

BUSINESS LAW

Introduction to law

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BME
Gazdaság- és
Társadalomtudományi Kar

Requirements

- two Moodle tests from the slides and the textbook (2x25 p, max. 50 p, 25-31= grade 2, 32-37= 3, 38-42= 4, 43-50= 5)
- class participation and activity (**in addition to the test scores**)
- test >>>

Law, legal norm

- social norms: social (behavioural) standards that prescribe what is correct and needs to be followed in the society
- social norm enforced by the state = legal norm
- law - obligatory rule of conduct created and enforced (sanctioned) by the state
- legal norm - smallest applicable unit of law

elements:

(i) hypothesis

(ii) disposition

(iii) sanction

“If you earn money, you should pay tax. If you do not pay, you will be fined by the state”

or let us see the practice:

„You may not steal. If you steal, you will be sanctioned by the state.” >>>

Legal acts, legal system, private and public law

Legal norms are contained in legal acts (legislation). The whole of legal acts in force of a sovereign state form its **legal system**. The legal system is divided into public and private law, and within these are different legal branches.

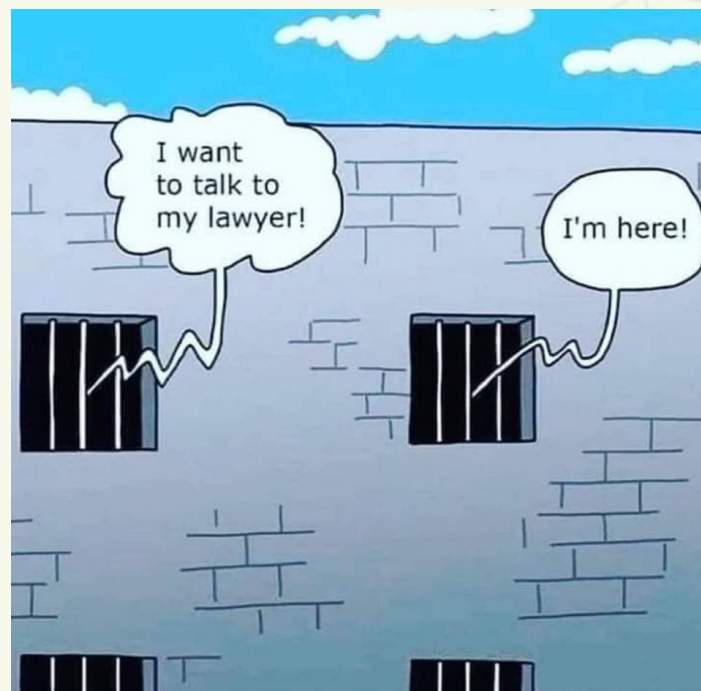
Public law is part of law which governs issues related to the functioning of the state

- protection of the public interest
- the relationship between the state and other subjects is always asymmetric: natural (humans) and legal persons (e.g. companies) are subordinated to the state, because the state represents the public interest
- typical branches of public law are constitutional law, administrative law, tax law and criminal law

Private law deals with relationships between natural and legal persons, and sometimes between natural and legal persons and the state (states can have private acts, like doing business through state companies), where the state is of equal rank with the former in front of the law and courts

- protection of the private interest
- civil law, company law, international trade law, etc.

Lawyers



	Substantive law	Procedural law
definition	Deals with those areas of law which establish the rights and obligations of individuals, what individuals may or may not do	Deals with and lays down the ways and means by which substantive law can be enforced
powers	Independent powers to decide the fate of a case	No independent powers
application	Cannot be applied in non legal contexts	Can be applied in non legal contexts
examples	Civil Code, Criminal Code, Labour Code	Code on Civil Procedure, Code on Criminal Procedure

validity, effectivity

validity: suitable to trigger a targeted legal effect

- it was created / adopted by a body empowered to legislate in respect of that

source (the Constitution defines + jurisdiction, power, competence)

- the law fits into the hierarchy of laws,
- the procedural rules governing the creation of that legislation have been respected in the course of the legislative procedure
- proper publication / promulgation of the law (official bulletin, gazette)

effectivity or effectiveness: relativity and conditions, spheres of validity, indicates the applicability of the norm → scope

- material scope
- personal scope
- territorial scope
- temporal scope

Sources (business) law

- (1) constitution
- (2) principles of international public law (like good faith, equity, etc.).
- (3) bi- and multilateral international treaties (conventions)

- (i) public law character
- (ii) mixed character
- (iii) private law character

(4) National laws

conflict of laws rules (it is also called private international law rules). These rules will help the judge seized with the dispute to determine the substantive law of which country is to be applied in private law legal relationship (international sale contract for example) that involves a foreign person, property or right (foreign element), when the laws of different states would be applicable, and the parties did not agree on the applicable *substantive law*. These rules will also determine which court has *jurisdiction*.

(5) Decrees (and other lower legal acts)

Sources (of business law) that are formally not laws (not made by sovereign states or their institutions)

- (1) contract
- (2) international commercial customs
- (3) written usages
- (4) unique business practices between the contracting parties
- (5) practice (case law) of international commercial arbitration
- (6) lex mercatoria

Sources of EU law

I. Primary law

- treaties establishing the EU: the TREATY ON EUROPEAN UNION (TEU)
- Treaty on the Functioning of the European Union (TFEU) and the
- Treaty on the European Atomic Energy Community (Euratom). (set out the distribution of competences (powers) between the EU and the EU Member States, describing the powers of the EU institutions)

Primary law also includes:

- the amending EU treaties;
- the protocols annexed to the founding treaties and to the amending treaties;
- the treaties on the accession of new Member States to the EU;
- the Charter of Fundamental Rights

II. General principles of law

These can be unwritten sources of law developed by the case-law of the Court of Justice of the European Union (CJEU).

