

Topic 1: Legal Theory & Function

Overview

This chapter provides an understanding of how law and the legal system establishes the foundation for a functioning economy. Specifically, we will discuss how law originates from society. The legal system allows for the ownership of property and the enforcement of ownership rights. We introduce the two types of legal systems that exist in the United States, the common law and civil law systems. Finally, we break down how the legal system is generally organized within the United States.

1. When is a state economically strong or weak?

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)** or 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. Several theories pertaining to the causes of economic strength are mentioned below.

- *Note:* Important for this course, we briefly discuss economic growth through the creation of laws governing individuals and property.
- *Discussion:* How big is the US economy in GDP? Which country has the largest GDP? Which country has the largest economy based upon PPP?
- **Practice Question:**
- **Resource Video:**

2. How does law or the legal system affect the economic strength or stability of a state?

Numerous theories exist as to why a state is economically strong. Common among these theories are the following:

Natural Resources Theory

- The natural resource theory posits that the economic growth and productivity of a nation are largely dependent upon access to natural resources. Per this theory, these resources provide a link to the larger world economy. The sale or exchange of these resources drives increased economic activity within the individual state. While this theory helps to defend the role of natural resources in a relevant economy, it is not a stand-alone explanation of economic activity within the country.
 - *Discussion:* Can you think of examples of countries with relatively low GDP compared to a high concentration of natural resources? *Hint:* Think of oil-producing countries with rampant poverty and low economic productivity.

Climate Theory

- The climate theory focuses on how a state or nation's climate affects any number of drivers of economic activity or productivity. Per this area of research, climate affects available resources and human capital. That is, the climate will affect food growth and the number and productivity of hours spent working. For example, moderate climates may allow for longer work hours, while more harsh climates may limit available work hours. Again, however, the body of research makes obvious that climate variations alone do not explain the economic strength of nations.
 - *Discussion:* Can you think of countries with favorable climates for work and growth that, nonetheless, have low productive and GDP levels? *Hint:* Think of countries located close to the equator.

Education and Technology Theories

- Education and technology theories of economic prosperity focus on productivity of individuals in a state. These theories posit that increased education and technology have the causal effect of generating increased economic output. That is, higher productivity of individuals yields greater economic output at a given amount of effort. The development and introduction of technology is also closely tied to the education level of a society. Studies have shown a strong correlation between cognitive ability of individuals in a nation and its economic output. While education levels and the implementation of

economic activity do affect the productivity of individual effort, these theories alone fail to fully explain economic output disparity between nations with similar education and technology levels.

- *Discussion:* Do you think that education and technology drives economic activity? Alternatively, is the availability of education and the development of technology a result of high levels of economic activity?

Public & Private Market Theory

- Public and private market theories focus on the productivity of individuals that results from public investment in infrastructure and the private investment in commercial activity. If the public (through a governing body) invests in infrastructure, this is a form of resource development that spurs economic activity in the country. Lower barriers to economic activity aid individuals and create a demand for resources to carry out that activity. Availability of private investment capital helps meet the demand for resources necessary to carry out economic activity. History demonstrates that varying degrees of investment in public infrastructure results in consistently higher levels of economic productivity; but, the availability of private capital alone is just one factor influencing economic activity.
- *Discussion:* Can you identify nations with high or low economic productivity in comparison to relatively high or low investment in infrastructure? Can you identify countries with high levels of available private, investment capital that has relatively low GDP?

Dependency Theory

- The dependency theory focuses on the assumption that one country achieves greater economic growth over another, due largely to either the usurping of the other country's resources or a disparity in advantage of each country in exchanging goods or services. In general, the stronger economic nations tend to exploit weaker economic nations. This theory explains much of the economic prosperity observed by colonizing or conquering nations; however, it offers little explanation for the mutually beneficial relationships that exist between economically productive nations.
- *Discussion:* Can you think of countries with close economic ties (e.g., trade

relations), through which both countries demonstrate a distinct economic benefit?

