

# FUNDAMENTALS OF LAW

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CHAPTER 2: THE LAW

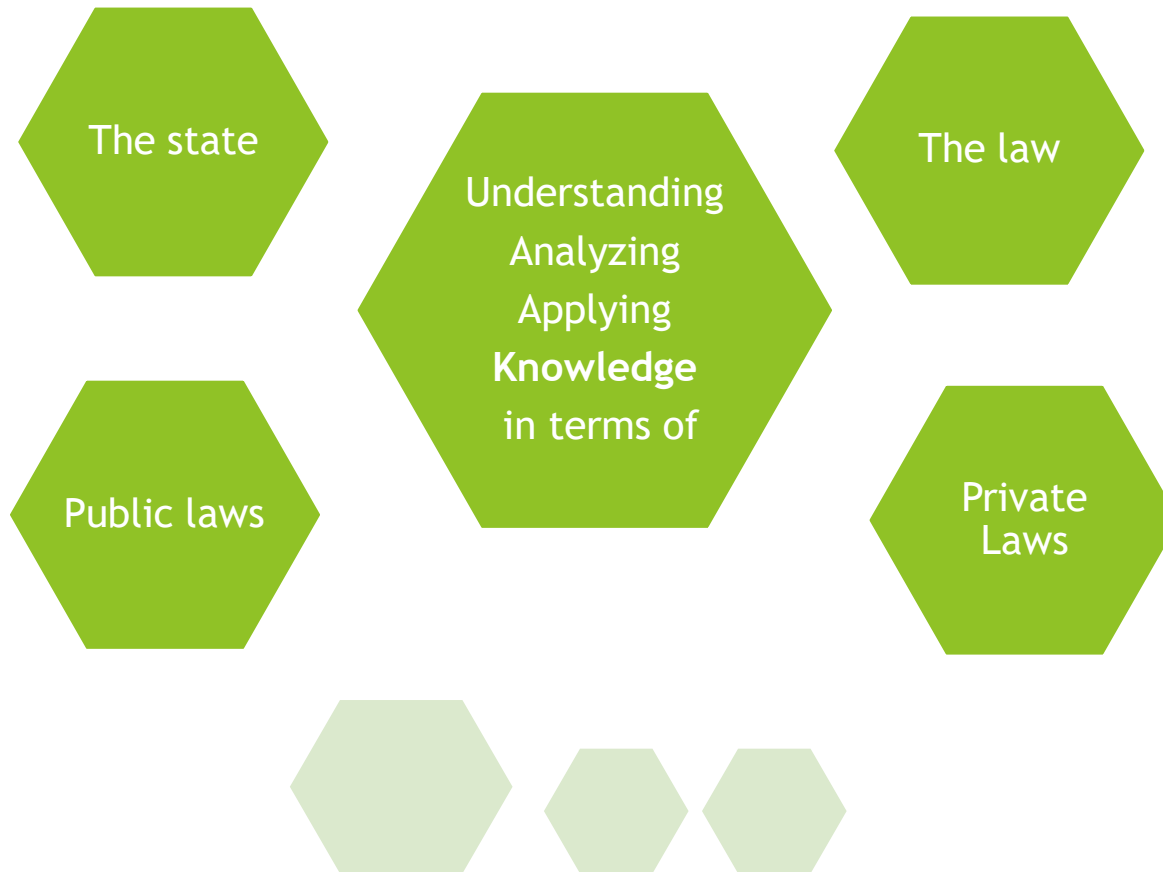
CHAPTER 3: PUBLIC LAWS

CHAPTER 4: PRIVATE LAWS

# LEARNING RESOURCES

- ▶ Hans Kelsen (2007), *General Theory Law and State*, Harward University Press
- ▶ Paul Richards (2017), *Law of Contract*, Pearson Longman
- ▶ Sarah Riches'and Vida Allen (2009), *Business Law*, Pearson Longman
- ▶ Nguyen Thi Hue (2017), *Fundamental State and Law Textook*, National Economics University.
- ▶ Legal documents
- ▶ Websites

