權利
 - 應考試權利、服公職權利。

2. Fundamental rights: freedom and equality 9/9

- **Restrictions on human liberty and rights**

- UK scholar Mill: A person's genuine freedom must be the extent not to infringe other's freedom.
- **(1) Restriction principles**: 為防止妨礙他人自由、避免緊急危難、維護社會秩序、或增進公共利益所必要者，始得以法律限制(憲23)
- **(2) Legal reservation principle(法律保留原則)**: Any administrative act shall not be legal and effective without law empowerment; which means any restriction on human liberty and rights should be clearly empowered by constitution or by law
- **(3) proportionality(比例原則)**: it should be proportionate between the means and goal of an administrative act. If people's liberty and rights under special circumstances should be restricted, the means should be selected for helping achieve the goal, the minimal harm to people's right and not to break the balance between the damage and the expected benefits
“Don't use a sledgehammer to crack a nut.”

二、基本權利的價值—自由與平等 9/9

• 人民自由與權利的限制：

- 英國學者Mill：一個人的自由，必須以不侵害他人的自由為範圍，才是真正的自由。
- **(一)人民自由權利的限制原則**：為防止妨礙他人自由、避免緊急危難、維護社會秩序、或增進公共利益**所必要**者，始**得以法律限制**（憲23）
- **(二)法律保留原則**：行政行為若無法律授權，則不能成為合法有效的行為，也就是任何限制人民自由權利的行政行為，都須具有憲法或法律上的明確授權。
- **(三)比例原則**：行政行為的手段與目的之間須合乎一定比例。若因特殊情形而須限制人民自由權利，所採取的方法必須有助於目的達成，且要選擇人民權益損害最少的方法達成目的，而且損害與達成目的的利益之間不可明顯失去均衡（即「不可以大砲打小鳥」/「殺雞焉用牛刀」）

3. The origin and protection of law 1/4

- The origin of law: in theory—
 - The theory of God power: God rules everything
 - The theory of command: King rules everything
 - The theory of history law: emerging nationalism
 - The theory of nature law: natural order
- **Why we should have the law?**
 - **To respond** specific events/matters, the empowered legislature, if necessary, **enacts** laws with legal effects **to permit or prohibit** certain acts or matters **for** the purposes of social order and social progress.


三、法律的起源與保障 1/4

- 法律從何而來，學理上有以下四個學說：
 - 神意法說：神權時期
 - 命令法說：君權時期
 - 歷史法說：民族興起
 - 自然法說：自然規律
- 因發生特定事件，**為**維持社會秩序與發展，有權制定法律之**人**（立法機關）認為有必要，而**允許或禁止**某些行為或事件，將其**制定為法律**並賦與相應之**效果**

3. The origin and protection of law 2/4

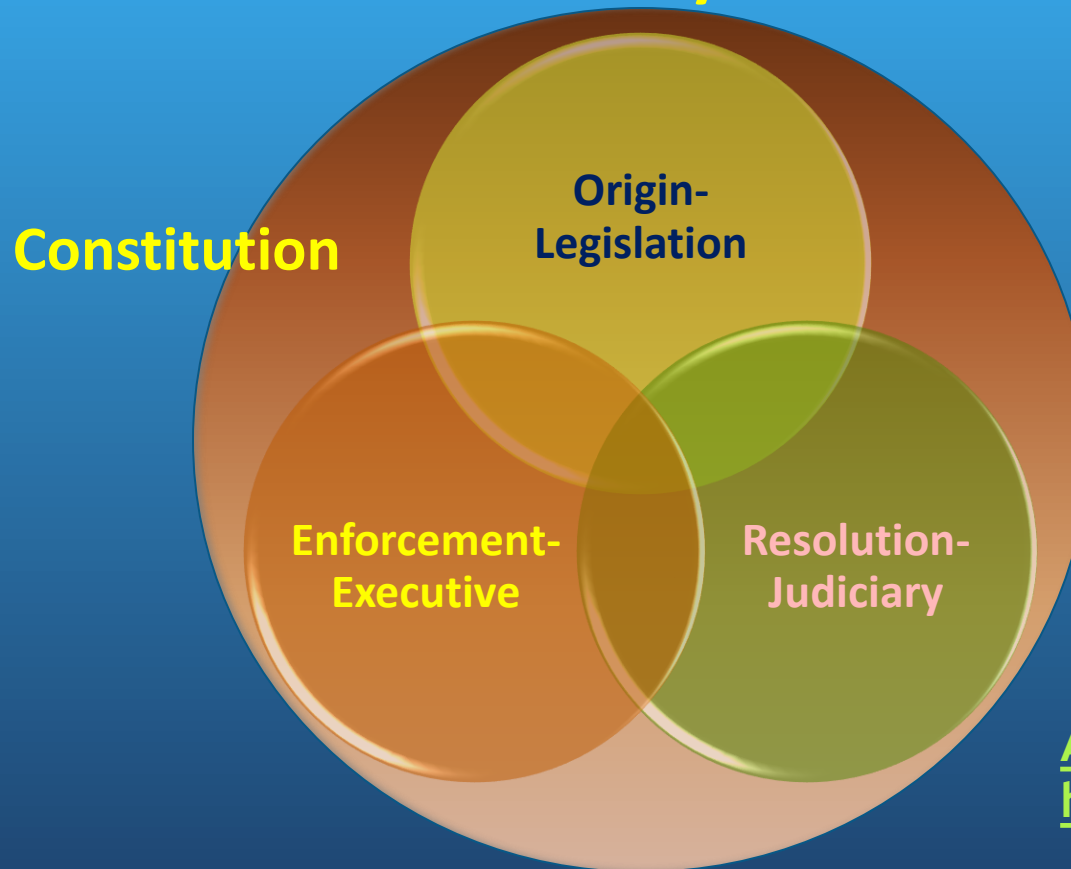
- **Law has two facets:** substance and formality
 - **Substance:** law is a sort of social norms, but law is more concrete, collective and common.
 - **“Law is the minimum standard of morals.”**
 - *E.g.* How to define “obscenity”?
 - **Formality:** With support by law enforcement, violators are punished for a certain forms
 - *E.g* : Specific performance on **breach of contract**
 - *E.g* Punishment and prevention for **criminal acts**
 - *E.g* : Sanctions on drug dealers, rehab on drug abusers