Legal Theory

- A commonly accepted theory about the economic strength of a nation regards the role of law and the legal system. Many theorists 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 in the market. In nations with such a system, individuals can now trade or undertake transactions with the confidence that they can enforce their rights in the agreement. This encourages more and continued business relationships. Further, there are lower transaction costs associated with an activity when a party does not have to take extensive measures to protect her interests. For example, an individual or business may lend you money without taking physical possession of your belongings to secure payment of the debt.
- *Discussion:* 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 stock broker 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 exchanging 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, then 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?

While none of the above theories can fully predict or explain the relative strength of one nation versus another, when examined together, they provide valuable insight into the issue. Hopefully this information will help you understand the impact that law has on the economy.

- *Practice Question:*

- *Resource Video:*

2. 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 government. 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. Other theories, however, focus on law as naturally occurring based upon commonalities or norms that individuals shares. The societal view of law is the most widely understood and accepted. That is, if society believes that certain rights or procedures should be in place, the representative law makers act to bring about a rule effectuating that societal norm. In summary, laws are rules that society (or a represented majority) accept as being necessary for the orderly administration of that society.

- *Note:* The major theories of law (jurisprudence) are discussed further below.
- *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?
- *Practice Question:*
- *Resource Video:* <http://thebusinessprofessor.com/law/>

3. 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 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 is applied uniformly and consistently 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. Consistent with the previous discussion of law and economic strength, 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** among individuals that their rights will be protected by **eliminating any unfair advantages or disadvantages** to individuals under said 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, then 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.
- *Discussion:* 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:**
- **Resource Video:**

4. What is property (or property rights)?

Most people understand property to be a physical item. The definition of property, however, is

far more broad 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**. Those rights include 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. Take for example a copyright. The writer of a book can hold the book in her hands and that is a form of property. The owner of the copyright holds the ability to sell or license the rights to third parties for use or production. Further, she has the ability to prevent others from copying, selling, or licensing that book. The copyright extends far beyond the physical book in that it includes any reproduction of content within the work. In this sense, it is more of a right to something that has been created, rather than 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 you can think off. 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?
- *Practice Question:*
- *Resource Video:*

5. What is ownership?

Ownership is a concept closely related to property. **Ownership is the legally recognized and enforceable rights that a person has to property**. The reason this concept is important is 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 but 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**. To own property or to possess the bundle of rights that is property is a form or legally provided assurance. The legal system provides you with a claim of right that cannot be infringed upon by others without violating the law. **If someone violates your ownership of property by infringing upon your property rights, you may resort to the legal channels to enforce those rights (e.g., the police or court system).**

- *Discussion:* What would you do if someone breaks into your house and takes some of your physical assets? Most people answer, I would call the police. This is a form 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 when you learn that 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 their 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.
- *Practice Question:*
- *Resource Video:*

Within the legal system, property is often classified by the ownership of the property. 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.

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

There are numerous theories about the development of ownership of property. 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 the property system with incentivizing individuals to undertake activities that benefit society at large. That is, ownership or property incentivizes individuals to increase productivity and create new resources, which ultimately benefits the greater 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 forms 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.

- *Practice Question:*
- *Resource Video:*

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

The legal system is developed from the structure established by the Constitution (and all amendments thereto). The Constitution provides the structure for administering the government and also delineates the rights that all U.S. citizens possess. These rights can be viewed as a form of property that is protected against infringement by the government. The structural components of the government further allow for the establishment of a legal system that further protects and promotes these rights among individuals. For example, the executive branches of federal, state, and local government (and the administrative agencies charged with implementing and executing laws) pass rules affecting an individual's property rights. Such regulations include ordinances, licenses, and other limits on use and taxation policies. The federal, state, and local governments enforce criminal laws that seek to protect the property of individuals from harm by others. For example, think of your state's criminal statutes regarding theft and vandalism. Contract law allows for the formalization of relationships between individuals. For example, breach of contract actions allows individuals to enforce the rights established through contract. Tort law allows for the remediation of harm to property suffered due to the actions or inactions of others. For example, individuals can sue others for intentionally or negligently harming them or their property. Lastly, an important manner in which the legal system affects property rights is through the designation 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?
- *Practice Question:*
- *Resource Video:*

9. 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 the source and justification for legislation and judicial interpretation of laws.

