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Chapter 1

Law and its Classifications

I. Law and its classifications

A. The concept of law

We are living in a world where our behaviors and lives are regulated by different laws. But what is the concept of law? This is an abstract question that is not easy to answer. Generally speaking, law is a system of rules and regulations that are enforced through certain social institutions to govern people's behaviors. Based on the nature of law, it can be made by legislatures through legislation process, this is what we call a statute, or it can be issued by executive department through decrees and regulations, or in common law legal system, it can be created by judges through binding precedents.

In another point of view, private individuals also create laws that bind certain parties. For example, private individuals can create legally binding contracts, including arbitration clauses that may elect to accept alternative arbitration to the normal court process. The law shapes politics, economics and society in a lot of different ways and it serves as a mediator of relations among different people.

Over the world, there are two main legal systems: common law system and civil law system. A common law system is a legal system that focuses on precedents and relevant cases. The principle for a common law system is that it is unfair to treat similar facts differently on different occasions. In contrast, a civil law system which is also called Roman law system is a legal system which originated in Europe, intellectualized within the framework of late Roman law. The most outstanding feature of civil

law is that its core principles and rules are codified into a referable system which serves as the primary sources of law.

Based on the substantive matters of law, it is generally divided into two main areas referred to as criminal law and civil law. Criminal law deals with the conducts that are considered to be harmful to society and in which the guilty party should be imprisoned or fined, such as a murder, rape, robbery, etc. In contrast, civil law deals with the resolution of lawsuits or disputes between or among different people or organizations. Civil law works to provide a legal remedy to the winning litigant. There are several specialties under civil law: contract law regulates contractual relationships between different people and organizations; property law regulates the transfer and title of personal property and real property; tort law allows claims for compensations if a person's body or property is harmed by someone else.

Besides civil law and criminal law, there are also some other classifications of law, for example, constitutional law, administrative law, international law, etc. Constitutional law provides a framework for the creation of law, the protection of human rights and the election of political representatives. It is usually taken as the most important law for a country. Administrative law is used to review whether a decision made by government agencies is proper. International law is used to regulate the affairs between and among different sovereign states in activities ranging from commercial trade to military action.

B. The classification of law

1. The classification of law in the United States

1) Constitutional law

The Constitution of the United States is the supreme law of the United States of America. It is the most important law in the United States. The Constitution, originally comprising seven articles, delineates the national frame of government. Its first three articles entrench the doctrine of the separation of powers, whereby the federal government is divided into three branches, and each branch represents a specific power. The three branches are the legislative, consisting of the bicameral Congress, which has the main power of legislation; the executive, consisting of the President, which has the main power of dealing with executive matters and issue executive regulations; and the judicial, consisting of the Supreme Court and other federal courts,

which has the main power of hearing and dealing with cases.

Articles Four, Five and Six entrench concepts of federalism, describing the rights and responsibilities of state governments and of the states in relationship to the federal government. Federalism in the United States is the evolving relationship between state governments and the federal government of the United States. Since the founding of the country, and particularly with the end of the American Civil War, power shifted away from the states and towards the national government. The main purpose of federalism is to give great and more powers to the state government, in order to avoid the establishment of a powerful central government. Article Seven establishes the procedure subsequently used by the states to ratify it.

The United States Constitution came into force in 1789, and it has been amended twenty-seven times since then. In general, the first ten amendments, known collectively as the Bill of Rights, offer specific protections of individual liberty and justice and place restrictions on the powers of government. The majority of the seventeen later amendments expand individual civil rights. Others address issues related to federal authority or modify government processes and procedures. Amendments to the US Constitution, unlike ones made to many constitutions world-wide, are appended to the end of the document. At seven articles and twenty-seven amendments, it is the shortest written constitution in force. All five pages of the United States Constitution are written on parchment.

The United States Constitution is interpreted, supplemented, and implemented by a large body of constitutional law. The Constitution of the United States is the first constitution of its kind, and has influenced the constitutions of many other nations.