# COURSE GOALS



# ASSESSMENT

## ► LECTURER'S ASSESSMENT

- Attitude
- Attendance
- 10%

## ► MID- TERM ASSESSMENTS

- Individual mid-term examination: 20%
- Group Assignment: 20%
- Week 8

## ► FINAL ASSESSMENT

- Individual final examination: 50%
- In writing

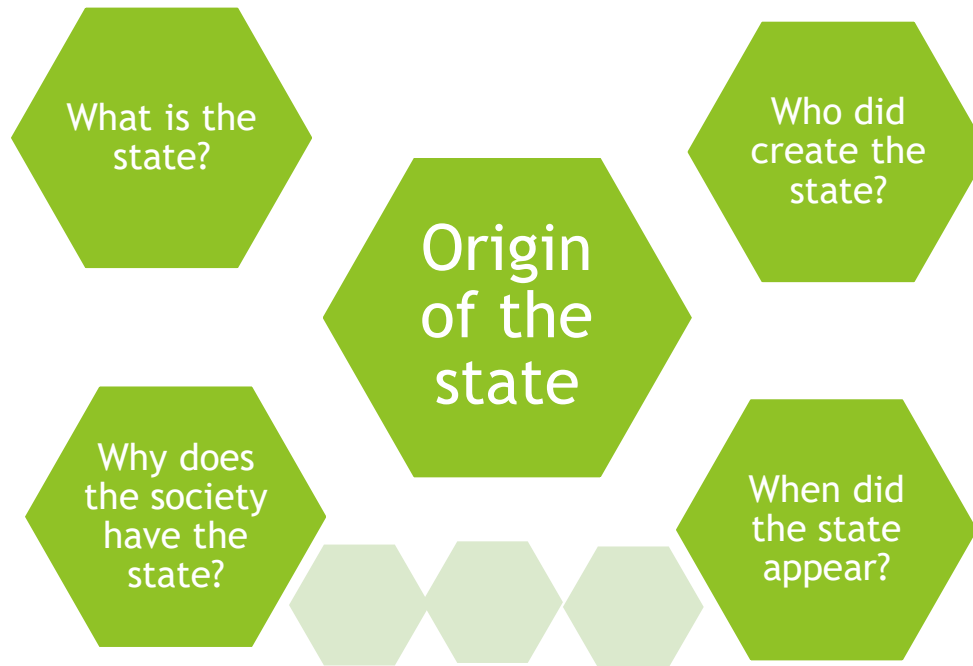
# RULES

- ▶ Do not absent over four times. It results in a failing grade for the class.
- ▶ Do your very best work in preparing for each class session and on all your assignments. See “Course Assignments”, for additional information on completing assignments.
- ▶ Stay focused and involved in every class, offering your best comments, questions and answers.
- ▶ Turn off your cell phone and all electronic devices and put them away before the class starts.
- ▶ Do not text or use laptops during class.

# CHAPTER 1: THE STATE

- ▶ 1.1. The origin, nature of the state
- ▶ 1.2. The characteristics of the state
- ▶ 1.3. The functions of the state
- ▶ 1.4 The organs of the state
- ▶ 1.5. Forms of government

# THE ORIGIN, NATURE OF THE STATE





# THE ORIGIN OF THE STATE

## ► The theories of the origin of the state

1. The theory of Divine Origin
  2. Social contract Theory
  3. Matriarchal and Patriarchal Theory
  4. Force Theory
  5. Historical or Evolutionary Theory
  6. **Marxist - Leninist theory**
- and so on

# THE ORIGIN OF THE STATE

- ▶ Some common recommendations on valuation of the origin theories of the state
  - “No values to answer the question “What is the origin of the state””
  - “Not adequate”
  - “Not satisfactory”

# THE ORIGIN OF THE STATE

## Under Marxist - Leninist Theory

- The state is not a permanent and unchangeable factor in our society
- The origin of the state was from the first eco-social form (stage). (primitive communism; possession of slaves; Feudatory; Capitalism; Socialism)

### WITH

- **Economic condition**
  - + Low development level
  - + Equality: no privilege, self-supply
- **Social condition**
  - + No class division
  - + Not yet has a state
  - + Clan - race -tribe
- **There is a power hold by all people in society, no exclusive power**

# THE ORIGIN OF THE STATE



Change of  
Economy

Change of  
Society

# THE ORIGIN OF THE STATE



# THE ORIGIN OF THE STATE

- ▶ The state is created only in the class-divided society

# THE ORIGIN OF THE STATE



Why was the state created only in the class- divided society???

Who created the state in the class- divided society???