三、法律的起源與保障 2/4

- 法律有實質與形式兩種面向：
 - **實體**：法律是社會規範的一種，但法律更為具體，更具共同性、一般性。
「**法律是道德規範的最低標準**」
 - 例如：猥褻性內容的認定
 - 3點全露裸拍大門法猥褻與否很難客觀認定 
 - **形式**：有國家機關的強制力做為後盾，違反者將有一定的制裁形式，例如違約判賠的強制執行、犯罪行為的處罰與預防
 - 例如：販毒者遭判徒刑、吸毒者遭判勒戒處分

3. The origin and protection of law 3/4

- Law is a dedicated human system

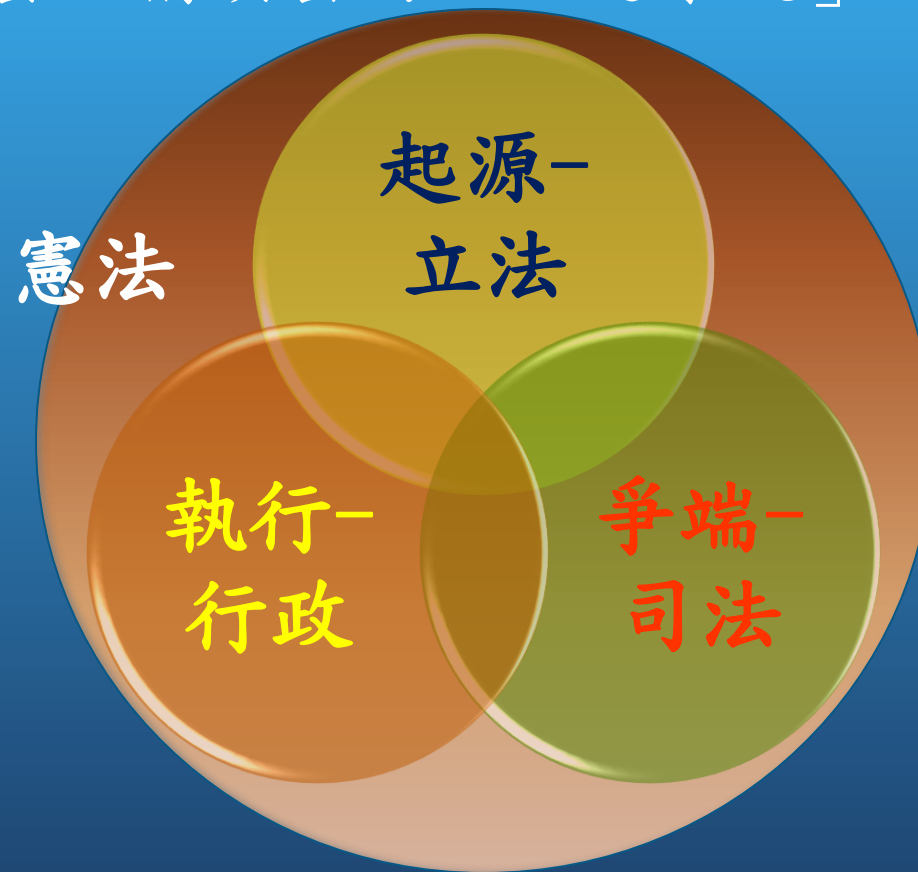


AI can replace 80%
human jobs

Q: Can operation of law achieve perfect results thru software design?

三、法律的起源與保障 3/4

- 法律是一套結構縝密的「人造系統」



Q：法律的運作可否透過程式設計來達到完美無缺的結果？

3. The origin and protection of law 4/4

- **Law is not a indefinite social norm**




- Taiwan high court rules in favour of same-sex marriage ▶
- 20200529 Adultery no longer a criminal offence in Taiwan ▶
- 20220812健保資料庫侵犯隱私權 憲法法庭判健保法應3年內修法 ▶

- **Legal protection**

- Positive: actively claim your own right; execute state power to guarantee your right
- Negative: your right is passively protected by clear provision, enforceable rules