In order to understand the United States Constitution, it is highly recommended that you read the *Marbury v. Madison* (5 U. S. 137) in section A of the supplementary reading.

2) Contract law

In common law legal systems, a contract is an agreement having a lawful object entered into voluntarily by two or more parties, each of whom intends to create one or more legal obligations between them. A contract is created by an offer and an acceptance. The parties of a contract have to be competent persons who have the legal ca-

pacities to exchange considerations to each other and create mutuality of obligations as a result.

Some contracts are required to be in writing, other contracts could be made orally or by conduct. The remedy for breach of contract can be some damages in the forms of compensation of money or specific performance enforced through injunction. There could also be reliance damages, as in promissory estoppel.

Contract law varies greatly from one jurisdiction to another, including differences in common law compared to civil law. United States contract law regulates the obligations established by agreement (express or implied) between private parties under United States law. The law varies from state to state and there is no nationwide Federal contract law. As to the transactions involving the sale of goods, they have become highly standardized nationwide through widespread adoption of the Uniform Commercial Code. There remains significant diversity in the interpretation of other kinds of contracts, depending upon the extent to which a given state has codified its common law of contracts or adopted portions of the Restatement (Second) of Contracts.

Parties are allowed to arbitrate disputes arising from their contracts. Under the Federal Arbitration Act, which has been interpreted to cover all contracts arising under federal or state law, arbitration clauses are generally enforceable unless the party resisting arbitration can show that there is unconscionability or fraud or something else which undermines the entire contract.

3) Torts law

A tort, in common law jurisdictions, is a civil wrong that unfairly causes loss or harm or damages to someone else and this will result in legal liability for the person who commits the tortious act. Although crimes may be torts, the cause of legal action is not necessarily a crime. For a tort, the harm may be due to negligence, but for a crime, it has to amount to criminal negligence. The victim of the harm can recover their loss as damages in a lawsuit. In order to prevail, the plaintiff in the lawsuit must show that the actions or lack of action was the legally recognizable cause of the harm.

Legal injuries are not limited to physical injuries. It may also include emotional, economic, or reputational injuries as well as violations of privacy, property, or constitutional rights. Torts comprise a lot of different topics as auto accidents, false im-

prisonment, defamation, product liability, copyright infringement, and environmental pollution. While many torts are the results of negligence, tort law also recognizes intentional torts, where a person has intentionally acted in a way that harms another, and in a few cases, the rule of strict liability is applied which allows recovery without the need to demonstrate negligence.

Tort law works as an important part in common law. It is old but it is very close to our daily life. That is why a large part of civil suits in the United States are torts claims. Although differences exist from state to state, we can still find a lot of common principles and concepts shared among different states' cases. Based on different types of harms a tort can cause, there are two kinds of torts: torts against physical and mental interests, and torts against nonphysical interests. As to the first kind of torts, torts against physical and mental interests, we further have three types of torts: intentional torts, negligence and strict liability. Each kind of tort consists of various elements or legal requirements.

4) Property law

In general, property law is the area of law that governs different forms of ownership and tenancy in real property and personal property, within the common law legal system. The word property actually refers to an object or objects that is or are owned by a person, and the relationship the person has to the object or objects. In law, the concept acquires a more nuanced rendering. Factors to consider include the nature of the object, the relationship between the person and the object, the relationship between some other people in relation to the object, and how the object is regarded within the prevailing political system. Most broadly and concisely, property in the legal sense refers to the rights of people in or over certain objects or things.

Under property law in the United States, there are several sections that are very important: possessing property, present estates, future interests, rule against perpetuities, concurrent ownership, landlord and tenant law, private land use restrictions, conveyance of real property, and recording system. They are essential parts of property law and they are very difficult to understand because they are describing something that is so abstract to common people.

5) Corporate law

Generally speaking, corporation is synonymous with large publicly owned com-

panies in the United States, which has a defining feature that it is independent from the people who created it. Corporate law is the study of how shareholders, directors, employees, creditors and other stakeholders such as consumers, the community, and the environment interact with each other. Corporate law is a part of a broader companies law, which is also called the law of business association. The law of business association contains more commercial forms, such as agency and partnership.