# The Socialist Republic of Vietnam

- ▶ The working class in Vietnam. The class corporates with the peasantry and the intelligentsia
- ▶ Article 2 of The constitution of the Socialist Republic of Vietnam in 2013
  - “ 1. The State of the Socialist Republic of Vietnam is a socialist state ruled by law and of the People, by the People and for the People.
  - 2.The Socialist Republic of Vietnam is the country where the People are the masters; all the state power belongs to the People and is based on **the alliance of the working class, the peasantry and the intelligentsia.**
  - 3. The state power is unified and delegated to state agencies which coordinate with and control one another in the exercise of the legislative, executive and judicial powers.”



# THE NATURE OF THE STATE

## ► CLASS NATURE

The state is a special enforcement machinery to protect the right to possession of property of WHO???

## ► SOCIAL NATURE

Take care people's standard of living

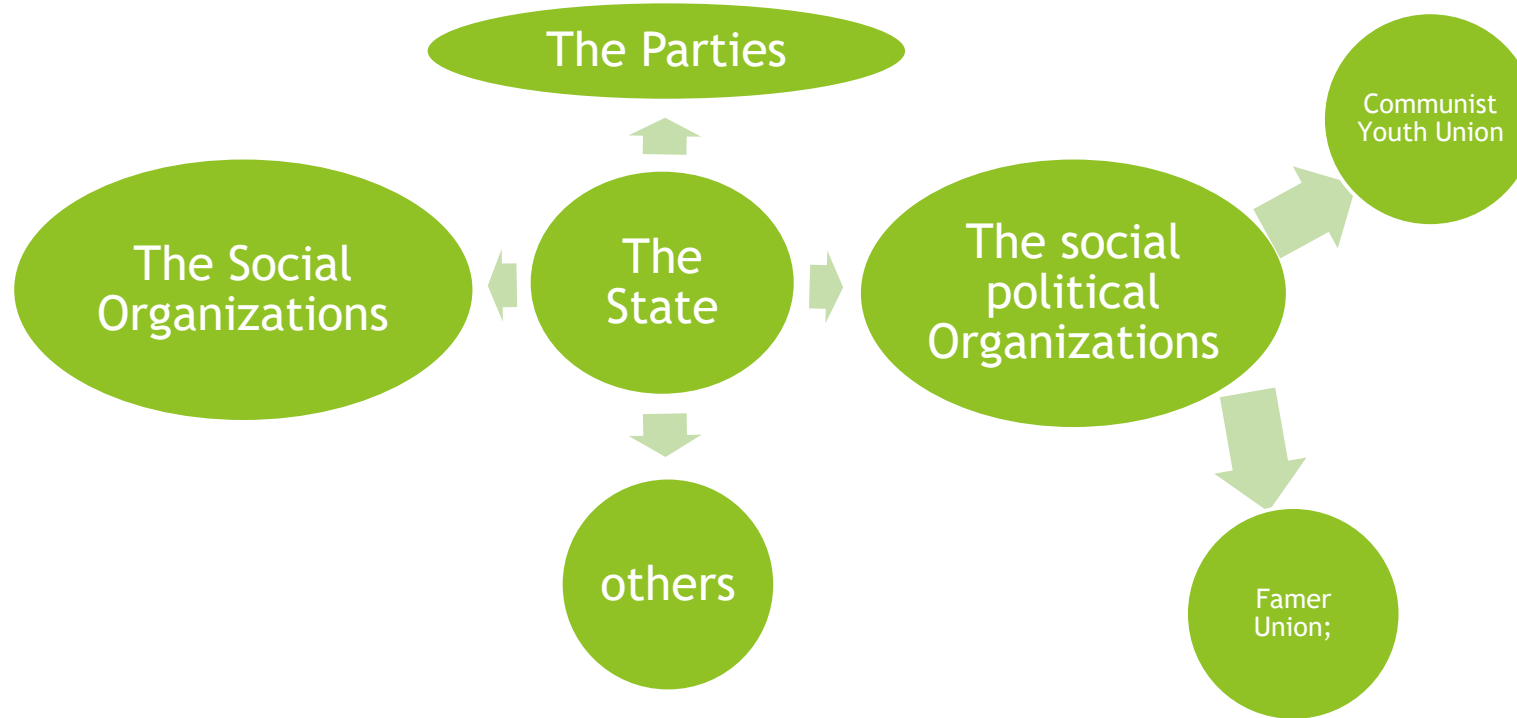
Build infrastructure system

Build education and training system

Build health care system

.....

