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HANDOUTS

INTRODUCTION TO THE LEGAL SYSTEM (MODULE 1) -FIRST PARTIAL-

for attending
students

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This handout is written by students with no intention of replacing university materials.

It is a useful tool for studying the subject, but does not guarantee preparation as exhaustive and complete as the material recommended by the University.





UNIT 1: LAW AND THE STATE

1) Definition of Law

- **Ethymology:** The word "law" comes from the Latin term "directum," meaning straight or just. Various languages have adapted this word (e.g., French "droit," Italian "diritto").
- **Concepts:** "Ius" in Latin translates to law, leading to words like justice, jurisdiction, and jurist. There's debate whether law is "what has been commanded" (ius quia iussum) or "what is just" (ius quia iustum).
- **2 Different Views of Law:**
 - **Legal Naturalism:** Ancient view where law is seen as a natural order where everything has a rational place and purpose, possibly divinely influenced.
 - **Legal Positivism:** Modern view where laws are seen as established by a legal authority. This view dominates contemporary legal discourse and was notably developed by Hans Kelsen.
- In the beginning of the 18th century, the formation of national states, marked by the political decisions of sovereign entities like absolute monarchs or democratic parliaments, shaped the development of private law.
- The "**Westphalian paradigm**" refers to a system of political organization that came into general acceptance after the Peace of Westphalia in 1648. This event marked the end of the Thirty Years' War in Europe. The key ideas of this paradigm are:

- **State Sovereignty:** Each country (or state) has the authority to govern itself without outside interference. This means that a country can make its own laws and enforce them within its borders.
- **Domestic Law:** Under this paradigm, the government of each country has the power to create laws that everyone in the country must follow. This is about how countries handle their own internal affairs.
- **International Law:** Even though countries can govern themselves, they can also make agreements with other countries. These agreements must be followed just like laws within a country. But these agreements are made voluntarily, which means a country agrees to limit some of its own powers to cooperate with other countries.

2) Comparative Law

- **Comparative law** is a discipline that studies the differences and similarities between laws of different nations. It helps understand how laws function in different national concepts and helps in the construction of both national and international laws.
- **Comparative law is NOT foreign law:** foreign law refers to the legal system of a country other than one's own, it is used in legal cases involving foreign elements.
- **Aims of comparative law are:**
 - **Aid to legislature:** it serves as a tool to help lawmakers understand different legal systems which can be useful in crafting new national or international laws.
 - **Academic Discipline:** comparative law is studied in universities to deepen understanding of global law systems
 - **Uniform Law Development:** studying comparative law can push efforts to standardize law across countries, making legal interactions easier and smoother.

- **History:** the historical birth of comparative law is the International Congress of Comparative Law which was held in 1900. Ernst Rabel is considered one of the fathers of it, he was a German scholar who defined the scope and methods of comparative law.
- **Methods:**
 - **The Historical Comparatist Approach:** this method focuses on the historical and cultural roots of legal systems. It seeks to understand how legal traditions developed over time and how they influence current laws.
 - **The Functionalist Approach:** this method looks at laws in terms of their functions and how they solve specific problems, without looking at the historical background.
 - **The Theory of Dissociation of Legal Formants:** it helps understand the complexities within different legal systems, by acknowledging that 1) Legislation, 2) Judicial decisions and 3) Scholar's opinions might diverge within the same legal system. This theory allows comparative law scholars to analyze and compare these discrepancies across different jurisdictions.
 - **Micro-Comparison:** this method of comparing legal systems relies on operational solutions to address real-world problems and practical cases.
 - **Macro-Comparison:** in contrast with micro, macro looks at broader legal frameworks. It compares national laws by considering their constitutional and institutional characteristics, as well as the overall legal culture in each system.

3) International Private Law

- **Legal families:** they are groups of legal systems in different nations that share common features and historical roots.
 - **Renè David's Classification:** Renè classified legal systems around the world into families based on shared concepts and characteristics.
 - **Two Main Families:** within the western legal tradition the two

most important legal families are common law and civil law.

- **Legal Traditions:** it is NOT like legal families, legal traditions focuses on the cultural practices that influence legal reasoning in different nations.
- **Mixed Legal Systems:** Some countries like Scotland, South Africa or Quebec have legal systems which combine elements from multiple legal traditions and legal families, having a blend of civil law, common law and **other** indigenous legal practices.
- **International private Law:** also known as conflict of laws, it addresses situations where the legal issues involve more than one country and it determines which legal system and which laws are applicable.
 - **Ex:** There is a contract between a French and a German party in Italy, international private law is used to determine which laws to apply.
 - **EU Regulation:** For EU member states many aspects pf international private law are unified under EU regulations, which help standardize the rules across member states.

4) Uniform Law

- **Definition:** Uniform Law aims at making laws and regulations consistent across different countries, to simplify and harmonize legal interactions from different places.
- **How? With Legal Transplants and Conventions:** Legal transplants involve transferring a law from one country to another with minimal modifications. Conventions are formal agreements or treaties between countries that agree to adopt the same legal standards.
 - **Problem With Legal Transplants:** There is potential for a



“rejection crisis” which occurs when the legal system of a country receiving the foreign law struggles to integrate it because of ingrained legal traditions. Such discrepancies can cause the new law to be misinterpreted, improperly applied, or also rejected

- **Rabel’s Perspective:** Rabel thinks that true uniformity in law is achieved only when uniform legislation is interpreted using comparative law, considering all the legal systems involved. Otherwise, local courts might interpret uniform legislation based on domestic criteria leading to problems.
- **History of International conventions and Model Rules:** Both international conventions for B to B sales like the CISG (UN convention on international sale of goods) and model rules like the UCC (Uniform commercial code) serve crucial roles in global commerce and legal interactions internationally in sales from a company to another (B To B).

UNIT 2: CIVIL LAW AND COMMON LAW JURISDICTION

1) Roman Law

- **Corpus Iuris Civilis:** is a collection of Roman Law. It was compiled under the direction of the Byzantine emperor Justinian I in the 6th century, and it systemized centuries of Roman jurisprudence into a comprehensive legal code which had a strong influence on the development of legal systems. It has 4 main components:
 - **Codex Justinianus**
 - **Digesta**
 - **Institutiones**
 - **Novellae Constitutiones**

2) IUS Civile

- **Renaissance of roman law:** the tradition of studying roman law had a revival between the end of the 11th century and the end of the 12th, these studies deeply influenced the development of western legal traditions.
- **Role of Irnerius:** Irnerius was a scholar from Bologna who rediscovered the Corpus Iuris Civilis and began to comment and teach them. The re-discovery of roman law contributed to the foundation of the first university of the western world: the Alma Mater Studiorum of Bologna.

3) Civil Law

- **Civil Law Characteristics:** The Civil Law systems is characterized by a division of state powers: 1) Legislature 2) Executive 3) Judiciary. It has a preference for organizing laws into comprehensive code that provides clear and accessible legal guidelines to promote justice and equality.
 - **Example in Italy:** Codice civile
 - **Example in France:** Code Civil
- **Role of Montesquieu:** He was a French philosopher famous for articulating the theory of the separation of powers, for example he described judges as only “the mouth that pronounces the words of the law”.

4) Common Law

- **Common Law Characterisrics:**

- **Judge Made Law:** Common law is based on rulings made by judges which become precedent that future judges have to follow.
 - **Organic Development:** Unlike civil law systems that are based on comprehensive codes, common law develops organically through the decisions made in individual cases by judges.
 - **Equity:** it is a separate body of law which focuses on addressing shortcomings of the rigidity of the common law system. It allows judges to rule decisions based more on fairness rather than following precedents which would be unjust.
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- **Historical Development:** The historical development of common law started with the Norman Conquest of England in 1066, establishing a legal system that evolved through judicial decisions rather than statutes. It was shaped significantly during the English Civil War and the Glorious Revolution, which emphasized the role of judges and the importance of judicial independence. Over the centuries, common law developed a body of precedents (*stare decisis*), further formalized by the Judicatures Acts of 1873-1875, integrating common law with equity.