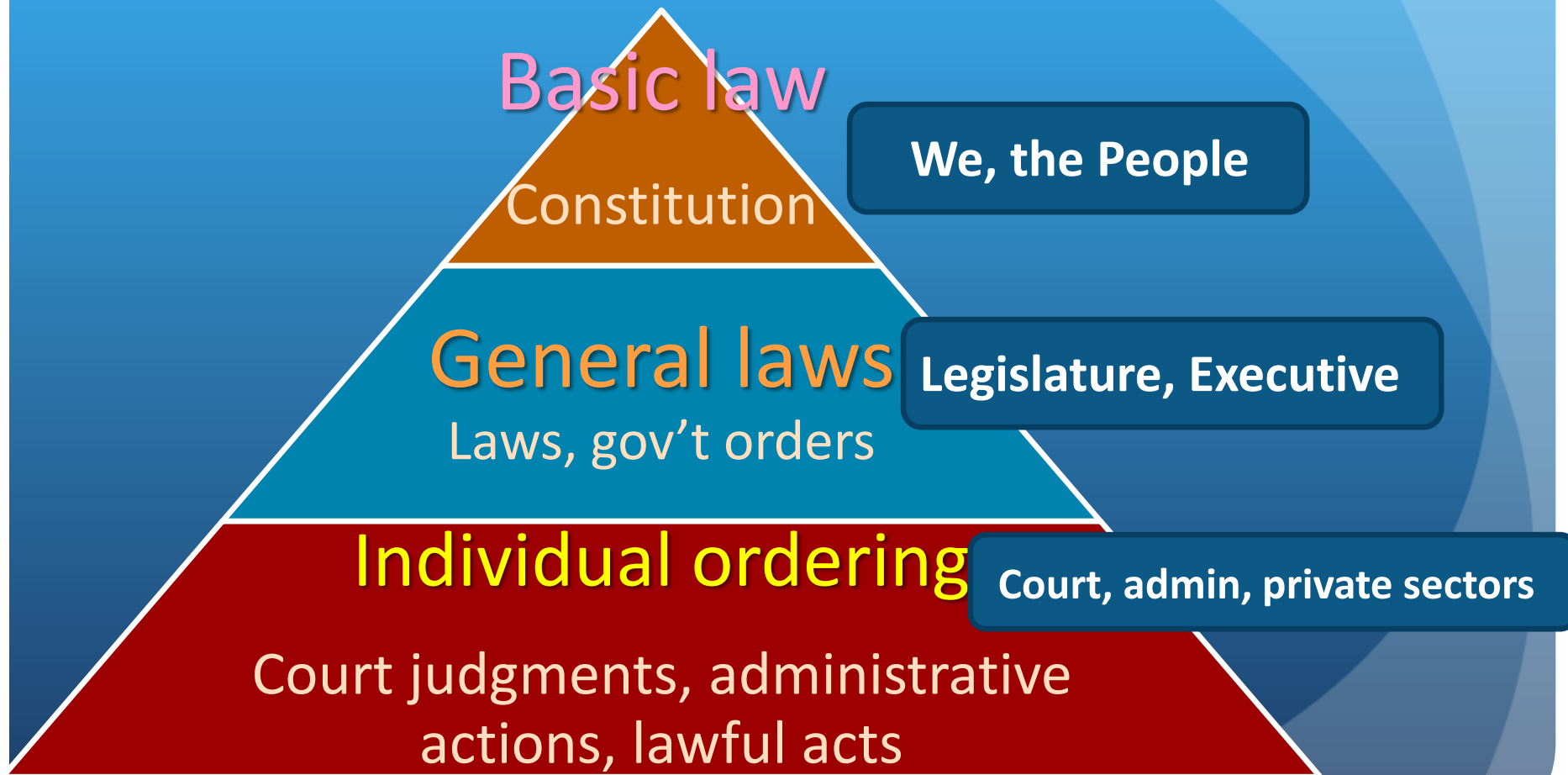
Q: What is the legal protection to citizens if the gov't does not enforce the law (state's inaction) or the law is not enforceable (unconstitutional law)?

三、法律的起源與保障 4/4

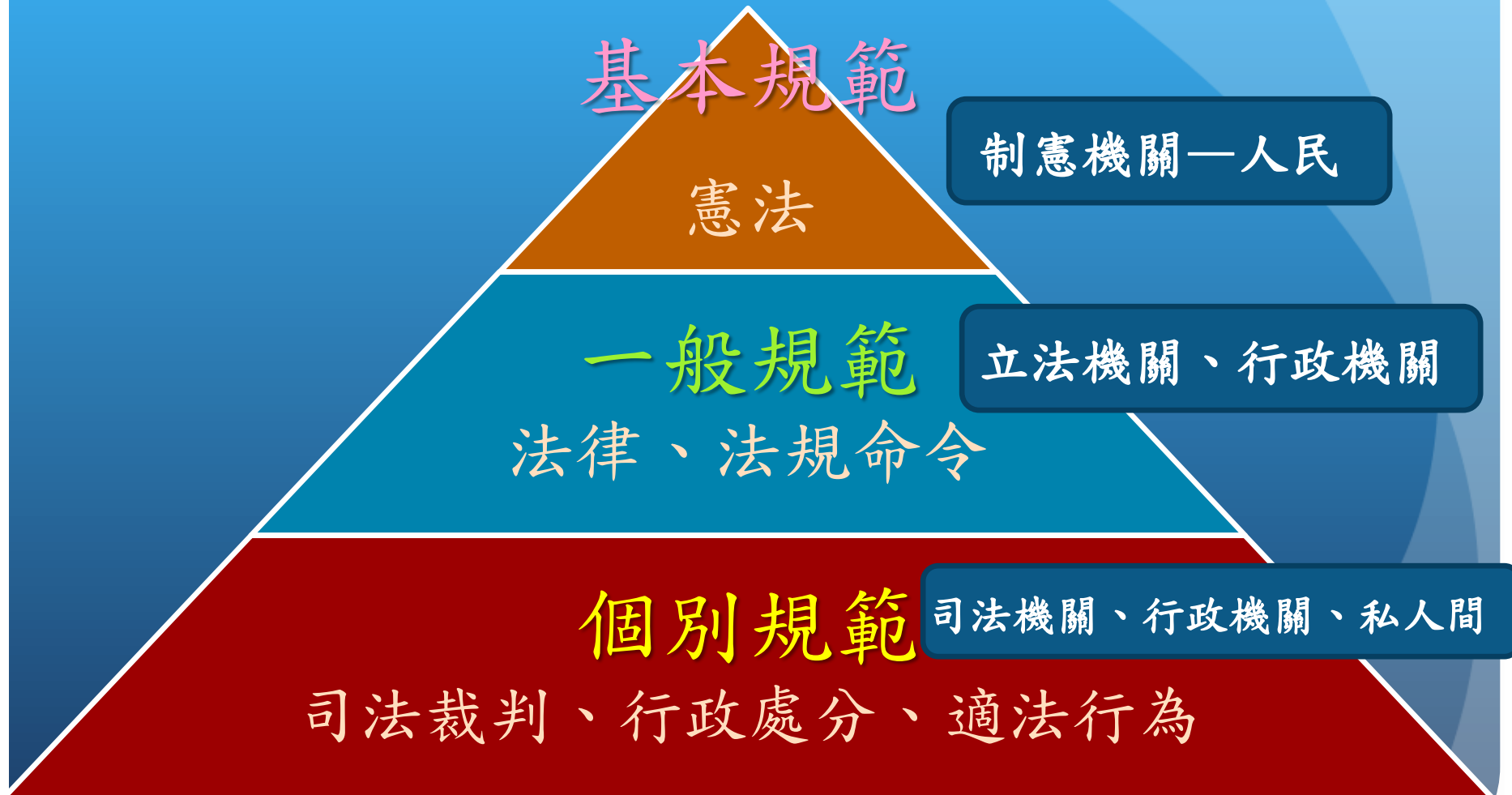
- 法律不是「無限期」的社會規範
 - 20190517台灣同婚專法通過 國際媒體即時報導 
 - 20200529 大法官釋憲通姦除罪化！ 
 - 20220812健保資料庫侵犯隱私權 憲法法庭判健保法應3年內修法 
- 法律的保障可從兩方面來說：
 - 積極面：主張權利、國家執行權利，權利因而受到保護
 - 消極面：明確規範、預期可以執行，權利因而受到保護