Under corporate law, corporations of any size have separate legal personality, with limited or unlimited liability for its shareholders, based on the specific type of the corporation. Shareholders are the real owners of the corporation, and they control the company through a board of directors which typically delegates control of the corporation's day to day operations to a full time executive, usually the manager of corporation.

Corporate law deals with firms that are incorporated or registered under the corporate law. There are four characteristics of modern corporations: corporation has separate legal personality; shareholders of a corporation have limited liability and the liability is limited to the value of their shares in the corporation; shares of public corporation are traded on a stock exchange; and there is delegated management, to be specific, the shareholders delegate their management powers to the board of directors who further delegates the day to day management of the corporation to the executives, such as the manager.

Corporate law is often divided into corporate governance which concerns various powers relations within the corporation, and corporate finance which concerns the rules on how capital of the corporation is used.

6) Civil procedure law

Civil law focuses on the substantive matters of law while civil procedure law focuses on the procedural matters of law. Civil procedure is the body of law that sets out the rules and standards that courts follow when adjudicating civil lawsuits, as opposed to procedures in criminal law matters.

The rules under civil procedural law govern procedural matters such as how a lawsuit or case may be commenced, what kind of service of process is required, the types of pleadings or statements of case, motions or applications, and orders allowed in civil cases, the timing and manner of depositions and discovery or disclosure, the

conduct of trials, the process for judgment, various available remedies, and how the courts and clerks must function.

Civil procedure in the United States consists of the rules of civil procedure that govern procedure in the federal courts, the fifty state court systems, and in the territorial courts. Like a lot of other laws of the United States, civil procedure is not reserved to the federal government in the Constitution. This means each state is free to operate its own system of civil procedure independent of her sister states and the federal court system. That is why we can find different civil procedure law applied in different states, and they have something in common, but have a lot of differences at the same time.

7) Criminal law

The relationship between civil law and civil procedure law applies here to the relationship between criminal law and criminal procedure law. Criminal law focuses on the substantive matter of law, while the criminal procedure law focuses on the procedure matters of law.

Criminal law is the body of law that relates to crimes. It regulates social conduct and proscribes whatever is threatening, harmful, or otherwise endangering to the property, health, safety, and moral welfare of people, for example, murder, rape, and robbery, etc. It includes the punishment of people who violate these criminal laws. Criminal law varies according to jurisdiction, and differs from civil law, where emphasis is more on dispute resolution and victim compensation than on punishment.

Like many other laws in the United States, under the structure of federalism, responsibility for criminal law and criminal justice in the United States is shared between the states governments and the federal government. The federal government and all the states rely on the following: common law, statutes, and Model Penal Code.

Common law is the law developed by judges through court legal opinion decisions, as opposed to statutes adopted through the legislative process or regulations issued by the executive branch. A common law crime is thus a crime which was originally defined by judges while making legal decisions. Common law crimes no longer exist at the federal level, but the validity of common law crimes varies at the state level. Although most states have abolished common law crimes, some have enacted "reception" statutes recognizing common law crimes when no similar statutory crime

exists.

All fifty states of the United States have their own penal codes. Therefore, for any particular crime somewhere, it would be necessary to look it up in that jurisdiction.

The Model Penal Code was created by the American Law Institute. Many states have wholly or largely adopted the Model Penal Code. Others have implemented it in part, and still others have not adopted any portion of it. However, even in jurisdictions where it has not been adopted, the Model Penal Code is often cited as a persuasive authority when the courts are dealing with criminal cases.

8) Criminal procedure law

Criminal procedure law deals with the procedural matters of law. The criminal procedure law of the United States focuses on how to limit the powers of the police and government, and how to protect the basic rights of suspects under relevant amendments of the United States Constitution.