- *Natural Law* – This legal philosophy relies on reason drawn from perceived **universal moral principles** in order to explain laws. This theory assumes that some values or beliefs are universal due to a common human nature and the ability to reason. Natural law theorist 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 founder's belief in natural law.
- *Positive Law* – This legal philosophy looks at laws as the **legal standards of conduct outlined by governments**. This theory does not look at the natural existence of standards leading to law, but rather focus on the objectives outlined by the governing body. Rather than occurring naturally, law and the rights resulting therefrom, are a 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 a 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 cultural, social, political, and economic factors of society influencing it. In turn, it 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* – Goes behind the concepts 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 on the political, social, and moral predilections of state and federal lawmakers and judges. Specifically, it states that 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 just 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.

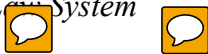
- *Discussion:* Ask yourself, what is the legislatures purpose and beliefs that drove/drive their drafting of the relevant law? Further, what judicial philosophy does an appellate judge employ when interpreting statutes (developing the common law)?
- *Practice Question:*
- *Resource Video:*

10. Common and Civil Law Systems

Two legal systems exist throughout the United States, the common law system and the civil law system. Forty-nine of the fifty U.S. States follow exclusively the common law system. Louisiana is the only US state that has a mixture of both 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 civil-law based.

- *Resource Video:* <http://thebusinessprofessor.com/common-law-vs-civil-law-systems/>

Civil Law System



The civil law system is a “code-based” system. 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 in a case. These characteristics are similar to those of the common law system. The difference lies in the effect of the judiciary’s interpretation of the law, which has little precedential value. That is, the judicial interpretation does not constitute precedent that binds the court (or any subordinate courts) in future trials that require application the same law. While the court’s decision may be influential in future cases, it’s reasoning and interpretation of the law have little legal effect outside of the respective case.

Common Law System

The common law system, on the other hand, centers around the **judicial interpretation** of statutes or other laws. That is to say, courts interpret statutes to determine the intent of lawmakers in passing the law. This interpretation guides how the subject law is to be applied in a given context. The appellate review of legal cases provides opportunity for the judiciary to write opinions explaining the court’s reasoning in how the law was applied. These opinions serve as precedent for that court or any subordinate courts within that jurisdiction when applying the subject law. In Latin, this is known as “*stare decisis*” or “let the decision stand”. The court’s interpretation then becomes the common law in that jurisdiction. In this way, the court develops a body of common law that applies alongside the subject statute. The judicial process is discussed further below.

- *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.
- **Practice Question:**

11. What is the difference between public and private law?

The distinction between “public law” and “private law” concerns who is directly governed or affected by the law.

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 state or federal) somehow interferes with the rights granted to individuals under the Constitution. Administrative law concerns the laws and procedure by which administrative agencies of the government regulated the conduct of individuals. Lastly, criminal law concerns the rules 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, state, or local agencies are governed by administrative laws? Who brings charges against and individual who violates a criminal statute?

Private Law

Private law concerns the legal relationships between individuals. While the government plays a role in the creation, execution, and interpretation of all laws, private law is less concerned with the Government’s actions with respect to its citizens. 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? How would that affect the economy? What is the effect of being able to enjoy one’s right with or without fear of infringement by others?
- *Practice Question:*
- *Resource Video:* <http://thebusinessprofessor.com/public-law-vs-private-law/>

12. What is **civil law** and criminal law?

First, 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 plain terms, it means suing or bringing a lawsuit against an individual, a business, or a governmental body. Criminal law, in contrast, refers to the procedure by which the government enforces statutes controlling the activity of individuals within the governing body's jurisdiction. Where civil actions seek compensation for losses or an order from the court to do or not do something, a criminal action seeks justice for violations of a criminal law. Often, an individual's actions can subject him or 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 and also resulted in liability in a civil lawsuit?
- *Practice Question:*
- *Resource Video:* <http://thebusinessprofessor.com/civil-law-vs-criminal-law/>

13. Substantive Law and Procedural Law

A substantive law defines a legal relationship or controls an individual's conduct. That is, it says what you can or cannot do. For example, a state that says, "though shalt not steal," would be a substantive law. Procedural law dictates how the substantive law is administered or carried out. For example, a state that says "an individual has 30 days to file a response to a civil complaint" is a procedural law.

