

Business law

Lecture 1

MGM412
Business law

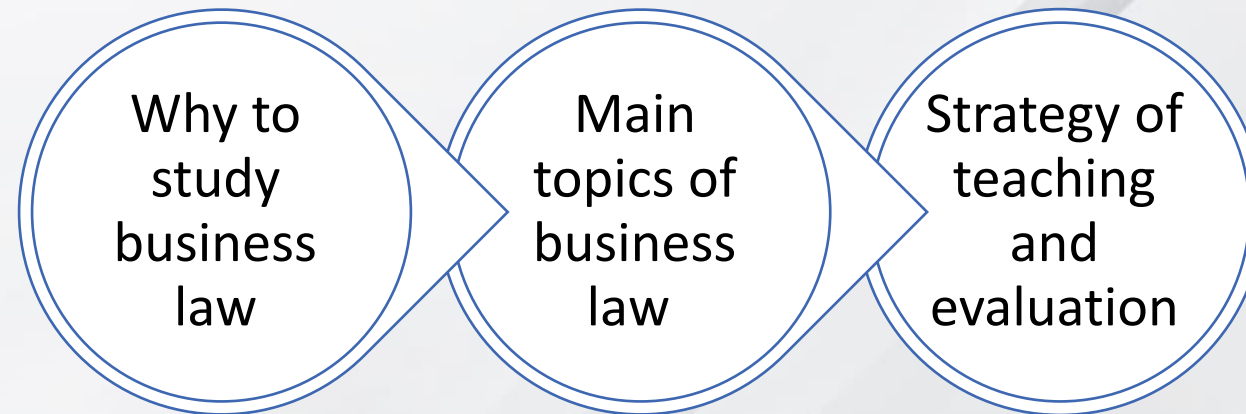
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Lecture goals

- 1- Quick revision of the previous lecture .**
- 2- Our educational goals today**
- 3- Conclusion**
- 4- References**



1- quick revision of the previous lecture



lecture

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2- educational goal today



PART 1: Definition and characteristics of law and its legal rules.

PART 2: classifying laws

(1- Classifying laws into public and private law.)

lecture
1**PART 1: Definition and characteristics of law and its legal rules.**

law could be defined as:

- law is a body of **general and abstract** rules which regulates the **social** conduct of people and enforced by a Different kinds of **sanction** imposed upon its violator.
- According to this definition law has three characteristics, namely:
 - - it is general and abstract.
 - - it is a social rule of conduct.
 - - it is enforced by sanction.

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1- Social rule of conduct:

- It governs the social conduct of persons in each society. So, the word Social come from society
- it organizes external behavior and act of individuals towards each other in the society. Law **doesn't regulate or consider intent and internal thoughts** until they turn to a legally regulated act.
- For example: If the debtor was stolen in front of his creditor's house. This proves that he has a real intent to pay his debt, though this intent doesn't release him from the debt of reduce the compensation he should pay in case the creditor sustained harm due to late or non- payment of the debt. Because obligation of debtor to pay his debt is only fulfilled by the real payment not by the intent to pay.

2- A rule having a general and abstract scope of application:

- The legal rule is a general rule. It **addresses every person** or a **group of persons** in the society defined by their position not by their names.
- Ex: The rules of criminal law address every person whether national or foreigner existing on the territory of the state.
- Also rules of civil law governing conclusion and execution of contracts are applied to all people on the territory.



- Sometimes rules of law are not addressing everyone in the state but also considered general because they are generally **governing every one in certain group**.
- For ex: The rules of commercial law addresses the traders and those who are involved in commercial acts. Commercial law doesn't not every one in the state but considered general because it addresses every person satisfying the description of merchant of conducting commercial act.
- The legal rule may regulate conditions of a **certain position** such as the president of the republic in his position not in his name. This rule is also general because it governs the conditions of the president of republic applied on everyone that may hold this position.



- **But why to focus on generality of legal rule ?**
- To assure that law and its legal rule does not address a **certain person** in his own name, as this is the function of **administrative decisions** issued in application of the law. Or judicial decision applying the law.
- So the legal rule may only state that university is obliged to appoint the student who gets the highest degree in each faculty as a lecturer in this faculty. But law doesn't appoint him by his name, instead each year the university will issue **a decision** to define the name of this student and actually appoint him.
- And if the university doesn't apply the law and issues such decision, this student can claim his legal right before the court and get a **judicial decision** to appoint him by his name instead.