Criminal procedure law of the United States focuses on several subjects: Fourth Amendment search and seizure, the law of arrest issues, the confession of suspect, and the pretrial identification issue, such as the line-up, show-up and photo arrays.

As to the Fourth Amendment search and seizure, there are several issues to consider: is the search or seizure governed by the Fourth Amendment? Does the search warrant under which criminal evidence was gathered satisfy the Fourth Amendment requirements? Is the warrantless search through which criminal evidence was gathered valid under any exceptions of the warrant requirements? To what extent can prosecutors use the evidence gathered in an unconstitutional search and seizure against suspect in court?

As to the law of arrest, there are several issues to consider: when does an arrest occur? What standard of proof applies to arrest? For what offenses does the Fourth Amendment permit custodial arrest? When do you need a warrant to arrest the suspect?

As to the confession of suspect, what are the federal constitutional challenges brought to exclude a confession: the Fourteenth Amendment Due Process Clause, the Sixth Amendment Right to Counsel, and the Fifth Amendment Miranda Warning Doctrine.

As to the pretrial identification, there are two substantive challenges: the denial

of right to counsel under the Sixth Amendment, and the violation of Due Process Clause.

Besides, there are also some small topics under criminal procedural law, such as the grand juries, the pretrial detention, the trial rights of suspect, guilty pleas and plea bargaining, punishment, double jeopardy, and the Fifth Amendment privilege against compelled testimony.

9) Evidence law

Evidence law encompasses the rules and legal principles that govern the proof of facts in a legal proceeding. These rules determine what evidence must or must not be considered by the trier of fact in reaching its decision and, sometimes, the weight that may be given to that evidence.

When a dispute, whether it is a civil law matter or criminal law matter, reaches the court there will always be a number of issues which one party will have to prove in order to persuade the court to find in his or her favor. The law must set up certain guidelines to ensure that evidences presented to the court can be regarded as trustworthy.

Evidence law also concerns the quantum, quality, and type of proof needed to prevail in litigation. The quantum of evidence is the amount of evidence needed; the quality of proof is how reliable such evidence should be considered. There are several types of evidence, depending on the form or source. Evidence governs the use of testimony, exhibits, documentary material, or demonstrative evidence, which are admissible in a judicial or administrative proceeding.

There are several important rules in evidence law. For example, the rule of relevance, the rule of character evidence, the rule of documentary evidence, best evidence rule, the rule of hearsay.

The rule of relevance means that evidence is relevant if it has any tendency to make a material fact more or less probable than without the evidence. A relevant evidence is inadmissible if its probative value is substantially outweighed by pragmatic considerations.

The rule of character evidence means evidence of a person's character or past acts is inadmissible if offered to prove that the person acted in conformity with that trait. The rule of documentary evidence means that the party seeking to introduce an

exhibit must introduce sufficient evidence for a reasonable juror to conclude that the or term is what the party claims it to be. Best evidence rule means that if a party seeks to prove the contents of a writing, the party must either: produce the writing, or provide an acceptable excuse for why you don't have the writing. If the excuse is acceptable, the party then uses secondary evidence (such as oral testimony or a handwritten copy).

As to the rule of hearsay, we first need to know what is hearsay. Hearsay is an out of court statement offered to prove the truth of the matter asserted. The rule of hearsay is that absent an exception or exclusion. Hearsay is inadmissible.

2. The classification of law in China

Since China is a country following the civil law legal system, the laws do not come from cases made by judges, but from statutes made by legislature and regulations issued by executive departments. Therefore, it is much easier for people to find what the law is.

1) Constitutional law

There have been four versions of the Constitutional law since October 1st, 1949, when the People's Republic of China was founded. The present version of Constitution was enacted and adopted on December 4th, 1982. There have been four amendments to the Constitution since then, and they are the amendment of 1988, the amendment of 1993, the amendment of 1999, and the amendment of 2004.