Q：有規範但執行不力（例如政府的不作為）或無法執行的法律（例如宣告違憲的法律）對人民的保障為何？

4. Legal system and names 1/4



四、法律的體系與名稱 1/4



4. Legal system and names 2/4

- **Laws and orders**

- **Law:** 由立法院通過、總統公布之法律（憲170）。但法律不得與憲法牴觸（憲171）。
 - **In general, the name of law can be: Law, Act, Statute**
 - **Law Reservation Principle:** those have to be stipulated in law--
 - (1) Clearly stated in the Constitution or laws
 - (2) Matters regarding peoples' rights and responsibilities
 - (3) Central government organizations
 - (4) Other matters should be provided in law
 - **No penalty without a law:** 刑法第1條「行為之處罰，以行為時之法律有明文規定者為限。拘束人身自由之保安處分，亦同。」
 - Only if that one's act fulfills all the requirements provided by the criminal law shall be deemed a crime
 - One who is deemed a criminal shall be punished based on law regarding the types, length, and severity of sanction

四、法律的體系與名稱 2/4

- 法律與法規命令

- **法律**：由立法院通過、總統公布之法律（憲170）。但法律不得與憲法牴觸（憲171）。
 - **法律可分：法、律、條例、通則**（標準2）
 - **法律保留原則**：對於以下四項內容，應以法律定之（標準5）
 - (一)憲法或法律有明文規定者；
 - (二)人民權利義務之事項；
 - (三)國家各機關之組織事項；
 - (四)重要事項應以法律定之者。
 - **罪刑法定主義**：刑法第一條「行為之處罰，以行為時之法律有明文規定者為限。拘束人身自由之保安處分，亦同。」也就是說，**法無明文規定不為罪，法無明文規定不處罰。**
 - 罪的法定是指只有當一人之行為符合刑法明文規定的犯罪構成要件，才能將該之視為犯罪
 - 刑之法定是指當行為人被認定犯罪，必須依照刑法的規定處罰，在刑種、刑期、量刑等方面均不能超過刑法明文規定（**不定期刑禁止**）

4. Legal system and names 3/4

- **Order**: based on law or its empowerment, administrative agency may announce, under certain procedure, an order or regulation to execute the administrative matters .
 - But the order/regulation shall not be against law or constitution;
 - Order from lower admin agencies shall not be against the order from superior agencies
 - The name of order varied: 稱規程、規則、細則、辦法、綱要、標準或準則（標準3）
- **Principle of Explicit Authorization**: the regulation made by administrative agency that limits people's freedom shall be based on law or explicitly authorized by law -
 - **The authorization shall be explicit by law on its goal, content and scope**; if the law does not authorize or authorize without clear grounds, the order and the law shall be unconstitutional.