3- The material sanction of the legal rule

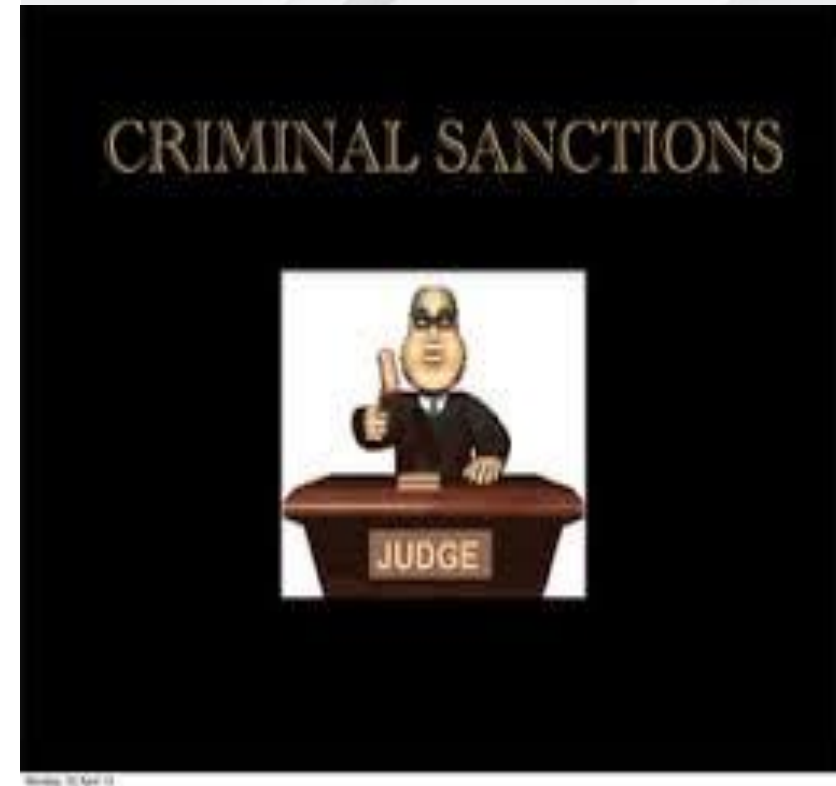
- The legal rule is different from other social rules in that it has a material sanction imposed by public authority. We shall discuss four kinds of legal sanctions: civil, criminal, administrative.



- It is to be noted that some rules of law are not mandatory or obligatory. These rules are supplementary or optional accordingly people can choose to apply or violate them with no punishment on the violator.

a- **Criminal or penal sanctions:**

- A person committing a **felony**, a **misdemeanor** or a **contravention** may be punished by a criminal penalty.
- **Criminal penalties may be:**
- an **imprisonment** which restricts the criminal's freedom
- or a **fine** which is paying certain amount of money collected by state, not the victim.
- In dangerous crimes, such as murder the penalty may be **death**



b- Civil sanctions:

are imposed in case of **breach of civil obligations, such as breach of contracts** (agreements between individuals) **and torts** (unlawful faults that harm others).

- For ex: If in a contract of sale of a specific piece of property, the seller refused to deliver this property to the purchaser by getting out of it and delivering its key to the purchaser. This is a violation to contract that require a civil sanction.
- Also if “A” was driving so fast exceeding the legal limit and hit “B” causing him an injury that requires paying 30 thousands as medical expenses. This is a tort that requires civil sanction.
- The creditor or the right holder may file a lawsuit, and will be called the claimant or plaintiff; the other party is called defendant or respondent.



- Civil sanctions include **specific performance and damages (compensation)**.
- * **specific performance:** is a contractual remedy in which a court orders a party to fulfill their obligations as closely as possible to what was promised in the contract, rather than simply paying damages (compensation) for failing to.
- For example, a contract for the sale of a specific piece of property, in which seller refused to deliver this property to the purchaser by getting out of it and delivering its key to the purchaser. If the purchaser may claim specific performance order requiring the seller to complete the sale to put the buyer in the position that enables him to use and enjoy the purchased property as defined in the contract.