There are four chapters under the Constitution of the People's Republic of China. Chapter one is the general principles. Chapter two shows the fundamental rights and duties of citizens. To be specific, it includes the following sections: the National People's Congress, the President of the People's Republic of China, the State Council, the Central Military Commission, the local people's congresses and local people's governments at various levels, the organs of self-government of ethnic autonomous areas, and the people's court and the people's procuratorates. Chapter four is about the national flag, the national emblem and the capital.

2) General principles of the civil law

We don't have a codified civil law in China right now. This is a pity and it sets up an object for scholars and legislature to work hard. Before a civil law code is enacted in China, we use the General Principle of the Civil Law of the People's Republic

of China instead. It is adopted at the Fourth Session of the Sixth National People's Congress on April 12th, 1986, and it has been effective since January 1st, 1987.

There are nine chapters under the General Principle of the Civil Law of the People's Republic of China: basic principles, citizen, legal persons, civil juristic acts and agency, civil rights, civil liability, limitation of action, application of law in civil relations with foreigners, and supplementary provisions.

3) Contract law

In China, we have the Contract Law of People's Republic of China. It was enacted and adopted by the Second Session of the Ninth National People's Congress on March 15th, 1999, and was effective since October 1st, 1999.

There are eight chapters under the Contract Law of People's Republic of China: general provisions, formation of contracts, validity of contracts, performance of contracts, amendment and assignment of contracts, discharge of contractual rights and obligations, liabilities for breach of contracts, and other provisions.

4) Tort liability law

Tort liability law is a new law in China. Tort Liability Law of People's Republic of China was effective as of July 1st, 2010. Before Tort Liability Law of People's Republic of China was adopted, one of the main resources that we could find tort law is the General Principles of the Civil Law of the People's Republic of China.

There are twelve chapters under Tort Liability Law of People's Republic of China: general provisions, constitution of liability and methods of assuming liability, circumstances for assuming no liability and mitigated liability, special stipulations on liable parties, product liability, liability for traffic accident caused by motor vehicles, liability for damages caused by medical treatment, liability for environment pollution, liability for high hazard work, liability for harm caused by raising animal, liability for damages caused by objects, and supplemental provisions.

5) Property law

Property Law of the People's Republic of China was enacted on March 16th, 2007, and has been effective since October 1st, 2007. There are five parts and nineteen chapters.

Part one is the general provisions. It includes three chapters: the basic principles; the creation, alteration, transfer and termination of real rights; and protection

of real rights.

Part two is about ownership of property. It includes six chapters: general provisions on ownership of property; state, collective and private ownerships issues; partitioned ownership of building areas; neighboring relationships; concurrent ownership of property; and special provisions on appropriation of ownership.

Part three is about usufruct rights of property. It includes five chapters: general provisions on usufruct rights; land contractual operating rights; construction land use rights; residential land use rights; and easements.

Part four is about collateral rights of property. It includes four chapters: general provisions on collateral rights; mortgage rights; pledge rights; and liens.

The last part is about possession, and it contains only one chapter named as possession.

6) Company law

Company law of the People's Republic of China was enacted on October 27th, 2005, and it has been effective since January 1st, 2006.

There are nine chapters under the Company law of the People's Republic of China: general provisions, establishment and organizational structure of a limited liability company, transfer of stock right of a limited liability company, establishment and organizational structure of a joint stock limited company, issuance and transfer of shares of a joint stock limited company, qualifications and obligations of the directors, supervisors, and senior managers of a company, corporate bonds, financial affairs and accounting of a company, and issues on merger and split-up of company and increase or deduction of registered capital.

7) Civil procedure law

Civil Procedure Law of the People's Republic of China was adopted at the Fourth Session of the Seventh National People's Congress on April 9th, 1991, and it has been effective since then. There have been two amendments to the Civil Procedure Law of the People's Republic of China, one in 2007, and one in 2012.

There are twelve chapters under the Civil Procedure Law of the People's Republic of China: aim and scope of application and basic principles, jurisdiction, trial organization, withdrawal, participants in proceedings, evidence; time periods and service, conciliation, preservation and advanced execution, compulsory measures a-