四、法律的體系與名稱 3/4

- **法規命令**：行政機關為執行行政事務，基於法律的規定或授權，或基於機關之法定職權，依一定程序發布之一般性法規，人民有服從之義務。但法規命令不得牴觸法律、憲法（憲172）；下級機關之命令不得牴觸上級機關之命令（標準11後）。
 - 各機關發布之命令，得依其性質，稱**規程、規則、細則、辦法、綱要、標準或準則**（標準3）
- **授權明確性原則**：行政機關制定法規命令限制人民權利自由時，須依法律規定或其明確之授權為之，**母法授權的「目的、內容、範圍」須具體明確**，若法律無授權或授權不明，行政機關所制定之法規命令違憲，該授權不明之法律亦違憲

4. Legal system and names 4/4

司法院大法官會議第443號解釋(86.12.26)

解釋文：憲法第10條規定人民有居住及遷徙之自由，旨在保障人民有任意移居或旅行各地之權利。若欲對人民之自由權利加以限制，必須符合憲法第23條所定必要之程度，並以法律定之或經立法機關明確授權由行政機關以命令訂定。限制役男出境係對人民居住遷徙自由之重大限制，**兵役法及兵役法施行法**均未設規定，亦未明確授權以命令定之。行政院發布之**徵兵規則**，委由內政部訂定役男出境處理辦法，欠缺法律授權之依據，該辦法第8條規定限制事由，與前開憲法意旨不符，應自本解釋公布日起至遲於屆滿六個月時，失其效力。

解釋理由書：

何種事項應以法律直接規範或得委由命令予以規定，與所謂規範密度有關，應視規範對象、內容或法益本身及其所受限制之輕重而容許合理之差異：諸如剝奪人民生命或限制人民身體自由者，必須遵守罪刑法定主義，以制定法律之方式為之；涉及人民其他自由權利之限制者，亦應由法律加以規定，如以法律授權主管機關發布命令為補充規定時，其授權應符合具體明確之原則；若僅屬與執行法律之細節性、技術性次要事項，則得由主管機關發布命令為必要之規範，雖因而對人民產生不便或輕微影響，尚非憲法所不許。又關於給付行政措施，其受法律規範之密度，自較限制人民權益者寬鬆，倘涉及公共利益之重大事項者，應有法律或法律授權之命令為依據之必要，乃屬當然。

5. Effect of law 2/3

- Formality of law / clauses

刑法第310條：Criminal Code - Defamation

意圖散布於眾，而指摘或傳述足以毀損他人名譽之事者，為誹謗罪，處一年以下有期徒刑、拘役或五百元以下罰金。

散布文字、圖畫犯前項之罪者，處二年以下有期徒刑、拘役或一千元以下罰金。

對於所誹謗之事，能證明其為真實者，不罰。但涉於私德而與公共利益無關者，不在此限。

Subjective: intent

Legal requirements

Legal effects

Objective: acts

- Effect of law
 - Law restricts and disciplines people. Thus the law has to be effective. The law without legal effect (such as unconstitutional laws) can not and shall not apply.

5. Effect of law 2/5

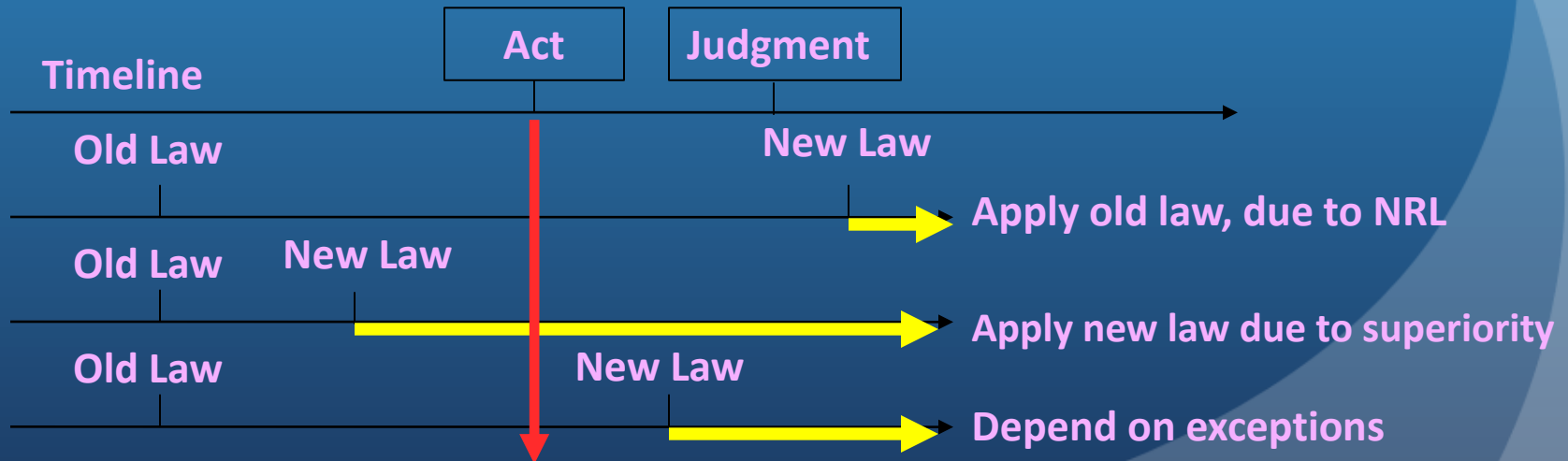
- **(1) law effect on time:** begins from coming into force; dies after invalidation
 - **Come into force:** laws or regulations come into force when
 - promulgated by the President (the third day after promulgation), or
 - a fixed date has been announced in the law, or
 - empowering Gov't to announce an effective date by order.
 - **Abolishment:**
 - **Announcement (new law is superior to old law) :** 機關裁併、事項已執行完畢或情事變遷無繼續施行之必要、因有關法規廢止或修正而失其依據、同一事項已有新法規發布施行（標準21）
 - **Expiration :** 法規定有施行期限而屆至者（標準23）