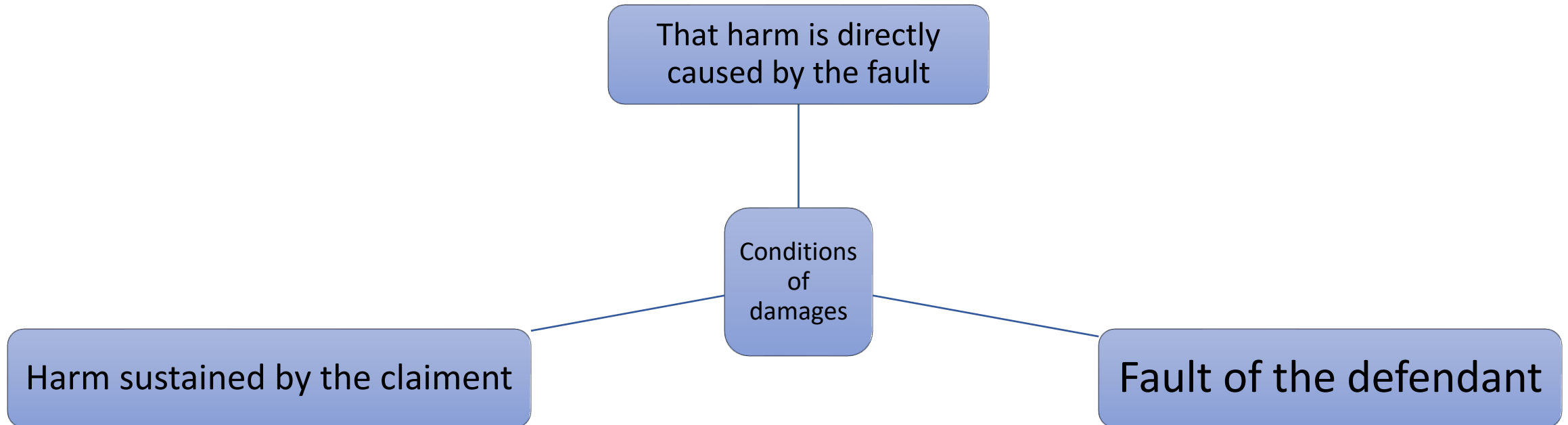


- * **Damages (compensation).**: damages are a remedy in the form of a monetary award to be paid to a claimant as compensation for loss or injury. To get the damages, the claimant must show that a breach of duty has caused loss. To be recognized at law, the loss must involve damage to property, or mental or physical injury.
- So, in the previous example in which if “A” was driving so fast exceeding the legal limit and hit “B” causing him an injury that requires paying 30 thousands as medical expenses.
- “ A” will be responsible to pay the medical expenses in addition he will compensate “B” for the emotional suffer he sustained, this compensation will be evaluated by the judge.



- * **Damages (compensation).**: damages are a remedy in the form of a monetary award to be paid by the wrongdoer to a claimant as compensation for his loss or injury. To get the damages, the claimant must show that a breach of duty has caused loss. To be recognized at law, the loss must involve damage to property, or mental or physical injury.
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To claim damages, and win the case. The claimant must assure that the other party actually committed a fault and that fault was the direct cause for the harm sustained by the claimant.



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Another example will be evident in the following case brief:

Facts: The defendant (actor Robert Reed) had agreed to play the major role in a TV series which was going to be filmed by Anglia Television. However, before taking part, he abandoned the television series and decided not to take part. He therefore terminated the contract and Anglia sued him for breach of contract and reliance loss because in preparation for filming they had incurred a certain amount of expenses amounting to £2750

Held: Anglia Television won the case



- **Do civil sanctions include imprisonment in case of serious harmful violations ?**
- For example: if a contractual party suffers from the non-performance of an obligation in the contract, which caused him 30 million as certain loss and may lead to more loss in the future. This loss lead to losing the whole business. May the judge order the imprisonment of the debtor, especially if it is evident that he can perform the contract but intendent not to do so to harm the creditor?
- No, The court may only decide either specific performance of the obligation or paying compensation to plaintiff to cover the harm caused by defendant.



- **May the same act be sanctioned by both criminal and civil sanctions?**
- in the previously mentioned example in which if “A” was driving so fast exceeding the legal limit and hit “B” causing him death. This will be punished criminally by imprisonment as unintentional murder (Manslaughter). In addition, B’s sons and daughters may claim damages for the financial and moral loss they sustain due to losing their father.
- Financial loss represented in losing the income of their father, the cost of repairing his car.
- Moral loss represented in the emotional pain they suffered due to their father’s loss



c - Administrative sanctions:

If an employee of the government did not fulfill his obligations towards his work or caused any harm to the funds of the state or caused any injury to any of the citizens he will be punished by an administrative sanctions

These sanctions includes warning, cutting some of his salary, degrading him to a lower position, dismissing him with or without pension.

