This is Business Law Chapter 1. Well, first of all, what to expect? These narrations on the slides will be short and I will limit it to what I feel is most important in the chapter. You will be expected to read and know everything in each chapter. Additionally, I like to provide a comic at the beginning of each chapter. Usually, something law-related, hopefully providing something a little more fun and interesting than the text, which can get rather dry at times.

Getting into the Introduction to Law and Legal Reasoning.

There are many different laws and regulations that affect pretty much almost every business activity and the difficult thing is we’re expected to know each and every one of them, whether it’s an agency regulation, a law passed by Congress, the Legislature or the Common Law of the courts. So, we’ll start off talking about what is law, where do you find it to that end.
Audio:
Law affects the decisions we make in so many different ways, whether you have a contract or you’re involved in a business that has employees. In so many different ways, law affects everything we do and all of the decisions that we make. As I said, we’re expected to know each and every one of the laws and regulations that affect what we do. In this chapter, I will start off talking about where you find the law.

Slide #: 5
Slide Title: § 2: Sources of American Law

§ 2: Sources of American Law
- Constitutional Law.
- Statutory Law.
  - Ordinances.
  - Uniform Laws (NCCUSL).
  - Uniform Commercial Code.

Audio:
In the United States, first and foremost, the law of the land is the U.S. Constitution. The U.S. Constitution has priority over any other law or any other constitution. Each state has its own constitution and the U.S. Supreme Court has allowed the states to have constitutional provisions that are more restrictive than that of the U.S. Constitution. For example, in Washington state, the Fourth Amendment rights regarding search and seizure are more restrictive in Washington state than they are in the U.S. Constitution. Thus, the policy are restricted in what they can do, how often they can get a search warrant in some particular situations than police in other states or the federal officials under federal law. Next, we look at statutory law. Statutory laws are the laws passed by Congress or Legislature. These laws have to conform with the Constitution and the U.S. Supreme Court or the Washington Supreme Court will rule a law unconstitutional if in some way it varies from
the rules first of all set out by the U.S. Constitution. Some of the laws that are passed by the legislature include uniform laws. Uniform laws are proposed throughout each state in United States so that there is uniformity in how the law is applied. One of the main uniform laws that we study in this class is the Uniform Commercial Code. The advantage to having a similar law in every state throughout the States means that the practice of the business practices can conform to one set of laws when doing business from one state to the next. Although, there is Uniform Law, Uniform Commercial Code being one of them, it’s not always uniform. Each state tends to kind of tweak the Uniform Law, one this way one that way, so they are not always exactly the same, but for the most part they are.

Slide #: 6
Slide Title: Sources of American Law

Sources of American Law
- Administrative Law.
  - Federal Agencies.
  - State and Local Agencies.
- Case Law and Common Law Doctrines.

Audio:
Next we have Administrative Law. Congress and Legislature assigns to the different agencies the authority to make rules and regulations that deal with that agency’s purview and once again, we’re expected to know all of these rules and regulations. And then, last of all, we have the Common Law and Case Law that’s handed down through the years through the courts, first of all in England and then in United States.

Slide #: 7
Slide Title: § 3: The Common Law Tradition

§ 3: The Common Law Tradition
- American law is based largely on English Common Law which was based largely on traditions, social customs, rules, and cases dating back to 1066 A.D.

Audio:
The way that works, the Common Law tradition was set up in England and rules and regulations were established by the courts from everything from Tort Law to contracts and a variety of other rules and laws. All of that was adopted in the United States and it became the tradition known today as Stare Decisis.

Slide #: 8
Slide Title: Stare Decisis

Stare Decisis
- *Stare Decisis* (“to stand on decided cases”) is judge-made law.
- Case Precedents and Reporters
  - Each decision and interpretation becomes a legal precedent.
Cases are now published in national and regional “Reporters” (discussed later in Chapter 1).

**Audio:**
That means to stand on decided cases or judge-made law. What happens is any court, first and foremost, must rule the same as some higher court has set a precedent. So, whether it’s a municipal court as I am a municipal court judge, I have to do or follow whatever rules had been determined by the superior court in the county – the Court of Appeals or Washington Supreme Court – regarding Washington law.

**Slide #: 9**
**Slide Title:** Stare Decisis

*Stare Decisis*
- *Stare Decisis* and the Common Law Tradition.
  - Courts are obliged to follow precedents within their jurisdictions.
  - Courts should not overturn their own precedents without compelling reasons.
- *Stare Decisis* and Legal Stability.

**Audio:**
This means that there is a precedent established and that all courts must follow those precedents. You will see when we do briefs that the courts will cite decisions by other courts, previous decisions, that describe similar fact situations and what rules of law applied that they will apply in each case and that is applying the precedent of a prior case.