UNIT 3: LAW AND JUSTICE

1) Natural Law and Human Reason

- **Two Opposite views of Law:**
 - **Legal Naturalism (Ius uia iustum):** This view posits that law is based on the natural order and moral truths. It holds that laws are inherent, rational, and should align with what is naturally just and right. Laws are valid if they reflect natural justice.
 - **Legal Positivism (Ius quia iussum):** This perspective emerged in the 19th century and argues that law is defined by what is enacted by legitimate authorities, regardless of moral considerations. According to positivism, laws are valid if they are established by the proper procedures and recognized by the state, conceptualized notably by Hans Kelsen.
- **Legal Naturalism and Human Reason:** In the doctrine of natural law, any law that deviates from what is deemed rational and aligned with the natural order is considered unjust and thus not a true law. This idea leads to the concept that "unfair law is no-law. However, we distinguish two approaches that judges following the doctrine of natural law might take:
 - **Strong Definition of Natural Law:** In this view, judges recognize when laws are unjust because they conflict with natural law. They have the discretion to choose whether to apply such laws. This gives judges a more active role in ensuring that the laws they enforce are just according to natural law principles.
 - **Weak Definition of Natural Law:** Here, judges also recognize when laws are unfair and conflict with natural law but feel obligated to apply them regardless of their own judgments about their fairness. This perspective limits the role of judges to merely enforcing laws, leaving the responsibility to amend or discard unjust laws to legislators.

2) Legal Positivism

- **Kelsen's "Pure Theory of Law:** posits that law is comprised of norms or rules that are completely autonomous from morality, religion, or any other external influence. The theory is termed "pure" because it seeks

to define law solely based on its own standards and structures, without mixing it with other disciplines or ethical judgments.

- **Legal Positivism:** This theory asserts that law is a system of norms defined by their creation process rather than their content. The validity of a law (whether it should be followed and recognized as law) depends on its origins and the process through which it was established, not on its fairness or moral value.
- **Norm Validation:** Legal positivism requires a specific method to recognize which norms are legally binding. This method focuses on the "pedigree" of the norm, meaning its source or the formal process by which it was enacted by relevant political institutions.
- **Hierarchy of Norms/Normativism:** Each norm gains its validity from another higher norm. This hierarchical system ensures that there is a clear rule or higher norm that governs the creation and application of each subsequent lower norm, thereby providing a systematic and orderly legal framework.
- **Judicial Role in Positivism:** Judges under legal positivism are bound to apply the law as it is, regardless of personal judgments about its fairness. The emphasis is on legal validity rather than justice, making the law's application compulsory as long as it fits the established criteria for a valid law within the system.

3) The Renaissance of Natural Law

- **Martin Luther King Jr. Thoughts:** he thought that humans have not only a legal but also a moral duty to obey just laws and, conversely they have a moral duty to disobey unjust laws. He was inspired by St. Augustine, who stated that "an unjust law is no law at all".
- **Radbruch's Formula:** he was a renowned legal philosopher which believed that law must be just, and if it fails to do so, it loses its authority and it should be disobeyed by humans.

UNIT 4: RULES, PRINCIPLES AND LEGAL SYSTEMS

1) Structure of Norms

- **Laws are Not Absolute Imperatives:** Laws are not absolute imperatives; unlike religious or moral norms, they do not solely rely on personal belief. For instance, the commandment "Thou shalt not kill" illustrates a moral directive typical in religion but not suitable for law. According to Kelsen's theory, legal norms are defined not only by the commands they issue but also by the sanctions for non-compliance. This highlights law's coercive nature, enforcing social order through specific penalties, contrasting with the voluntary adherence seen in moral imperatives.
- **Structure of a Norm:**
 - **If Clause:** specifies the state of affairs of a particular situation or condition. It outlines the scenario which must occur to trigger the then clause of the norm.
 - **Then Clause:** it is the consequence specified by the norm. it details what actions the law will enforce when the conditions of the If clause are met.
 - **Not Always a Negative Consequence:** usually the then clause implies a negative consequence, but actually in private law it can be of three different types: 1)To create, 2)To Modify or 3)to Nullify
- **Scope of Norms: a norm is marked by two different characteristics:**
 - **Generality:** it means that a norm applies to universally to all individuals who find themselves meeting the conditions of the If Clause. Everyone is treated equally.
 - **Abstractness:** It means that the description of the state of affairs envisaged by the if Clause must be broad so that whatever event matches it will trigger the Then Clause.
 - **Example:** Whoever kills an animal will be.....(in this case "Whoever" is the general characteristic since it is not specifying a single human but humans as a class and "An animal" is the abstract part since it is not specifying a specific animal.
- **Mandatory and Default Rules:**

- **Mandatory Rules:** these laws may NOT be set aside by an agreement between parties. Most of public law is composed of mandatory rules to maintain the supremacy of public interest over individual interest.
- **Default Rules:** these rules may be set aside through an agreement between parties. Most of private law is composed of default rules, essential for example in the case of supplement agreements entered by the parties.

2) Normativism

- **Hierarchical Order of Norms and Validity:** legal norms are organized in a hierarchy, where each norm derives its validity and authority from a higher norm above it in the legal system. The most foundational norm is the “Grundnorm” or basic norm.
- **Soft Positivism:** This theory, associated with the philosopher H.L.A. Hart, suggests that while legal norms primarily derive their authority from their place in the hierarchical structure (pedigree), they also incorporate principles of justice or moral values recognized by society. This contrasts with strict legal positivism, which holds that the validity of a law depends solely on its origins and not on its content.

3) Sources of Law

- **Definition and Characteristics:** Sources of Law are the “Secondary rules” which govern the possible change of the primary ones. They ensure 1) Certainty, 2) Dynamism and 3) Efficiency of the legal system. Each legal system has its own sources of law, and they are not recognized in other legal systems.
- **Capabilities:** Sources of law are capable of either 1) Creating new rules or 2) Amending or Repealing rules already existing. 3) Validate whether a specific rule is also a legal rule.
- **Two Types of Sources of Law:**
 - **Sources of Production:** they are mechanism through which laws are created or altered and they are divided into:
 - **ACTS:** These are formal decisions made by sovereign authorities, such as parliaments, to enact new laws, amend

- existing ones or repeal outdated laws.
 - **FACTS:** These refer to customs and traditions that evolve and become legally binding due to their long standing and consistent practice (Opinio juris ac necessitates).
 - **Some Examples:** The constitution, Statues and Enactments, Regional Laws, Regulations, Uses.
- **Sources of Cognition:** they are methods to inform about laws such as official publications: Gazzetta Ufficiale della Repubblica Italiana.

4) EU Law

- **Primary Sources of EU Law:** they are the foundational legal documents that establish and govern the European union such as treaties. They provide the legal basis for the EU's operations and outline the responsibilities and powers of its institutions.
- **Founding Treaties:**
 - **Treaty of Paris (1951):** Established the European Coal and Steel Community, aiming to integrate economic interests and reduce the likelihood of conflict between member nations.
 - **Treaties of Rome (1957):** Created the European Atomic Energy Community (EURATOM) and the European Economic Community (EEC), the latter of which is aimed at creating a common market with free movement of goods, services, labor, and capital across member states.
 - **Lisbon Treaty (2007):** This is the most recent major reform of the EU's constitutional framework. It streamlined the EU's governance structures and enhanced the powers of the European Parliament.
 - **Legal Decisions by the EU's Judiciary:** Key court cases have also acted as primary sources of law by interpreting the treaties. For example, the **Van Gend en Loos case (1963)** established the

- principle of direct effect, allowing EU law to confer rights on individuals which they can enforce in their national courts.
- **Charter of Fundamental Rights of the European Union:** This document consolidates all personal, civic, political, economic, and social rights of European citizens and residents as derived from the constitutional traditions and international obligations common to the Member States.
 - **Treaty on the Functioning of the European Union (TFEU):** Alongside the Treaty on European Union (TEU), it sets out the explicit functions, policies, and operations of the EU.
- **Secondary Sources of EU Law:** derive from Article 288 of the Treaty on the Functioning of the European Union (TFEU) and include regulations, directives, and decisions or also non-binding acts.
 - **Regulations:** have general application, are binding in their entirety, and are directly applicable in all EU Member States
 - **Directives:** are binding only regarding the result to be achieved, leaving national authorities the choice of form and methods.
 - **Decisions:** are binding legal acts that may be of general application or addressed to specific entities
 - **Non-Binding Acts:** such as recommendations and opinions, which provide guidance but do not impose legal obligations
 - **Faccini Dori Case (1994):** is an important ruling by the European Court of Justice (ECJ) regarding the direct effect of directives in horizontal relationships (i.e., relationships between individuals or private parties). This case clarified that while directives are binding on Member States, they are not directly enforceable by individuals against other individuals unless they have been transposed into national law.
 - **The relationship between national and EU sources of law:** was initially marked by conflicts between the European Court of Justice (ECJ) and national constitutional courts, but it is now a well-established principle that EU law takes precedence over national law, regardless of

whether the conflicting national law was enacted before or after the EU law. These principles were established by two different cases:

- **Costa v. Enel case (1G64):** where the ECJ ruled that EU legislative acts override national laws, ensuring uniform application across Member States.
 - **Simmenthal case (1G78):** further reinforced this by stating that every national court must stop applying national legislation that conflicts with EU law, without waiting for a ruling of unconstitutionality from the national constitutional court.
 - **Example:** when a national court encounters an issue requiring EU law interpretation during a case, it must suspend proceedings and refer the question to the ECJ for resolution, ensuring that EU law is upheld consistently across all Member States.
- **Relationship Between EU law and National Sovereignty:** The 1993 Maastricht ruling by the German Constitutional Court emphasized that while the EU has sovereign powers within its competencies, the EU is not a federal state. The ruling reinforced that the EU's power is derived from the Member States and that national constitutional courts retain the authority to review EU actions against national constitutions.
 - **Cases in which states fail within its competences:** for subjects falling within its competence, the EU exercises two main powers:
 - **Legislative Power:** allows the EU to create laws that apply to Member States and their citizens. This power is exercised through institutions such as the European Parliament, which consists of elected representatives of EU citizens, the Council of the European Union, which includes representatives of Member States' governments, and the European Commission.
 - **The Judiciary power:** ensures the uniform interpretation and application of EU laws. This is primarily carried out by the Court of Justice of the European Union (CJEU), which interprets EU law and resolves disputes involving EU institutions.

- **The European Court of Justice:** consists of two main courts:
 - **Court of Justice:** handles requests for preliminary rulings from national courts, ensuring uniform interpretation of EU law, and deals with certain actions for annulment and appeals.
 - **General Court:** on the other hand, rules on actions for annulment brought by individuals, companies, and, in some cases, EU governments. It primarily deals with cases related to competition law, state aid, trade, agriculture, and trademarks.

 - **Example:** If a private individual or company suffers damage due to an EU institution's action or inaction, they have two possible ways to seek legal recourse.
 - First, they can act indirectly through national courts, which may refer the case to the Court of Justice for a ruling.
 - Alternatively, they can act directly before the General Court if the EU institution's decision has affected them individually and directly.

- **EU Law and Comparative Law:** illustrated through the interaction between EU legal principles and national legal traditions.
 - **The Werner Mangold v. Rüdiger Helm (2005) Case:** demonstrated how comparative law, particularly principles found in the Finnish and Portuguese Constitutions, influenced EU law.
 - The Court of Justice of the European Union (CJEU) recognized a general principle prohibiting discrimination on grounds of age and granted it direct horizontal effect, meaning it could be applied directly between individuals. This principle became part of European private law without being explicitly mentioned in EU primary legislation, showcasing how legal principles from Member States can shape and reinforce overarching EU legal norms.

 - **Downward impact on National Private Law:** A clear example is the increasing importance of the principle of good faith in Member States' legal systems. In Italy, for instance, the Corte di Cassazione (Supreme Court) rarely applied the principle of good

faith, but this trend was reversed as EU law emphasized its relevance, particularly after the enactment of the Unfair Terms Directive. This demonstrates how European legal principles can gradually shape national judicial practices and interpretations.

- **Charbonnière de Belgique v. High Authority (1G54-1G56) case:** Advocate General Maurice Lagrange emphasized that the sources of EU law could be drawn from international law, but in most cases, they would be found within the internal legal traditions of the Member States. This insight highlights the reciprocal influence between national legal traditions and EU law.

5) Filling Gaps

- **Filling Legal Gaps:** according to legal positivism a legal system should have 2 characteristics: Completeness and Consistency. However statistically all legal systems are incomplete and inconsistent, this is why there exists secondary rules designed to fill legal gaps and solve contradictions.
 - **Completeness:** there should be no gaps in the primary rules
 - **Consistency:** there should be no contradictions in the primary rules, and each legal case is given only one legal response.
- **Englaro Case:**
 - **Description of the Case:** Eluana Englaro suffered a car accident that left her in a persistent vegetative state. She was kept alive through artificial feeding, despite her previously expressed wish not to be kept alive under such conditions, a wish her father supported and sought to honor by ending artificial life support.
 - **Constitutional Context:** The case raised constitutional issues, referencing the duty to solidarity, the inviolability of personal liberty, and the safeguarding of health as both a fundamental right and a collective interest under the Italian Constitution.
 - **Legal Decision:** The Corte di Cassazione ruled that a legal guardian could discontinue medical treatments like hydration

and artificial feeding if the patient's irreversible vegetative state was confirmed and the application reflected the patient's will, aligned with their previous statements or known beliefs.

- **Consequence:** Following this ruling, Eluana's feeding was discontinued, allowing her condition to conclude naturally in accordance with her and her family's wishes. This case is significant for filling legal gaps as it addressed the lack of clear guidelines in Italian law about the withdrawal of life support when a patient cannot decide for themselves, setting a precedent for how similar cases should be handled legally.
- **Filling gaps: Two Opposite Views:**
 - **Hart:** gaps may be filled at judges' discretion by creating a new law when they encounter a case that is not specifically addressed by existing laws or precedents.
 - **Ronald Dworkin:** he argued that no gaps in law really exist because all decisions can be guided by the underlying moral principles of "implicit" law.
- **Analogy:** it is primarily used in civil law systems and it is a legal method where judges apply existing statutes to situations that are not explicitly addressed in the law, based on the similarity to cases that are covered.
 - **Limitations of Analogy:** particularly in criminal law, where the principle "nullum crimen, nulla poena sine lege" (no crime and no punishment without law) prevails, preventing the use of analogy to create new offenses or penalties. Analogical application is also restricted in cases where norms are considered exceptional and not similar to any other cases, thereby limiting its use to more routine situations.
 - **Italian Model:** In Italian law, judges can apply two types of analogy to address cases where the law is silent:
 - **Analoga Legis:** allows judges to extend specific laws to similar cases not explicitly covered by the existing statutes

- if these cases are closely related to the matters legislated.
- **Analogia iuris:** is used as a backup when no specific law applies, allowing judges to decide based on general principles of the state.
 - **Swiss Model:** In the Swiss legal model, if no specific law applies to a case, judges use customary law as the first reference. If customary law is also insufficient, they then apply what they believe the law would dictate, based on legislative intent and established legal traditions. This approach allows Swiss judges to use their discretion to fill legal gaps, ensuring decisions respect historical practices and the underlying principles of the law.
 - **French Model:** judges in France are required to decide cases based on existing laws, even if these laws are unclear or incomplete. They are prohibited from refusing to judge by claiming that the law is silent or ambiguous, ensuring they actively fulfill their judicial duties. This approach restricts the use of analogy, particularly in criminal law, to adhere closely to the written law and its explicit provisions.
 - **Settling Antinomies:** An antinomy in law refers to a contradiction between two rules or laws where both cannot apply simultaneously. These inconsistencies arise when different provisions of the law clash, making it unclear which should be followed.
 - **Hierarchical Criterion:** This criterion states that if a conflict occurs between a higher-level law and a lower-level law, the higher-level law prevails. This ensures that the most authoritative source of law in the hierarchy is followed
 - **Content-Based Criterion:** When laws of similar hierarchy conflict, the one with a narrower scope (addressing specific issues) takes precedence over one with a broader scope. This approach prioritizes detailed regulations specific to the matter at hand.
 - **Time-Based Criterion:** If two laws of the same level conflict, the more recent law supersedes the older one. This criterion

recognizes the legislature's latest intentions as the most relevant to current conditions.

6) Criteria of Interpretation:

- **Criteria:** they are established methods used to determine the scope of application of a law to make sure judges are applying it consistently. They are primarily used in civil law systems, where judges need to interpret laws written in the comprehensive civil codes.
 - **Grammatical/Literal Interpretation:** it focuses on the exact wording of the law.
 - **Systematic Interpretation:** looks at the law in the context of the whole legal system in which it is.
 - **Historical Interpretation:** considers the original intent of the lawmakers based on historical documents and preparatory works
 - **Teleological Interpretation:** examines the purpose or policy behind the law to determine its broader or narrower application.