五、法律的效力 2/5

- (一)時的效力：**始於生效、終於廢止**
 - 生效：法律或法規自公布後（第三天起全國生效）、或明定施行日期、或授權以命令規定施行日期而生效。
 - 廢止：
 - **公布廢止（新法優於舊法／後法優於前法）**：機關裁併、事項已執行完畢或情事變遷無繼續施行之必要、因有關法規廢止或修正而失其依據、同一事項已有新法規發布施行（標準21）
 - **當然廢止**：法規定有施行期限而屆至者（標準23）

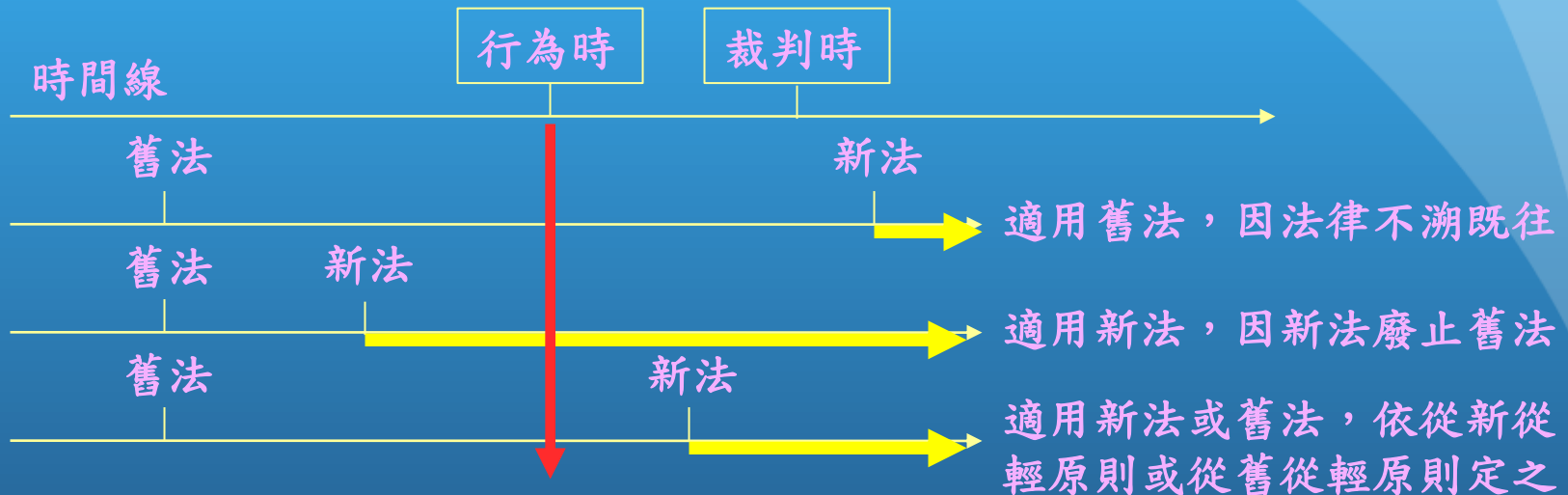
5. Effect of law 3/5

- **Principle of non-retroactivity of law** : **law becomes effective after promulgation**
 - **Exception#1** : 刑法2(1) : 「行為後法律有變更者，**適用行為時之法律**。但行為後之法律有利於行為人者，適用最有利行為人之法律。」
(**從舊從輕原則**)
 - **Exception#2** : 標準18 : 「各機關受理人民聲請許可案件適用法規時，除依其性質應適用行為時之法規外，如在處理程序終結前，據以准許之法規有變更者，**適用新法規**。但舊法規有利於當事人而新法規未廢除或禁止所聲請之事項者，適用舊法規。」 (**從新從輕原則**)



五、法律的效力 3/5

● 法律不溯及既往原則：法律原則僅向後生效



- **例外一：**刑法2(1)：「行為後法律有變更者，**適用行為時之法律**。但行為後之法律有利於行為人者，適用最有利行為人之法律。」（**從舊從輕原則**）
- **例外二：**標準18：「各機關受理人民聲請許可案件適用法規時，除依其性質應適用行為時之法規外，如在處理程序終結前，據以准許之法規有變更者，**適用新法規**。但舊法規有利於當事人而新法規未廢除或禁止所聲請之事項者，適用舊法規。」（**從新從輕原則**）

5. Effect of law 4/5

- **(2) law effect on land: territory principle**
 - **Principle**: territorial lands, seas and airspace
 - **Exceptions**: embassy, naval vessels, civil vessels or aviation in public seas or airspace
 - **Exceptions of exception**: crimes of hijacking, pirate, human trafficking, and drug dealers can be charged anywhere

Q : how to deal with online infringement?


- In practice, law governs based on location of site server
- But how to deal with outbound infringement at local authority?
- 20190909Illegal Set-Top Boxes caught and indicted
- 20200410Pirated Website “Maplestage” shut down

五、法律的效力 4/5

● (二)地的效力：疆域（領域）原則

- **原則**：包括領土、領海、領空（領土、領海之上空）
- **例外**：他國之領使館、軍艦、行駛於公海或公領空之民用船舶、航空器等
- **例外之例外**：劫機、海盜、販賣人口、煙毒等犯罪，任何國家皆得加以逮捕人犯，並予審判處罰

Q：網路侵權行為（民事、刑事）該如何處置？

- 目前實務上依照網站（伺服器）所在地之法律處理之
- 但境外侵權行為國內該如何處理？
- 20200410楓林網被抄 盜版網接連關避風頭 

5. Effect of law 5/5

- **(3) law effect on human**

- Humanism: applying the law based on your nationality
- Localism: applying the law based on where you are
- Compromise: localism in principle and humanism is supplemental → most countries


What is Diplomatic Immunity?