**Slide #: 10**
**Slide Title:** Stare Decisis

*Stare Decisis*
- Departures from Precedent.
  - In cases of “first impression” where there is no precedent, the court may refer to positive law, public policy, and widely held social values in order to craft the best new precedent.
- When There is No Precedent.

**Audio:**
On occasion, there is no prior case and no decision has been made. For example, there is a law in the state of Washington that says any unlawful search is a gross misdemeanor punishable by a maximum of one year in jail and a $5,000 fine. There was a case in which a person was charged with having made an unlawful search and it was in good faith. It was a police officer and in good faith, he believed he had the right to make the search, but it was later determined that it was an unlawful search. The statute does not say anything about good faith, so question is do you read good faith into that statute or not? Well, he was convicted of having made this unlawful search and criminally liable, appealed that to the Court of Appeals. The Court of Appeals ruled that implicit within this statute is the exception...
if the search was made in good faith, then one is not criminally liable. That was then appealed to the Washington State Supreme Court for its interpretation of the statute. This is the only case I’ve ever read that has done this.

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<td><strong>Slide Title:</strong> There is No One “Right” Answer</td>
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<tr>
<td>There is No One “Right” Answer</td>
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<tr>
<td>- Good arguments are made for different sides.</td>
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<td>- Judges have personal beliefs that can affect decisions.</td>
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<td>- Outcomes to lawsuits cannot be predicted with certainty</td>
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**Audio:**
In Washington State Supreme Court, there are nine judges. Four of the judges took a very legalistic, very non-activist judge approach and said the law is what it is and we’re not going to mean something other than what it says. On the other hand, four other judges said that we can safely assume that there is a good faith exception to this statute and so they are reading a good faith exception into this statute even though it’s not in there specifically. Interestingly enough, the last judge said, “You know what, I don’t know if there is or isn’t. It’s just too hard to decide”. Well, the end result as far as precedent goes in this situation is that the decision of the Court of Appeals then stands as the decision for the state of Washington and when I had to rule on this issue, that was my determination. If there’s no precedent at all, then there’s no other court that you have to follow and you make your best decision as possible based on the law as you know it when you’re the judge. Often times, a court can go either way on a legal argument. The law, contrary to what you may think, is not black and white. Why do you think you get four judges deciding one way and five judges deciding the other way in the Supreme Court?

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<td><strong>Slide Title:</strong> The Common Law Today</td>
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<td>The Common Law Today</td>
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<tr>
<td>- Common law governs transactions not covered by statutory law.</td>
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<td>- Courts interpret statuses.</td>
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<td>- Summarize the common law of most states</td>
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<td>- American Law Institute.</td>
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**Audio:**
It’s because the law is not black and white. What is or is not legal is not always that easy to determine. Sometime it is, but not always and that’s why you have the tough cases with judges going either way. You have Supreme Court overruling the Court of Appeals, the Court of Appeals overruling a trial court. Each judge does the best they can with their understanding of the law, with the arguments that are made and following whatever higher court opinion has been issued.
§ 4: Schools of Jurisprudential Thought

- Natural Law School.
- Positivist School.
- Historical School.
- Legal Realism.

Audio:
Next, we talk about the schools of jurisprudential thought. What is jurisprudence? Jurisprudence is the study of law. That simple! And so, different schools of jurisprudential thought are a determination of how the law affects each one of us and what theory of applying the law is best. Now, the book covers four different theories: the Natural Law, Positivist, Historical, and Legal Realism. Each one has a different approach and in United States, at different times each one of these approaches has been applied. So, we'll start with the Natural Law.

The Natural Law School

- Assumes law, rights and ethics are based on universal moral principals inherent in nature discoverable through human reason.
- The oldest view of jurisprudence dating back to Aristotle.
  - The Declaration assumes natural law, or what Jefferson called “the Laws of Nature.”

Audio:
This law assumes law rights and ethics are based on universal moral principles and you find this in our founding documents. For example, in The Declaration of Independence.

Declaration of Independence

“We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness.”

Audio:
It says, “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty
and the pursuit of happiness.” That would be a description of the Natural Law school approach to law.

**Slide #: 16**
**Slide Title: Natural Law: Rev. Martin Luther King, Jr.**

Natural Law: Rev. Martin Luther King, Jr.

Letter from the Birmingham Jail, April 16, 1963. “[T]here are two types of laws: just and unjust laws. ...A just law is a man-made code that squares with the moral law. ...An unjust law is a code that is out of harmony with the moral law. ...An unjust law is a human law that is not rooted in eternal and natural law.”

[Image of Martin Luther King, Jr.]