# THE CHARACTERISTICS OF THE STATE



# THE CHARACTERISTICS OF THE STATE

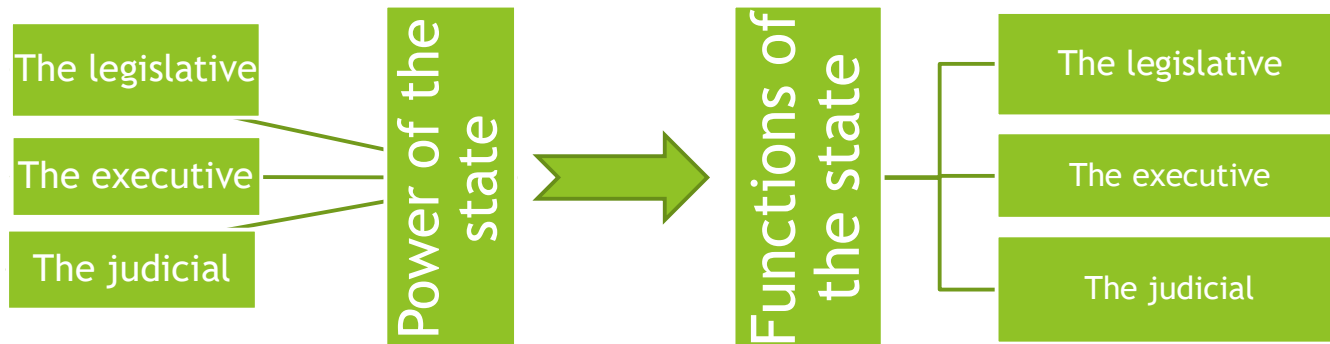
- ▶ The state has an exclusive public power (state power) Page No. 255 Hans Kelsen
- ▶ The state is a representative of sovereignty.
- ▶ The state enacts legal documents. (Under the will of the ruling class)
- ▶ The state divide its territory into administrative units so as to control the people who live in the units.

Note: Page No.181- 192 Hans Kelsen Text books.

# THE CHARACTERISTICS OF THE STATE

## The power of the state

- This is one of the elements of the state (territory, people, power)
- It is thought possible to distinguish between three different component powers



- The “power” of the state must be the validity and efficacy of **the national legal order**, if sovereignty is to be considered as a quality of this power
  - Aristotle described the state as order (legal order)

# The FUNCTIONS OF THE STATE

- ▶ What are the functions of the state? Function/responsibility/mission/liability
- 1. Based on the framework of the state activities, the functions of the state are divided into two kinds:
  - INTERNAL FUNCTIONS: Economic, Culture, Education...
  - EXTERNAL FUNCTIONS: Foreign affairs, security protection
- 2. Based on the state power, the functions of the state are divided into three kinds:
  - The legislative function: create the law
  - The executive function: apply the law
  - The judicial function: protect the law (“are all ultimately aimed at the execution of a legal sanction” page No. 192 Hans Kelsen)

# THE ORGANS OF THE STATE

- ▶ The concept of the state organ
- ▶ The formal and the material concept of the state
- ▶ The simple and the composite organ
- ▶ The creation of the state organ
- ▶ Procedure

# THE ORGANS OF THE STATE

## ► The concept of the state organ

“Whoever fulfills **a function** determined by the legal order is an organ” (Hans Kelsen, Page No. 192)

“Has a specific legal position”

- **An Individual or An organization????**
- **Officials (narrower sense)**

Eg: **The judge**

The contracting parties of a contract

**The parliament**

The citizen takes part in the election of the parliament by voting performs

# THE ORGANS OF THE STATE

- ▶ The creation of the state organ
  - By appointment, election or lot
- Classification of the state organ
  - Base on the functions of the state: the state organs divided into three groups:
    - + The legislative organs
    - + The executive organs
    - + The judicial organs



# THE ORGANS OF THE STATE



HOW ABOUT THE ORGANS OF THE  
SOCIALIST REPUBLIC OF VIETNAM????

UNDER THE CONSTITUTION 2013

# FORMS OF GOVERNMENT

- ▶ How to organize the state power is considered as the criterion of the classification of the forms of government.

# FORMS OF GOVERNMENT

MONARCHY

- One individual

REPUBLIC

- Several individual

# FORMS OF GOVERNMENT