- Special identity: President (criminal exemption), congressman (legislative immunities), ambassador/consul
- Special occupation: soldiers (Military Criminal Law & Military Trial Law)

**2013/8/13 at peace time all soldiers
litigate in common courts**

五、法律的效力 5/5

● (三)人的效力：

- 屬人主義：以行為人國籍來決定法律適用對象
- 屬地主義：以國家領域來決定法律適用對象
- 折衷主義：以屬地主義為主、屬人主義為輔，形成「雙重服從義務」，大多數國家屬之
- 特殊身分：總統（刑事豁免權）、國會議員（言論免責權、身體不可侵權）
 - 駐台使節好禮遇！「有無邦交」皆享豁免權 
- 特殊職業：軍人（特定犯罪行為適用陸海空軍刑法、軍事審判法）

2013/8/13承平時期軍人犯罪回歸普通司法機關追訴、審理

6. Civil, criminal and administrative liability 1/3

• Civil law

- **Damages** : in principle recover the original status, if not, pay for money is an exception; creditor shall prove the debtor is intentional or negligent on the act → **Civil claim**
- **Recovery** : To ask for recover the right on the property when it faces infringement → **property right**
- **Invalidation and revocation of a legal act** : if a legal act has defects (EX: against social order, being forced, or not follow statutory formation) can be invalidated or revoked.
- **Depriving rights** : stop parental rights, interest over statutory cap, dissolution of legal entity

六、民事刑事行政責任之區分 1/3

- 因法律規範種類、性質不同，其立法目的亦有不同，因此在法律效果（責任）的設計上可區分為以下三種：
- 民法：
 - **損害賠償**：損害賠償責任「以回復原狀為原則，金錢賠償為例外」、「以行為人有故意過失為原則，無過失責任為例外」
→ **債權**
 - **回復權利**：對物侵害可行使「回復權利」之物上請求權
→ **物權**
 - **法律行為之無效與撤銷**：法律行為有瑕疵(例如違背公序良俗、遭他人脅迫、未依法定方式)嚴重者無效、輕者可得撤銷
 - **權利剝奪**：停止親權、超額利息之無請求權、法人解散

6. Civil, criminal and administrative liability 2/3

- **Criminal law**

- **Main Punishment**

- Life: Death penalty
- Freedom: Life imprisonment, sentence to imprisonment, criminal detention
- Money: fines

- **By-punishment** : cannot be punished alone

- Deprived of public power
- Others: confiscation, compensation, etc.

- **Security measures** : on prevention

- Juvenile education, rehab of drug abusers, custody of mental distress, forced labor, compulsory treatment, etc.

六、民事刑事行政責任之區分 2/3

● 刑法：

● 主刑：得獨立科處

- 生命刑：死刑
- 自由刑：無期徒刑、有期徒刑、拘役
- 財產刑：罰金

● 從刑：不得獨立科處

- 資格刑：褫奪公權
- 其他：沒收、追徵、抵償、追繳

● 保安處分：側重犯罪矯正預防

- 少年犯感化教育、煙毒犯禁戒處分、心神喪失或精神耗弱者之監護、強制工作、強制治療等

6. Civil, criminal and administrative liability 3/3

• Administrative law

- Punishment on public servants : discipline on violators or delinquent by dismissal, degradation, reducing salary, recording demerit or warning.
 - (1) Send to Control Yuan for review
 - (2) Send to Disciplinary Sanction Committee for review
- Punishment on citizens
 - **For order:** 罰鍰、沒入銷毀、拘留、勒令歇業、停止營業
 - **For discipline:** 停止職業、撤銷資格
 - **For enforcement:** 拘提、管收、代履行、處以怠金、扣留、限制使用、進入建物、拆除違建、註銷證照、斷水斷電、命令解散等等

六、民事刑事行政責任之區分 3/3

● 行政法：

- 對公務員（含文、武官員與公營事業人員）的處分：對違法或失職者處以懲戒處分（包括：撤職、休職、降級、減俸、記過、申誡，但政務官僅適用撤職與申誡）
 - （一）送監察院審查
 - （二）送公務員懲戒委員會審議：九職等以下公務員可逕送
- 對人民的處分
 - 秩序罰：罰鍰、沒入銷毀、拘留、勒令歇業、停止營業
 - 懲戒罰：停止職業、撤銷資格
 - 強制罰：拘提、管收、代履行、處以怠金、扣留、限制使用、進入建物、拆除違建、註銷證照、斷水斷電、命令解散等等

7. Application and interpretation of law 1/2

- How a court to deliver a judgment?
 - Legal syllogism/judicial reasoning/justification (法律三段論)

Law -
General ruling

法律規定（大前提）：無故利用工具或設備窺視、竊聽他人非公開之活動、言論、談話或身體隱私部位者，處三年以下有期徒刑、拘役或三萬元以下罰金（刑法第315條之一）

Facts -
to be proven

待證事實（小前提）：水果日報記者A非基於採訪之目的，利用高倍數相機，向身處豪宅內參與活動之不知情女星B進行拍攝

Apply law to
the facts -
“application”