Sources of EU law

III. Secondary law

legal acts:

(i) regulation - binding legislative act, must be applied in its entirety across the EU

(ii) directive - is a legislative act that sets out a goal that EU countries must achieve, however, it is up to the individual countries to devise their own laws on how to reach these goals

(iii) decision - binding on those to whom it is addressed

(iv) opinions and recommendations – non binding

Also: rules of procedure of the institutions and interinstitutional agreements

IV. International agreements with non-EU countries or with international organisations

V. Other sources of EU law

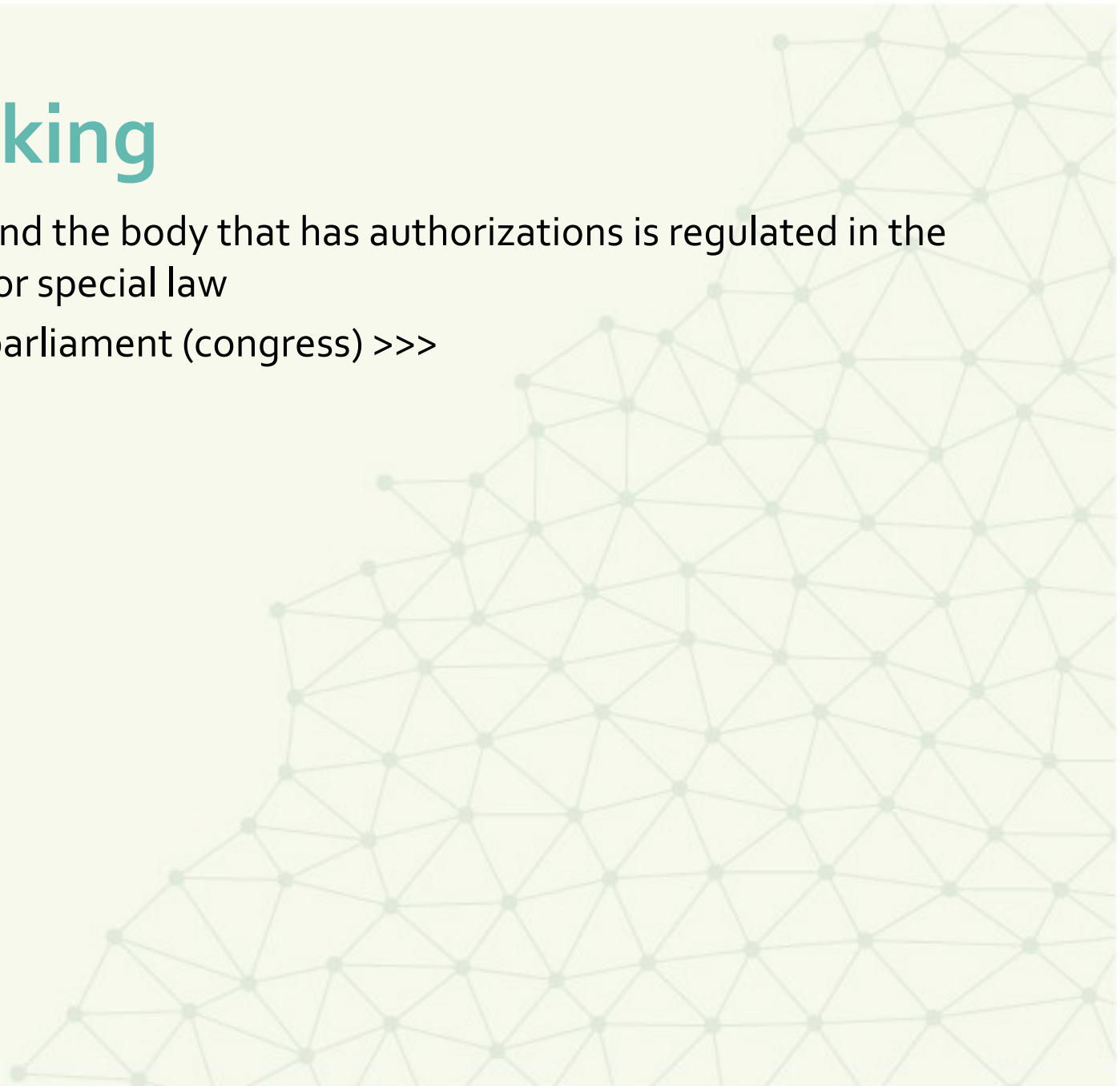
CJEU case-law

international law

Lawmaking

The procedure and the body that has authorizations is regulated in the constitution or special law

It is usually the parliament (congress) >>>



Separation of powers

Legislature (parliament, congress)

Executive (government, president)

Judiciary

- several issues (like democratic deficit)

Useful sources

Introduction to Law, Basic Concepts of Law

http://kretschmer.cc/pdf/introduction_1.pdf

How laws are made in the UK

<https://www.youtube.com/watch?v=iM4CKYCrW7Y>

Separation of Powers explained

<https://www.youtube.com/watch?v=e1cN5KuB5so>

Thank you!



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