

**REVIEW  
OF  
BUSINESS LAW ONE**

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This course is about the exercise of discretion.

- Who gets to participate in the decision process?
- What are the constraints upon the decision maker(s)?

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**Process versus Substantive**

**DUE PROCESS  
notice  
and  
hearing**

both proportional to the interest(s) involved

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The law favors the **objective** over the **subjective**.

**KNOWING**

actual knowledge	subjective
receipt of notice	objective
reason to know	objective

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The "reasonable person" is a legal fiction.

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A limitation on power includes a prohibition on doing indirectly that which you may not do directly.

The law works by analogy and by narrowing the scope of a law. Thus, a specific law controls a general law.

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**EXPRESS:**  
all terms known by the parties' **WORDS**  
oral  
or  
written

**IMPLIED:**  
all terms known by the parties'  
acts  
words, and/or  
circumstances

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Separation of Powers  
is a central concept in the  
allocation of discretion.

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**Separation of Powers**, in order of importance,  
from top to bottom  
and from left to right

**Individual v. Government**  
**Federal v. State**

Within Government's Three Branches

**legislature:** makes law  
**executive:** enforces law  
**judiciary:** interprets law  
**JUDICIAL REVIEW**  
power to declare act of  
Legislative and Executive  
unconstitutional.

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**The Separation of Powers  
divides power into a system of  
checks and balances**

**Administrative agencies are not in Constitution.**

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**The law reacts to problems.**

**The legislature tends to act when:**

1. **unequal bargaining power;**
2. **history of abuse; and/or**
3. **disparate impact.**

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**BROAD DIVISIONS IN THE TYPES OF LAW**

<b>LAW</b>	v.	<b>EQUITY</b>
ordinary legal action		<i>only if no adequate remedy at law</i>
compensation		compel action
precedence		<b>no precedence:</b> unique solutions
rules		<b>maxims</b>

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**BROAD DIVISIONS IN THE TYPES OF LAW**  
**CIVIL v. CRIMINAL**

individual v. individual      **government v. Individual**  
symmetric power      **asymmetric power**  
   **separation of powers**

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**CIVIL v. CRIMINAL BURDENS OF PROOF**

**CRIMINAL:**      **beyond a reasonable doubt**  
   **(roughly 99% sure)**

**CIVIL:**      **preponderance of the evidence**  
   **(at least 50.01% sure)**

because of  
**standing to sue** and  
**complaint requirements,**  
one act may yield several causes of action

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**BROAD DIVISIONS IN THE TYPES OF LAW**

private v. public

contract v. tort  
voluntary v. social contract

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**LAWYER'S ROLE**  
communication

advocate  
strategy  
preventive  
enforcive

creative

never ask  
"What should I do?";

always ask  
"How do I do this legally?"

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**ADVERSARIAL SYSTEM OF JUSTICE**

each side presents its version of the truth  
to  
an impartial trier of fact

Jury is usually the trier of fact,  
without a jury the judge does this.

Jury approximates a "reasonable person"

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**STANDING TO SUE**

**injury in fact**

easy  
constitutional requirement

**and**

**within zone of protected interest**

hard to prove  
judicial efficiency

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**COMPLAINT**

1. **cause of action**
2. **Jurisdiction = authority**  
subject matter  
geographic  
substantial minimal contacts
3. **remedy sought**

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- trial court**  
finds fact  
  
applies law
- appellate court**  
finds error  
  
interprets law

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upon appeal,  
the **appellate court will AFFIRM** the trial court  
**UNLESS**

1. **clear error of fact** by the trial court
  2. **non-harmless error of procedure**  
by the trial court
- or
3. **any error of law** by the trial court

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the burden of proof is higher in **criminal cases**,  
therefore,  
any **error of procedure**  
is **more likely** to be **non-harmless**  
*(i.e., would have changed the court's decision)*

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appellate courts  
treat **administrative agencies** like trial courts;  
except,  
with administrative agencies,  
appellate courts are **quicker to find a**  
**non-harmless error of procedure.**

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**PLEADINGS**

**COMPLAINT**  
cause of action,  
jurisdiction, AND  
remedy

**ANSWER**  
defenses,  
counterclaim, and/or  
cross claim

**REPLY**

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**MOTION TO DISMISS**  
**ASSUME AWAY ALL QUESTIONS OF FACT,**  
**LEAVING ONLY QUESTIONS OF LAW**  
**FOR THE TRIAL COURT**

**IF**  
assuming  
everything non-moving party claims is true,  
including reasonable inferences,

**AND IF**  
moving party still wins,

**THEN**  
grant the motion to dismiss.

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**SUMMARY JUDGMENT**

**BY THE AGREEMENT OF THE PARTIES**  
**THERE ARE**  
**NO QUESTIONS OF FACT,**  
**LEAVING ONLY QUESTIONS OF LAW**  
**FOR THE TRIAL COURT**

often used in a case of first impression  
in order to establish precedence

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**(PRELIMINARY)**  
**INJUNCTION**  
(typically, an equitable action)

1) *(very likely will)* win on merits  
2) irreparable harm to plaintiff  
3) not unjustly harsh to defendant  
**AND**  
4) serves public interest

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