判決結果（涵攝結果）：經「認事用法」後，得出事實符合法律各項要件之規定後，給予「處六個月以下有期徒刑」之法律效果

7. Application and interpretation of law 2/2

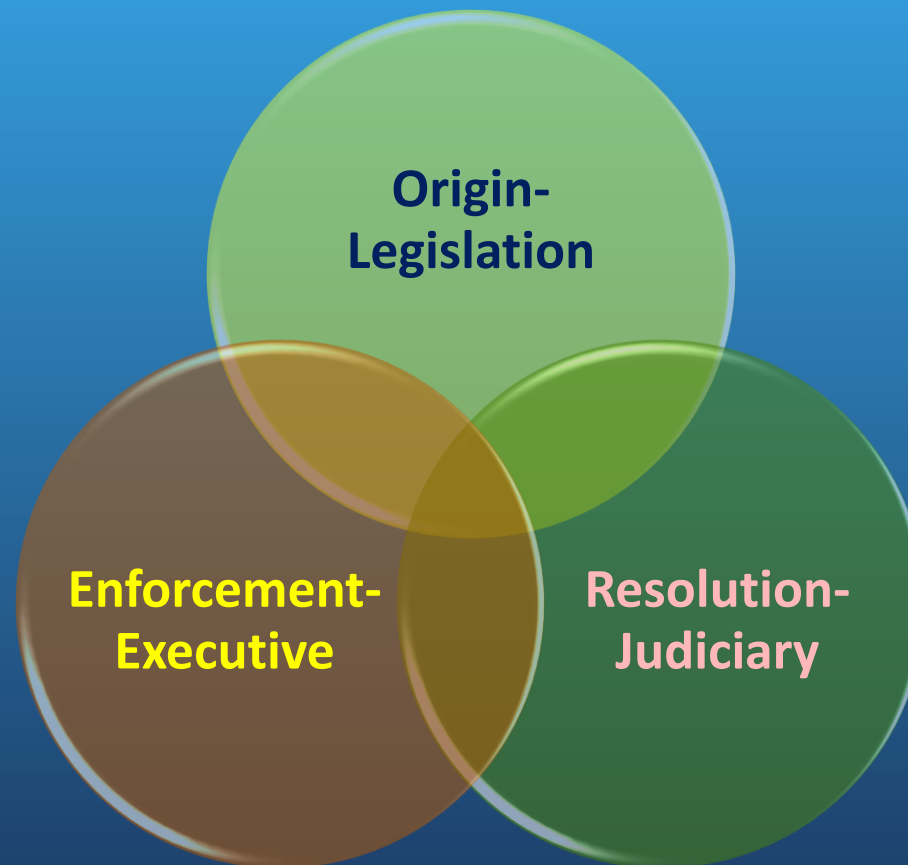
- **Legal interpretation:** When a law with abstract, non-precise, general terms shall be interpreted before applying it to a specific fact
 - **Legislative interpretation:** by law itself
 - **Judiciary interpretation:** by judge/court decisions
 - **Administrative interpretation:** by gov't order
- The United States Supreme Court Explained In 2 Minutes
- Commencement address by Chief Justice John Roberts
(clip in full)

七、法律的適用與解釋 2/2

- 法律的解釋：抽象、不精確、概括性詞彙的法律要適用到具體之事實上，須先經過解釋
 - 立法解釋：法律
 - 司法解釋：大法官會議解釋/判例/判決
 - 行政解釋：法規命令
- 美國大法官畢業典致詞，祝畢業生「遭遇不幸、被人背叛」
(05:20) <https://www.youtube.com/watch?v=p3w8H16qclw>

8. Organizations applying laws and its principles 1/5

- Separation of powers



8. Organizations applying laws and its principles 2/5

- Taiwan's Executive Yuan
 - **Central Executive Agencies**（行政院長由總統提名）
 - 根據行政院組織法，行政院所屬組織共有14部（內政、外交、國防、財政、教育、法務、經濟、交通、勞動、**農業**、衛生福利、**環境**、文化、數位發展）、9會（國發、國科、大陸、金管、海洋、僑務、退輔、原民、客家）、3獨立機關（中選、公平、通傳）、2總處（主計、人事行政）、1行（央行）、1院（故宮）。
 - **Local Executive Agencies**（首長由人民直選）
 - 直轄市政府、縣（市）政府、鄉（鎮、市）公所

8. Organizations applying laws and its principles 3/5

- Courts

- Local (trial) court

- 法官一人獨任或三人合議
- 民事、刑事第一審、非訟事件
- 簡易法庭（民事簡易、刑事簡易、調解、違反社會秩序維護法之第一審）

- Appeal (high) court

- 法官三人合議
- 內亂、外患、妨害國交之刑事第一審法院
- 不服地方法院第一審判決而上訴之民、刑訴訟案件

- Supreme (final) court

- 法官五人合議
- 不服高等法院一審或二審判決而上訴之民、刑訴訟案件
- 非常上訴案件

8. Organizations applying laws and its principles 4/5

- Structure of Courts
 - Common courts: Civil, Criminal, Civil Small Claim, Profession (E.g.: IPR Court, Juvenile Court, and Family Court)
 - Administrative courts: 2 tiers
 - Discipline Sanction Committee (for public officers)
 - **Justice of Constitutional Court** :
 - 15 Justices, 8-year tenure, staggering terms
 - Interpretation of Cons: 2/3 attendance, and 2/3 majority
 - Interpretation of laws and orders : ½ attendance, and ½ majority

8. Organizations applying laws and its principles 5/5

- Common principles to apply laws
 - **Fairness**: apply for all, no discrimination
 - **Non-retroactivity of law**: stability of law, protection of human rights
 - **Superiority**:
 - New law is superior to old law
 - Special law is superior to general law
- Individual principles to apply laws
 - Executive: ruled by law, discretion, secondary norms
 - Courts: independent trial, no condemnation without accusation, protection against double jeopardy, trial in court

Next Topic

Intro to Intellectual Property

Assigned reading: *Guide to IP* (pp.1-16)