- **Example:** there is a law that forbids the presence of dogs in a butchery, and we have to use different criteria of interpretation to examine whether also guide dogs are included in the If clause and therefore cannot enter by the then clause.
 - **Literal Interpretation:** the law explicitly forbids all dogs, with no exceptions for guide dogs. Thus, a strict reading of the text means guide dogs are also not allowed in a butchery.

 - **Legislative Intent:** The law's purpose, based on legislative discussions, is to maintain hygiene in food stores. Since guide dogs are still dogs and the law is designed to prevent hygiene risks associated with dogs, this interpretation would also exclude guide dogs.

 - **Teleological Interpretation:** This approach considers the law's

objective to ensure hygiene. Recognizing that guide dogs are well-trained and fewer in number, they might not significantly impact hygiene. Therefore, it could be argued that guide dogs could be an exception to the rule, as their controlled presence still supports the law's goal of maintaining hygiene.

7) Doctrine of Stare Decisis:

- **Stare Decisis:** This doctrine, used primarily in Common Law legal systems, which means "to stand by decisions," is a legal principle that mandates courts to follow the rulings of higher courts in previous similar cases. It ensures consistency and predictability in the law by binding lower courts to adhere to established precedents unless they are overruled.
 - **A Precedent Set by a Higher Court:** A precedent set by a higher court is binding on lower courts within the same jurisdiction, ensuring legal uniformity by requiring these courts to follow established rulings on similar legal questions.
 - **Overruling:** When a higher court determines a previous ruling is unsound, it can overrule that precedent, removing its binding effect. This allows the law to evolve and stay relevant by adapting to new interpretations or changed circumstances.
 - **Distinguishing:** Courts use distinguishing to handle cases that are similar but not identical to a precedent. If there are significant differences in facts or legal issues, a court may decide the precedent does not apply, providing flexibility while maintaining respect for established rulings.

UNIT 5: PRIVATE LAW AND PUBLIC LAW

1) Private Law vs Public Law:

- **History:** the distinction between the two types of law originates from Roman law, and is now present in most of Continental Europe.
 - **Public Law:** defined as the sector of law involving administrative roles, indicating where government or state functions are directly involved.
 - **Private Law:** described as the area of law where the state or administrative bodies do not play a direct role. This domain typically covers laws that govern individual and private entity interactions.
 - **Exception:** it is also possible that the state can act as a private party and is treated like any other private party in legal terms. (acting Iure privatorum)
- **Private Law:** focuses on the relationships between individuals or entities, regulating the interactions and disputes among them without direct involvement of the state in its role as a regulator or enforcer and it is divided into 2 branches:
 - **Civil Law:** Civil law is broad and applies to the general populace. It encompasses various legal subjects that affect daily life and interactions of citizens.
 - **Contract Law:** governs the agreements and obligations between parties.
 - **Tort Law:** deals with situations where someone's wrong can cause harm to another, leading to civil liability.
 - **Property Law:** involves regulations related to ownership and use of property.
 - **Family Law:** addresses matters such as marriage, divorce, child custody, and related personal affairs.
 - **Inheritance Law:** concerns the passing on of assets from one generation to another.

- **Commercial Law:** this branch of private law specifically targets enterprises and commercial activities and it is divided into:
 - **Companies Law:** includes laws that govern how companies are formed, operated, and dissolved.
 - **Fair Competition and Antitrust Prohibition:** Ensures business practices promote healthy competition and prohibit monopolies and other forms of unfair competitive advantage.
 - **Industrial and Intellectual Property Law:** covers patents, copyrights, trademarks, and industrial design rights, which are crucial for protecting the creations and inventions of businesses.

- **Italian Codice Civile:** this Italian code includes both branches of private law in the same code: civil law and commercial law.

- **Public Law:**
 - **Purpose:** aims to protect the state's authoritative power from being subjected to private law norms. This means public law seeks to separate the functions and powers of the state from those of private individuals, especially concerning civil liability.

 - **Special Nature:** Unlike private law, which is applicable to all legal subjects (individuals and organizations), public law is described as "special." It is applicable solely to the state or governmental entities as they exercise their sovereign powers. This special status helps to manage the state's unique responsibilities and authorities without conflating them with those of private entities.

 - **Branches of Public Law:**
 - **Administrative Law:** this is about how government agencies work. It includes the rules these agencies must follow when making decisions, like issuing licenses or enforcing regulations, ensuring they act fairly.

 - **Criminal Law:** this deals with crimes and their penalties. It



defines what actions are crimes and explains what punishments they carry, aiming to protect society and maintain public order.

- **Constitutional Law:** this is the core of a country's legal system, outlining the basic rules that govern a nation. It defines the rights of individuals and the powers of government officials, ensuring that citizens' freedoms are protected.
- **Procedural Law:** this sets the steps for conducting legal actions, including trials. It ensures that everyone uses the same process in court, whether in a criminal or civil case, promoting fairness and consistency.
- **Tax Law:** this concerns how government collects taxes from individuals and businesses. It sets the rules for tax collection, ensuring that the process is clear and that the taxes levied are as per the law.

UNIT 6: LEGAL FACTS AND LEGAL ACTS, RIGHTS AND DUTIES

1) Legal Relevance of Natural Events:

- **Identifying Legal Events:** it's challenging to establish clear criteria for what is inherently legal versus what is not when talking about natural events.
- **Assessing Legal Insignificance:** it's problematic to determine when events or actions cease to hold legal relevance. However, it is essential to recognize that any event capable of triggering legal effects remains significant.

2) Legal Acts and Facts:

- **Legal Acts:** A legal act is any action, like signing a contract, that creates, changes, or ends legal rights and duties. understanding of their legal effects.
 - **Examples:** Contracts, Wills, Marriage.
- **Party's Autonomy on Legal Acts:** is a core principle allowing individuals or groups to declare their intentions, verbally or through behavior, to alter rights and duties. The central idea is that individuals have the freedom to make decisions about their personal or property rights unless there is a specific legal restriction preventing them.
 - **DCFR Overview:** details rules on party autonomy, stating that while parties can freely structure their agreements, this freedom is limited by mandatory legal provisions. They can modify or exclude certain rules, but cannot change fundamental legal protections or obligations. This framework balances individual autonomy with legal order, protecting both party intentions and societal norms.
 - **Autonomy in Patrimony vs Personality:** Party autonomy in patrimony allows wide-ranging freedom to manage and dispose

of property and financial assets. In contrast, autonomy in personality is more restricted, focusing on rights related to personal identity and integrity, where legal and ethical considerations limit decision-making.

- **Structure of Legal Acts:**

- **Unilateral:** unilateral legal acts require a declaration from just one party, like in wills, where an individual decides on asset distribution without others' consent, or when someone unilaterally withdraws from a contract.
- **Bilateral:** bilateral legal acts necessitate mutual agreement between two parties, as seen in sales contracts where buyer and seller consent to the transaction terms. This is the most common type of legal act in daily transactions.
- **Multilateral:** multilateral legal acts involve three or more parties, common in forming companies or international agreements, where all participants must agree to establish legal terms jointly.

- **Content of Legal Acts**

- **Patrimonial:** Patrimonial legal acts involve interests that have economic value and can be financially evaluated. An example is a contract under Article 1321 of the Italian Civil Code, which typically deals with transactions like buying or selling goods, where the terms directly relate to economic aspects.
- **Non-Patrimonial:** focus on interests that are not primarily financial in nature. For example, marriage is considered a non-patrimonial act because its main intent is not economic, even though it may have financial implications. In such acts, the economic aspect is present but does not define the overall nature of the legal act.
- **Inter Vivos Acts:** legal actions taken during a person's lifetime, like buying property or entering contracts, which immediately affect their rights and those involved. These acts manage and

address concerns directly while the parties are still alive.

- **Mortis Causa Acts:** involve plans made for asset distribution after an individual's death, such as wills or estate plans. These actions only become effective upon death, ensuring the person's wishes for their property and assets are executed afterward.
- **Legal/Material Facts:** is an event like death or a natural event that happens without deliberate human intent but still has significant legal consequences.
 - **Example:** death automatically triggers inheritance processes, transferring property rights to heirs according to law, regardless of how or why the death occurred. This contrasts with legal acts, which are intentional actions taken to create, modify, or end legal rights.