**Audio:**
Next, we have the Martin Luther King, Jr. He described it this way, “There are two types of laws: just and unjust laws. ...A just law is a man-made code that squares with moral law. ...An unjust law is a code that is out of harmony with the moral law. ...An unjust law is a human law that is not rooted in eternal and natural law,” which then would bring us to the next issue is if a law is contrary to some higher moral code, when is it acceptable to violate that law? When is civil disobedience acceptable? Well, that’s more than this class is going to cover, but certainly an issue that we could spend all semester on.

**Slide #: 17**
**Slide Title: The Positivist School**

The Positivist School

- Law is the supreme will of the State that applies only to the citizens of that nation at that time.
- Law, and therefore rights and ethics, are not universal. The morality of a law, or whether the law is “bad or good,” is irrelevant.

**Audio:**
Next, we have the Positivist school. This says the law is supreme. It says what it says; it means what it means. It’s not good or bad – it just is what it is. Now, there’s an important aspect about this: the law is not always fair. The law was written often times for a particular situation and then applied to a different situation where it is not fair. So, do not expect the law to always be fair. It is what it is and that’s the way it goes and that’s what the positivist school indicates.

**Slide #: 18**
**Slide Title: The Historical School**

The Historical School

- Emphasizes the evolutionary process of law.
• Concentrates on the origins of the legal system.
• Law derives its legitimacy and authority from standards that have withstood the test of time.

Audio:
The Historical school of approach emphasizes the evolutionary approach to the law: that law derives its legitimacy and authority from the standards that have been handed down over time.

Slide #: 19
Slide Title: Legal Realism (Legal Activism)

Legal Realism (Legal Activism)
• Jurisprudence that holds law is not simply a result of the written law, but a product of the views of judicial decision makers, as well as social, economic, and contextual influences.

Audio:
And then, Legal Realism or Legal Activism. This holds that law is not simply a result of written law, but a product of views of judicial decision makers, as well as the social, economic, and contextual influences of today’s society. In other words, even though the Constitution says one thing, you can interpret it differently if society has changed and that’s what Legal Activism is. When we get into Constitutional law, I have a clip that gives you a discussion of Legal Activism and different thoughts about it, but in Legal Activism you basically have the judges, usually the Supreme Court judges, indicating that even though the law says this or doesn’t say anything about that, they’re going to write it into the law and assume that it’s there because that’s best for society.

Slide #: 20
Slide Title: § 5: Classifications of Law

§ 5: Classifications of Law
• Every type of law will be either:
  o Civil or Criminal. →
  o Substantive or Procedural. →
  o Public or Private.

Audio:
Next, we get into classifications of law. Now, we have covered in the text here three different classifications. The last one – Public or Private – usually doesn’t come into play very much. So, the first one, Civil and Criminal.

Slide #: 21
Slide Title: Civil vs. Criminal

Civil vs. Criminal
- Civil law defines the rights between individuals or individuals and governments.
- Criminal law defines and individual’s obligations to society as a whole.

Audio:
Civil Law and Criminal Law are substantially different, both in terms of procedure in court as well as the rights and liabilities of one that is subject to the law. So one of the first determinations one needs to make when talking about applying the law is to determine if we’re talking about Civil Law or Criminal Law. The burden of proof is different. It’s just substantially different rules applied at each different type of law.

Slide #: 22
Slide Title: Substantive vs. Procedural

Substantive vs. Procedural
- Substantive law defines or creates the rights and obligations of persons and governments.
- Procedural law provides the steps one must follow in order to avail oneself of one’s legal rights or enforce another’s legal obligations.

Audio:
Next, we cover Substantive and Procedural. Okay, that does sound confusing, but it’s really not. Substantive – that deals with the substance of the law itself, what does the law say? Procedural deals with exactly what the word says, kind of nice for us, because not everything is like that. Procedural means what procedure you have to go through, usually in court, to apply the law or argue about it or deal with it in court and you’ll need to separate those different aspects of law as we move along through court procedure and Constitutional law and some of these things.

Slide #: 23
Slide Title: Cyber Law

Cyber Law
- Not really a new type of law.
- Traditional legal rules applied to online transactions.
- Applies to advertising, contracting, baking, filing documents with courts, employment relations and other transactions.

Audio:
And the book decided to cover separately Cyber Law with the first point being it’s not really a new type of law. Cyber Law is just law applied to the internet. It’s the same law and some things they have to modify somewhat because of jurisdictions and territory and because of the expanse of the internet, but it’s still the same kind of law so don’t expect any different section of law that is Cyber Law although the text kind of does that. This concludes Chapter 1. I hope you’ve enjoyed the lecture.