- *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)?
- *Practice Question:*
- *Resource Video:*

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

The Constitution is the supreme law of the land. Federal Acts or Statutes (located in the federal code of statutes) are passed by Congress. Administrative regulations (located in the code of federal regulations) are the primarily procedural rules passed by agencies to carry out statutory law. Specifically, treaties and executive orders 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. In both state and federal systems, the judiciary provides appellate opinions that have the same legal force as the laws being interpreted. In terms of legal priority, federal law is superior to state law and state law is superior to the local law. Any area of law not specifically reserved to or preempted by federal law is subject to regulation by the state. State constitutions will generally lay out or 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
 - Federal Regulations
 - Treaties & Executive Orders
 - State Constitutions
 - State Statutes
 - State Regulations
 - Local Ordinances
 - Federal or State Common Law (matches the authority of the law being interpreted)
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- *Discussion:* What are some areas of law that are strictly federal law? What are some types of law that are strictly state law? Can you think of some areas of law that are regulated by both state and federal law? Can you think of a situation where state and federal law have conflicted? What is the state and federal minimum wage and how is this possible? Can state's regulate immigration into the country or state?
 - *Practice Question:*
 - *Resource Video:*

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

The judicial branch is charged with reviewing the laws passed by Congress and the Executive's execution of those laws. 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 and balance to the legislative and executive branches:

- *Step 1: Trial Court* - The federal and state trial courts serve as the mechanism by which the government enforces criminal laws against individuals (criminal law) or by which individuals (including businesses or the government) 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 fact-finder makes determinations of guilt or liability. The fact finder will either be the jury or the judge. As we will discuss in later chapters, some courts do not allow parties a jury trial. Also, a defendant can 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 involved parties have the opportunity to file for an appeal in the case. There are 13 federal appellate courts in the US, 2 of which are special appellate circuits based in Washington, DC. Most states have intermediate state appellate courts, but not all. An appeal will generally allege the erroneous application of procedural or substantive law by the trial court. In the alternative, the appeal may allege that the law itself 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 as to the application of law in that case becomes precedent for the court and all subordinate courts in that jurisdiction. If the court determines that a law was applied incorrectly or violates an individual's constitutional rights, the case (or part of the case) is overturned and remanded to the trial court. The parties may then retry the case, applying the superior court's interpretation of the law.
- *Step 3: Supreme Court* - The Supreme Court is the appellate court for all federal district courts and any state Supreme Court decisions that allegedly violate the rights granted under the Constitution. As previously mentioned, 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. In other states, the State Supreme Court acts as a second level of appeal and hears cases appealed from the intermediate state appellate court. In some cases, the State Supreme Court (state cases) or U.S. Supreme Court (federal cases) will direct that a trial court decision be appealed directly to the Supreme Court and skip the appellate court stage. Both the U.S. and State Supreme Courts generally decide issues of constitutionality. That is, did the law as applied violate the constitutional rights of a party or is the law on-its-face unconstitutional? It is important to remember that states have constitutions. The State Supreme Court determines if state laws violate the constitutional rights granted to citizens of that state. 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 appellate court for continued appeal or overturn the case (or part of the case) remanding it back to the trial court.

The judiciary provides a check that the laws passed by the legislature 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. If Congress wishes to regulate that subject-matter, it must go through the process of drafting a new law. Likewise, if conduct by the Executive 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 U.S. Supreme Courts? What constitutional right(s) did the court find that the law was violated?
- *Practice Question:*
- *Resource Video:*

18. What effect does the legal system 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, which allow for greater economic productivity and an overall benefit to society. The entity is generally considered separate being from its owners or employees. Like individuals, businesses have rights that cannot be infringed upon. Likewise, businesses cannot infringe upon the rights of others without facing 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, which you will continue to learn about throughout this text, the government undertakes considerable efforts to prevent the use of business entities to harm individuals or the market at large. 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?
- *Practice Question:*
- *Resource Video:*