3) Legal Relations:

- **Definition:** legal relations are fundamental connections defined by law that establish rights and duties between individuals or entities, typically involving a "can do" aspect, where one party holds the right to demand a specific action, and a "shall do" aspect, where another party is obligated to perform in response to that demand.
 - **Example:** a "credit" represents a legal right or claim that the holder (creditor) can enforce, characterized as a "can do" position. This right directly correlates with a duty or obligation ("shall do") on another party, typically the debtor, who is required to perform or deliver a specific action in favor of the creditor.

4) Categories of Rights:

- **Relative Rights:** are specific claims held by an individual that can only be enforced against particular other individuals or entities. These rights are directed towards specific parties and involve personal obligations (rights in personam).
 - **Example:** In the credit-obligation relationship, a credit gives the creditor the right to demand specific economic performance from the debtor. This relationship is a legal bond where the creditor has a claim, and the debtor has a corresponding duty to fulfill this claim. This scenario highlights relative rights, as the creditor's claim is directed specifically towards the debtor and does not extend to others.
- **Absolute Rights:** apply universally and can be asserted against anyone who interferes with the right-holder's interest. These rights are related to property and are enforceable against the world at large (rights in rem).
 - **Absolute Patrimonial Rights:** meaning they can be exchanged for money.
 - **Property:** ownership
 - **Intellectual Property:** copyright
 - **Industrial Property:** patents and trademarks
 - **Absolute Non-Patrimonial Rights:** meaning they cannot be exchanged for money.
 - **Rights of Personality:** dignity, privacy, image, name.
- **Disposable vs Non-Disposable Rights:** rights are disposable when the good owned by the rightholder can be transferred to someone else, otherwise, they are non-disposable.
- **Case Study of Dwarf Tossing:**

- **Situation:** Dwarf-tossing involves individuals with dwarfism being thrown for sport, which led to a legal dispute when a French town's mayor banned the activity. Participants challenged the ban, arguing it infringed on their right to earn income.
- **Legal Resolution:** The French Supreme Administrative Court upheld the ban, ruling that dwarf-tossing could be prohibited to protect human dignity and public order. The United Nations Human Rights Committee also supported the ban, emphasizing that it maintained public order and upheld human dignity without being discriminatory.

5) Statues of Limitations:

- **Definition and Purpose:** Statutes of limitations are laws that set the maximum time after an event within which legal proceedings may be initiated. The rationale for these laws is to ensure that disputes are resolved within a reasonable timeframe, providing certainty in legal relationships, easing the burden of proof over time, and protecting the confidence of debtors who may believe that old debts are no longer claimable.
- **Exceptions to Statues of Limitations:** rights related to ownership and non-disposable rights, such as certain family rights or personal statuses, do not expire after a prescribed period. These exceptions acknowledge the enduring nature of such rights that should not be compromised by time limits.
- **Tolling:** is the legal suspension of the statute of limitations, pausing the countdown on the time limit within which legal action can be taken. Common reasons for tolling include the claimant being a minor, mental incapacity, or the defendant being out of the jurisdiction. The statute remains paused until the specific condition is resolved.
- **Interruption:** occurs when the statute of limitations is reset and begins



anew. This can happen if the rights holder takes a proactive step, such as filing a lawsuit or formally demanding enforcement, which acknowledges the breach and seeks remedy. Unlike tolling, interruption restarts the clock from the beginning, providing a fresh period for legal action.



UNIT 7: LEGAL SUBJECTS

1) Legal Subjects:

- **2 Types of Legal Subjects:**
 - **Natural Persons:** these are human beings with legal rights and responsibilities from birth to death. They have rights like privacy, expression, and physical integrity, fundamental to human dignity and protected by law.
 - **Legal Persons:** these include entities like corporations and organizations, created by law and able to own property, enter contracts, or sue. Unlike natural persons, they lack physical attributes and rights like freedom of religion or physical integrity, which don't apply to non-human entities.
- **Animals:** are neither classified as natural persons nor legal persons. Instead, they occupy a unique category. Although they are not recognized as "things" purely in the context of property, they do not have the legal status of persons who can bear rights and duties in their own name. Laws typically provide animals with certain protections, recognizing their sentience and the ethical duty humans have to ensure their welfare.
- **Robots/AI:** Technological entities like robots, autonomous vehicles, and AI systems present new legal challenges due to their advanced capabilities and autonomy. Traditionally, these technologies are classified as property controlled by human operators. However, as they become more autonomous, there's increasing debate on whether they should be granted some form of legal personhood or rights. This ongoing discussion reflects the evolving nature of law in addressing the complexities introduced by modern technology.

2) Legal Personality and Capacity to Act:

- **Legal Personality:** refers to the ability of an entity to be vested with

rights and duties; this applies to both human beings and legal entities like corporations. This concept is fundamental in law as it defines who can be a participant in legal transactions and who can be held responsible for actions or debts.

- **Capacity/Power to Act:** is about the ability of those entities to engage actively in legal processes, such as entering contracts, owning property, or suing and being sued. This involves the power to establish or modify legal relationships based on the entity's decisions and actions.

3) Natural Persons:

- **Natural Persons:** refers to any human being who has legal rights and obligations. From birth, and in some legal systems even from conception, a natural person is recognized as having rights such as the right to own property, enter into contracts, and seek legal remedies. These rights can also include basic human rights like the right to life, liberty, and security.
 - **Death of a Natural Person:** most rights and obligations of a natural person (like property ownership and financial responsibilities) are transferred through legal processes such as probate, although personal rights tied specifically to the individual's existence (such as the right to privacy) typically cease.
- **Embryos and Fetuses as Legal Subjects:** embryos and fetuses are not considered natural persons as they are not yet born. This classification primarily influences their legal rights under various laws.
 - **Constitutional Context:** the U.S. Supreme Court in *Roe v. Wade* (1973) determined that the word 'person' in the Fourteenth Amendment does not include the unborn, supporting the constitutionality of abortion.

- **Right of Abortion:**
 - **Roe vs Wade:** Originally, Roe v. Wade linked the right to abortion to personal privacy rights under multiple constitutional amendments, emphasizing it as a matter of personal choice.
 - **Legal Developments:** the Dobbs v. Jackson Women’s Health Organization decision overruled Roe v. Wade, asserting that the Constitution does not guarantee a right to abortion and returned the regulation of abortion to state governments.

- **Rights of Embryos and Fetuses:** though not recognized as natural persons, embryos and fetuses are granted specific legal protections, such as rights related to health and potential heirship, reflecting their future potential if born alive.

- **Natural Persons and Slavery:**
 - **Aristotelian View:** Aristotle viewed slavery as justified by natural law, arguing that some people are naturally suited to be slaves, benefiting from being ruled by others due to their inherent characteristics.
 - **Legal Status of Slaves:** In historical legal contexts, such as the 1830 North Carolina case of *Lenoir vs. Sylvester*, slaves were not recognized as natural persons with legal personhood. They could not own property or accept gifts, as anything a slave acquired would automatically belong to their master, reinforcing their status as property rather than persons with rights.

- **Legal Capacity to Act of Minors:** minors generally gain full legal capacity to act independently at 18, although this can vary between 15 and 21 depending on the jurisdiction. Before reaching majority, minors lack the legal capacity to perform acts such as entering into contracts or making valid wills without restrictions.
 - **Emancipation:** minors can gain partial capacity through emancipation, which allows them to engage in certain legal actions like marriage and managing their own finances.

- **Legal Representation for Minors:**
 - **Civil Law Approach:** In civil law jurisdictions, minors and incapacitated adults must act through legal representatives (like parents or guardians) for significant legal transactions. These representatives can act on their behalf, particularly in situations where extraordinary decisions are needed.
 - **Common Law Approach:** unlike civil law, common law systems do not usually have a formal legal representative for minors or incapacitated adults but may appoint a deputy on a case-by-case basis to manage specific legal actions.

- **Limited Capacity to Act:** generally, minors over the age of seven can engage in contracts, but these are often voidable to protect the minor unless they involve reasonable and necessary items (like food or clothing). Some jurisdictions recognize limited contractual capacity from a specific age, under certain conditions.
 - **Italy Example:** minors are generally restricted in legal capacity until they meet certain civil codes or are emancipated (the strictest out of the three).
 - **France Example:** minors can act within the limits of laws and customs, provided their actions are reasonable and supervised.
 - **Germany Example:** a minor's contracts are valid if they involve minor transactions or use funds provided specifically for that purpose.

- **Incapacities of Adults DE IURE:**
 - **Protective Incapacities:** involve appointing a support administrator for adults who are impaired or disabled, to manage their affairs based on the severity of their condition.
 - **Punitive Incapacities:** result from criminal convictions, imposing legal restrictions like disqualification from certain roles, while still

allowing personal legal actions like marriage or making a will.

- **Capacity to Act of an Incapacitated Adult:** contracts entered into by an incapacitated adult are generally treated as invalid, similar to those made by a minor. Legal systems often specify that contracts by incapacitated adults are valid only if they involve essentials or everyday transactions necessary for daily living.
- **Incapacities De FACTO:** temporary condition where an adult's ability to engage in legal agreements is impaired due to factors like drunkenness, drug abuse, or mental disturbances. A legal transaction made under such conditions can be voided or contested if two strict criteria are met:
 - **Severe Impairment Test:** the impairment was so severe that it completely negated the individual's ability to understand or control their actions.
 - **Bad Faith Awareness Test:** the other party involved in the contract was aware of the individual's severe impairment and exploited the situation to their advantage.
- **Consumers:** defined as a natural person who engages in transactions outside of their professional or commercial activities. This includes actions taken for personal, family, or household purposes. The definition is consistent across EU legislation, ensuring that consumer law applies uniformly to protect these individuals.
 - **Why Consumer Law?:** Consumers are protected by law due to inherent market failures and imbalances between businesses and individual buyers. These imbalances may include unequal bargaining power and information asymmetries, where businesses have more knowledge than the consumer.
 - **A special Case: Mixed Transactions:** involve activities where a person acts partly for personal and partly for professional purposes. Mixed transactions are controversial because they blur the lines between personal and professional activities, making it challenging to determine when consumer protection laws should

apply.

4) Legal Entities:

- **Legal Entities:** in civil law jurisdictions we have two types of legal entities:
 - **Under Public Law:** the State is considered a public entity.
 - **Under Private Law:** for example, companies limited by shares.
- **Legal Entities in Private Law:** they can be either
 - **Corporations (or Legal Persons):** corporations are autonomous entities with their own legal identity, separate from their owners, capable of owning property, entering into contracts, and having liabilities independently, managed by their own governance structures like boards or executives.
 - **Unincorporated Legal Entities:** These do not have a separate legal existence from their owners. This means the business and the owners are considered as one and the same for legal purposes, where members are directly and personally responsible for any debts and legal obligations.
- **Rules on Agency:** legal entities, although they are fictional constructs (i.e., they exist legally but not physically), act through natural persons. This means that actions by the company are carried out by individuals who are authorized to act on its behalf.
 - **Authority and Binding:** when these authorized individuals (agents) act within their given powers, their actions bind the legal entity. This means that the entity is legally obligated by whatever contracts or agreements the agent enters into within their authority.
 - **Defective Consent:** This occurs when an agent, acting within their authority on behalf of a legal entity, enters into a contract under conditions that compromise the validity of the agreement. If there is a defect in consent due to reasons like mistake or fraud



when an agreement is made, the mental state and intent of the agent at the time are considered. This assessment helps determine the legal implications for the entity in such cases.

- **Non-Profit Entities:**

- **Purpose and Taxation:** Non-profit entities are organizations established to support and advance social causes such as charitable, scientific, or educational purposes. These entities benefit from partial or complete exemptions from taxation, which helps them direct more resources towards their missions.
- **Income Distributions:** Non-profits are distinct in that they are prohibited from distributing any profits they generate to their shareholders, leaders, or members. Instead, all income must be reinvested back into the organization's objectives and operations.

- **Two Types of Non-Profit Entities:**

- **Foundation:** is a type of non-profit corporation known as a "corporation sole," which means it's an incorporated office held by a single person or position. An example provided is "The Crown," which represents a legal entity vested in a single office holder.
- **Associations:** are another form of non-profit, classified as "corporation aggregates." This form consists of a collective of members or partners working together, like a partnership but within the non-profit framework. These entities focus on group collaboration to achieve their non-profit goals.

- **Constitutional Documents of a Company:**

- **Memorandum of Association and Articles of Association:** These key documents outline the fundamental aspects of a company. The Memorandum of Association defines the company's purpose, name, and corporate capital, establishing its

legal identity. The Articles of Association specify the internal governance rules, detailing how the company is managed and how corporate decisions are made.

- **Bylaws:** Bylaws focus on the internal structure of the company, regulating the functions and decision-making processes of its bodies. They detail the operational guidelines for governance, including the roles of directors and the procedures for meetings.

- **Corporated Businesses:**
 - **Joint-Stock Company/Public Limited Company (PLC):** divides ownership into publicly traded shares, allowing it to raise capital from public investors. Unlike smaller entities, PLCs are managed by a board of directors rather than their shareholders directly, aligning with their larger scale and public trading status.
 - **Limited Liability Company (LLC):** : protects its owners' personal assets by limiting liability to their investment in the company. Shares of an LLC aren't traded on public stock exchanges and management can be handled directly by the members or through designated managers, offering operational flexibility.

- **Unincorporated Businesses:**
 - **General Partnerships (GP):** partners manage the business together and share joint and several liabilities, meaning they are collectively and individually responsible for all business debts and obligations. This structure allows for shared decision-making and accountability.
 - **Limited Partnerships (LP):** features general partners who manage operations and carry unlimited liability, and limited partners who invest financially without engaging in management. Limited partners' liability is confined to their investment amount,



making this structure suitable for PE funds and investment funds.

- **Limited Liability Partnerships (LLP):** commonly used by professional firms like law and accounting, all partners may participate in management without personal liability for the actions of other partners. Each partner's liability is limited to their own conduct and the activities they supervise, protecting personal assets from business-related risks.



UNIT 8: CONTRACTS AND OTHER SOURCES OF OBLIGATIONS

1) Contract Definition:

- **Contracts as Consumer Transactions:** contracts allow consumers to buy goods and services, which are essential for daily activities and satisfaction of personal needs.
- **Contracts Help Business Operations:** they help businesses organize themselves and facilitate the trading of goods and services, ensuring operational efficiency and profitability.
- **Formation Methods of Contracts:**
 - **By Written Documentation:** formalized through written documents prepared by the involved parties, public notaries, or solicitors, providing a clear legal record.
 - **Orally:** This means that the contract is made through spoken words rather than written down. Parties agree verbally to the terms of the contract.
 - **By Conduct:** the actions of the parties imply an agreement. Even without spoken words or written documents, their behavior demonstrates a mutual understanding and acceptance of contractual terms.

2) Contracts in Civil Law and Common Law:

- **In Civil Law:**
 - **Roman Law Context:** The term originates from Roman law where "Cum-trahere" means "to bind," emphasizing the binding nature

of agreements where parties are tied to their commitments.

- **General Definition:** In civil law jurisdictions, a contract is broadly defined as an agreement between parties.
- **Inclusivity of Donations:** donations are considered contracts in civil law, highlighting a more inclusive approach to what constitutes a contract compared to common law systems
- **In Common Law:**
 - **General Definition:** a contract represents a bargain, meaning it fundamentally involves an exchange in which each party receives something of value.
 - **Key Exclusions.**
 - **Gratuitous Promises:** These are commitments made without receiving anything in return. In common law, such promises are typically not enforceable as contracts unless they are formalized through a deed under seal.
 - **Gratuitous Bailments:** Involves the transfer of possession of an item from one person (bailor) to another (bailee) without any form of payment or benefit. This type of transfer does not qualify as a contract because it lacks the mutual exchange of value.
 - **Consideration:**
 - **Definition:** something of value that each party agrees to give or do for the other in order to form a binding contract. It's essentially the exchange of benefits and detriments between parties, like paying money in return for goods, or providing services in exchange for compensation.
 - **Legal Function:** Consideration serves as a critical mechanism in common law to differentiate enforceable promises from those that are not legally binding

- **Contracts in European Legal Systems:**
 - **DCFR:** According to the Principles of European Contract Law, a contract is an agreement intended to create a legally enforceable relationship. It emphasizes the intention behind the agreement to produce legal consequences, applicable as a bilateral or multilateral juridical act.
 - **Italian Civil Code:** Art. 1321 of the Italian Civil Code describes a contract as an agreement between parties to establish, regulate, or end their economic relations. It stresses managing legal standings through a causa (purpose), reflecting civil law's focus on the lawful reason behind agreements.
 - **French Civil Code:** Art. 1101 of the French Civil Code (amended in 2016) sees a contract as a mutual agreement aimed at creating, modifying, or extinguishing obligations. This definition aligns with the DCFR and omits the concept of causa, focusing solely on the parties' intent and agreement.

3) Binding Force of Contracts:

- **Binding Force of Contracts in French law:**
 - **Principle:** article 1103 of the French Civil Code establishes that contracts lawfully formed are binding in the same way as legislation for the parties involved.
 - **Implication:** once a contract is agreed upon and meets all legal requirements, it must be honored by the parties as if it were a law. This underscores the serious commitment and obligation that contracts impose on the parties.

4) Contract and Obligations:

- **Contracts as Obligations:** Contracts serve as a foundational source of obligations in legal and business dealings. They formalize the duties and rights of the parties involved, ensuring structured and enforceable interactions.
- **Example, Contract of Sale:** A contract of sale specifically entails the agreement to transfer ownership of goods or rights in exchange for payment. It outlines specific obligations for both the buyer and the seller to fulfill their parts of the deal.
 - **Seller's Responsibilities:**
 - **Delivery:** the seller must deliver the item as agreed in the contract.
 - **Warranty:** the seller is also responsible for ensuring the item is free from any claims or defects that could affect the buyer's use of the item, protecting the buyer from eviction and other issues.
 - **Buyer's Responsibilities:**
 - **Payment:** the buyer must pay the agreed price at the time and place specified in the contract, fulfilling the financial obligation of the agreement.

5) Sources of Obligations:

- **Primary Source: Contracts**
- **Secondary Source, Torts:** torts involve obligations that arise from non-contractual wrongs. These occur when a party's actions cause harm or



loss to another, leading to liability without a pre-existing contractual relationship.

- **Other Minor Sources:** such as unjust enrichment, undue payment, and statutory duties. These are less common but can impose legal responsibilities in specific circumstances.

UNIT G: FUNCTIONS, CONTENTS AND CHOICE OF CONTRACT LAW

1) Party Autonomy:

Party Autonomy: contract law is based on the idea that parties are the best judges of their own interests, known as party autonomy. This principle allows parties to freely enter into contracts and set their terms without outside interference.

Subsidiarity Principle: the subsidiarity principle supports minimal court intervention, emphasizing that the primary authority over contracts lies with the parties themselves.

Judicial Perspective: courts typically do not alter contracts to benefit a dissatisfied party, as seen in *Travers v Lismore* (1900). Their role is to enforce contracts as they were originally agreed upon, not to adjust them based on later concerns or fairness.

2) Freedom of Contracts and Limits:

- **Contractual Freedom in the French Civil Code:** Article 1102 of the French Civil Code, revised in 2016, emphasizes that individuals have the freedom to enter contracts, choose their contracting parties, and set the terms of their agreements. However, this freedom is constrained by the boundaries of the law and cannot override public policy rules.
- **Limits to Contractual Freedom:** Contractual freedom has inherent limitations, especially when parties contract in ways that violate legal or moral standards. If a party lacks the capacity to understand their interests or is irrational, the law intervenes with mandatory rules. These rules can render a contract void or allow it to be annulled by one of the parties, ensuring protection against unfair or exploitative agreements.
- **Business Contracts and Consumer Protection:** the extent of contractual freedom also differs across business contexts:
 - **B2B Contracts:** Generally, there is more flexibility in terms of contract terms as both parties are deemed to have comparable bargaining power.

- **B2C Contracts:** EU law imposes stricter limits to protect consumers, recognizing the typical disparity in bargaining power between businesses and individual consumers.

3) EU Consumer Contract Law:

- **United Nations Convention on Contracts (CISG):** the Vienna Convention, known as the United Nations Convention on Contracts for the International Sale of Goods (CISG), was adopted on April 11, 1980, and came into effect on January 1, 1988. This convention is specifically applicable to B2B (Business-to-Business) sales of goods internationally, standardizing contract laws across borders to facilitate global trade.
- **EU Consumer Contract Law:** over the past three decades, EU legislation has focused on consumer protection in contract law, resulting in directives that almost exclusively govern B2C (Business-to-Consumer) transactions. These laws are designed to protect consumers in specific contract scenarios such as package travel, doorstep sales, and consumer goods sales, addressing key consumer rights like information duties and the right to withdraw.
- **Legal Basis of EU Contract Law:** the EU's power to legislate in matters of contract law stems primarily from Article 114 of the Treaty on the Functioning of the European Union (TFEU). This article allows EU institutions to harmonize national laws to ensure the smooth functioning of the internal market, particularly through measures that address disparities in consumer protection laws among member states.

4) Choice of Law , Issue of Jurisdiction and Proper Law.

- **National Contract Law:** Contract law is set by legislatures and interpreted by courts within national jurisdictions. This ensures laws

reflect local priorities.

- **Global Perspective:** Contract law shows notable similarities across global jurisdictions, aiding in international commerce.
- **Choice of Law Clause:** The choice of law clause allows parties to specify which jurisdiction's law governs their contract and which court will handle disputes. This is essential for ensuring clarity in legal obligations and dispute resolution in cross-border transactions.
- **Convention on Choice of Court Agreements:** The 2005 Convention on Choice of Court Agreements, effective from 2015, standardizes how court agreements between the EU and the US are recognized and enforced, facilitating clearer international dispute resolution.
- **Jurisdiction Issues:** The Brussels I Regulation (EU No 1215/2012) streamlines the recognition and enforcement of judgments across EU states, enhancing legal certainty for businesses operating across European borders.
- **Arbitration Clause:** Arbitration clauses specify that any disputes will be resolved by an arbitrator, who acts like a private judge, at places like the ICC in Paris according to set rules. This process, governed by both local laws and international treaties such as the 1958 New York Convention, offers a widely accepted alternative to court, allowing quicker and simpler resolution of conflicts.
- **The Issue of Proper Law:** Parties in a contract can choose which law applies to their agreement:
 - **Hard Law:** The contract law of a specific national state (e.g., France, Delaware), providing a concrete legal framework.
 - **Soft Law:** A collection of principles that offer guidance to the national law system but are not strictly enforceable. They serve as a resource for courts and parties in drafting contracts and resolving disputes for example to fill in legal gaps of the national

legal system. Soft law is typically used in conjunction with an arbitration clause.

- **Draft Projects on European Private Law:**
 - **Purpose:** developed to harmonize laws across European nations, these principles aim to facilitate smoother interactions across different jurisdictions.
 - **Impact:** they have shown effectiveness as model laws within individual countries and across the European Union.
 - **Approach Used:** a scientific and comparative approach to law, these drafts promote a concept of law that transcends national boundaries, akin to the successful methods adopted by the CISG.
 - **Status and Vision:** these draft projects are not mandatory; they are proposals that countries can adopt to align more closely with each other. They represent a vision for a unified legal framework within Europe, aiming to standardize aspects of private law across member states.
- **Principles of International Commercial Contracts (PICC):** provides comprehensive rules for international commercial contracts, inspired by the CISG and drafted by global experts. It aims to offer a standardized legal framework for international business transactions, applicable worldwide.
- **Principles of European Contract Law (PECL):** crafted by European legal scholars, seeks to harmonize contract law across EU member states. It focuses on establishing a unified set of contract laws that cater specifically to the intra-European market, enhancing legal consistency across the EU.
- **Draft Common Frame of Reference (DCFR):** extends beyond contract law to cover a broader range of private law areas, aiming to lay the groundwork for a future European Civil Code. It builds on the principles

of the PECL and is designed to provide a more comprehensive legal framework for all EU member states.

- **Restatement (Second) of Contract:** developed by the American Law Institute (ALI), simplifies and standardizes contract law across the U.S., consolidating best practices into a single document despite the country's multiple state jurisdictions. First issued in 1932 and updated in 1981, it offers a "better view" rather than just majority state opinions, aiming to resolve conflicts among states with a coherent approach.
 - **Difference from European Draft Projects:** Unlike the European draft projects like PICC and PECL which aim to harmonize laws across different countries within a supranational framework (EU), the Restatement primarily serves to unify and clarify contract law within a single country, despite its federal structure.

5) Choice of Contract Law:

- **EU Regulations: Rome Convention and Rome I Regulation:**
 - **Rome Convention 1980:** Introduced to standardize the rules governing the law applicable to contractual obligations across Europe, providing a framework for determining which national law applies to contracts with cross-border implications.
 - **Rome I Regulation 2008:** Successor to the Rome Convention, allowing parties significant freedom to choose the applicable law for their contracts. Some key provisions are:
 - **Article 3 - Freedom of Choice:** Parties can select the law applicable to the whole or part of a contract, ensuring flexibility in cross-border transactions.



- **Article 6 - Consumer Contracts:** Restricts choice of law in consumer contracts to protect consumers. The law of the country where the consumer resides will apply if the business directs activities to that country, limiting the freedom previously mentioned under Article 3.
- **U.S Regulations:**
 - **State Regulation:** In the U.S., contract law is primarily state-regulated, and there's no overarching federal contract law except for specific areas governed by federal statutes.
 - **Uniform Commercial Code (UCC):** Adopted by all 50 states to some extent, the UCC standardizes transactions involving goods (and to a lesser extent, services) across states, especially in B-to-B transactions. Article 2 of the UCC specifically deals with the sale of goods, providing a consistent legal framework that facilitates commerce across state lines.



UNIT 10: CONTRACT TERMS AND THEIR INTERPRETATION

1) Construing Contracts

- **Theories of Contract Interpretation:**
 - **Subjective Theory:** which emphasizes the internal intentions of the parties involved, suggesting that the real meaning of a contract depends on what the parties intended privately.
 - **Objective Theory:** which focuses on the external expressions of the parties, asserting that a contract is bound by the outward declarations and actions, regardless of internal intentions.
- **Applications of Theories Through Tests:**
 - **Subjective Test:** evaluates the internal intentions of the parties.
 - **Objective Test:** considers how an external observer would interpret the contract based on outward expressions.
- **Case Study: Wood v Capita Insurance:**
 - **Background:** Capita Insurance bought a company called Sureterm and later found out Sureterm had been misleading customers. They focused on an indemnity clause—a part of the contract that deals with covering losses from specific issues.
 - **Indemnity Clause Issue:** The main question was whether this clause should cover all the mis-selling problems found after buying the company, even though there weren't any formal complaints made to the authorities about these issues.
 - **Court's Decision:** the court looked closely at the exact words of the indemnity clause and decided it only covered issues that had been officially complained about to authorities like the Financial Services Authority (FSA), not all potential issues found later. This



shows how important the actual words in a contract are when deciding what it means.

- **General Principles of Interpretation Applied:**
 - **Textualism:** In this case, textualism was important because the court focused on the specific wording of the contract to make their decision. This method helps keep things clear and predictable by sticking closely to the written words.
 - **Contextualism:** This method wasn't as influential in this case but generally involves looking at the broader situation around a contract to make sure the interpretation fits with the overall purpose and business reality.

2) Interpretation in Common Law:

- **Understanding Contract Interpretation in Common Law:** contract interpretation primarily focuses on the objective meaning of the words used in the contract. This approach seeks to determine how a reasonable person, with all the background knowledge available to the parties at the time of the contract, would understand the contract terms.
- **Key Sources and Principles:**
 - **Lord Hoffmann's View:**
 - **Case Reference:** Investors Compensation Scheme Ltd v West Bromwich Building Society
 - **Principle:** The meaning of a contract should be what the document would convey to a reasonable person who has all the background knowledge that would have been available to the parties.
 - **Impact:** This emphasizes understanding the contract in its factual context, moving slightly away from strictly literal interpretations.

- **Lord Hodge's View**
 - **Case Reference:** Wood v Capita Insurance Services Ltd
 - **Principle:** The task is to find the objective meaning of the language that the parties chose to express their agreement.
 - **Impact:** Reinforces the focus on how the contract language is framed and its apparent meaning, stressing the importance of the words chosen.

- **Lord Diplock's View**
 - **Case Reference:** Antaios v Salen Rederierna A.B.
 - **Principle:** If a literal interpretation of the words flouts business commonsense, it must yield to business commonsense.
 - **Impact:** This introduces a practical perspective, suggesting that where literal interpretations are absurd, the contract should be interpreted in a way that makes sense from a business standpoint.

- **Extrinsic Evidence:**
 - **Case Reference:** Oates v Romano
 - **Principle:** If the contract's words are clear, extrinsic evidence (information outside the contract) shouldn't alter their meaning. If words are ambiguous, then the context can be considered to clarify.
 - **Impact:** Balances strict adherence to textual clarity with flexibility to interpret vague terms based on the broader circumstances.

3) Interpretation in Civil Law:

- **Understanding Contract Interpretation in Civil Law:** Civil law systems generally emphasize finding a balance between the subjective and objective methods of interpreting contracts. This approach aims to

discern the common intentions of the parties, going beyond the literal meaning of the contract terms.

- **Key Sources and Principles:**

- **German Civil Code (BGB):**

- **Principle:** When interpreting a promise or agreement, the focus is on uncovering the effective intent of the parties, rather than strictly adhering to the literal meaning of the words used.
- **Impact:** This allows for a more flexible interpretation that considers the parties' true intentions at the time of contract formation.

- **French Civil Code:**

- **Principle:** Contracts should be interpreted according to the mutual intentions of the parties, rather than merely the literal interpretation of terms.
- **Subsequent Guidance:** If the common intention is not clear, the contract should be interpreted in the way a reasonable person in the same situation would understand it.
- **Impact:** This supports a dual approach where the search for mutual intention prevails, but objective interpretation serves as a fallback.

- **UNIDROIT PICC:**

- **Principle:** The contract is primarily interpreted according to the common intentions of the parties. If that intention cannot be established, interpretation should reflect what reasonable people in the same position as the parties would assume.
- **Details on Party Contract:** The conduct and statements of the parties are interpreted in light of what each party knew

or should have known about the other's intent, reinforcing the subjective approach.

- **Impact:** These principles ensure that contracts are interpreted flexibly and pragmatically, taking into account both the expressed terms and the broader conduct of the parties involved.

4) Express/Implied Terms:

- **Express Terms:** These are the specific conditions and details explicitly stated within the contract by the parties involved.
- **Implied Terms:** These terms are not specifically stated but are understood to exist to fill gaps in the contract. They ensure the contract can function effectively and fairly.

5) Implied Terms in Civil Law:

- **Implied Terms Overview:**
 - Contracts might not cover every possible issue or detail, leading to gaps.
 - These gaps are filled by implied terms which are based on law, court decisions, or reasonable expectations of the parties.
 - The law steps in with default rules (also called 'rules of thumb') to cover anything not explicitly addressed.
- **General and Special Parts in Civil Law:**
 - **General Part:** refers to a broad set of norms that apply to any contract, regardless of its type.
 - **Special Part:** contains norms that are specifically tailored to the most relevant and common types of contracts, like sales or leases.
 - **Terms Implied by Law:** are part of the general norms and serve to fill in gaps in contracts, ensuring basic fairness and functionality.

- **Implied Terms in Specific Contracts:**
 - Sale
 - Lease
 - Loan
 - Deposit
- **Example, Art 1510, Place of Delivery:** Specifies that unless the contract states otherwise, the default delivery location for goods sold is either where the goods were located at the time of the sale or the seller's place of business.
- **The Contra Proferentem Rule:** This legal principle applies when a contract term is ambiguous. In such cases, the unclear term is interpreted against the party who introduced it. This rule is widely used to protect the party who did not draft the term, ensuring fairness, particularly in consumer contracts under EU law.

6) Implied Terms in Common Law:

- **Classification of Contracts:** In common law, the classification of contracts into special categories tends to play a less significant role. While civil law systems might have detailed rules tailored for specific types of contracts, common law relies more heavily on general principles that apply across various types of agreements.
- **Source of Implied Terms:** Implied terms in common law are primarily derived from the natural interpretation of the contract's explicit terms, established business practices, or statutory requirements. This means that the courts look to see what the contract terms suggest implicitly, what is typically expected in such business relationships, and what statutes might require for such contracts to function effectively.
- **Types of Implied Terms in Common Law:**



- **Obvious, Regular and Customary Terms:** These are terms that are so obvious and customary that they do not need to be expressly stated in the contract. For example, it might be an unspoken rule that goods sold should be of merchantable quality.
- **Terms Necessary for Business Efficiency:** These are terms that are implied into a contract to ensure it can operate effectively. Without these terms, the contract would not fulfill its intended purpose effectively.
- **Terms Implied by Law or Statute:** Some terms are implied by common law or specific statutes to uphold fairness, fulfill policy objectives, or protect certain parties within the context of the contract.

FOR DOUBTS OR SUGGESTIONS ON THE HANDOUTS



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