Finally, The administrative sanction may not exclude a penal sanction if the action of the defaulting employee amount to a crime



Part 2 : classifications of laws

- Laws have two classifications:
- 1 - classifying laws into **public and private law**.
- 2- classifying laws into **complementary and imperative** rules.
- It is to be noted that the each rule must take a description of each classification. Public rules law could be complementary and imperative. Also private law rules could be complementary and imperative.

Public Law



- Government-Citizen Relations
- Societal Impact Focus
- Constitutional Regulation
- Criminal and Administrative Laws

Private Law



- Private Party Relations
- Individual Rights Defined
- Common Law Application
- Contracts, Property, Family Regulation

1- classifying laws into public and private laws.

- Mainly public laws are those governing relation between public persons and private laws are those governing relation between private persons.
- So we have first to know what is meant by public and private persons
- then redefine public and private laws, and know the different branches of each of them.

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A- The difference between public and private persons:

- **Public person:** an entity **representing the society** as whole and enjoying **extraordinary powers**, such as the state, public authorities(legislative, judicial, and executive), the governorates, public corporations and even public universities.
- Is to be noted that a human may never be a public person. Public person should be an entity or association.
- **Private person:** is the person **representing himself only**, it is either natural (individuals or) juristic person (private corporations).

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b- The definition of public and private laws:

- **Public law**: is the law governing the relation between **two public persons** or between a public person and a private person. For example: international law is a public law because it governs the relation between two public persons (two states) and tax law is a public law because it governs the relation between a public person (the government) and private persons (such as merchants).
- another example will be the contractual relationships between two public authorities in the state such as supply contracts between the ministry of agriculture and ministry of health.

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- **Private law**: is the law governing the relation between **two private persons** or between a private person and public person acting as private person
- For example: sale contract, rent contract and even mortgage contract conducted between two private persons, or a labor contract between a human and a commercial company. All these contracts are governed by private laws such as civil and commercial law.
- It is to be noted that parties of the previous contracts are private persons either individuals or private corporations.
- Also private relation is not necessarily a contract it take another for such as tort committed by a human causing harm to another human. This will also be governed by a branch of the private.

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- Does it mean that if “A” is about to conduct a land purchase contract from “B” and they both humans. So he will search the internet for the private law to know his rights and obligations?
- While if is conducting the same contract with a governmental entity, he will search the internet for the private law to know his rights and obligations?
- Actually there is no specific law titled as “ private law” or “ public law” this is only an **initial step** to define the broad classification of the law governing the relation in hand.
- The **second step** to define the governing law is to choose a subcategory or a branch.



- **C- Main branches of private law:**

- * Civil law:

Civil law is one of the most important branches of private law that regulates the relationships that arise between persons, neither of whom acts as a sovereign. Civil law is the law that regulates financial legal relations - except those related to trade.

Such as person's legal capacity to conclude legal acts, different kinds of legal obligations, and conclusion, execution and termination of different kinds of contracts.

Civil law is the most important private law branch because it is considered as the basis of all other private law branches. So it is the basis of labor law, commercial law, insurance law...etc.

For example: Saudi Civil Transactions law for the year 1444.



- **What does it mean to be the basis of all other private law branches?**
- It means that it is the common legislation, we refer to if we didn't find a governing rule in any of the other private law branches.
- To make more clear let's take the following example: commercial law govern commercial acts and contracts concluded between merchants.
- If we have a dispute between two merchants as to the validity of conclusion of certain contract, and there is no rule to solve such dispute in commercial law or in commercial custom. We shall search for solution of that dispute in the rules of civil law.
- The reason for the necessity of referring to the Civil Code and considering it as the source is that the **Commercial Code is silent on the general provisions** and rules, and only provides the special provisions required by its nature. This means that it does not exclude the fundamental rules that came in the Civil Code, as the general reference for obligations and contracts.
- Same will be applied in labor disputes, and insurance disputes...etc.

- **Commercial law** :govern financial commercial relations, trade, merchants , commercial companies and commercial contracts in general (commercial financial relations).
- For example: Saudi Commercial law issued by Royal Decree No. M/2 dated 15/1/1390. and Saudi Companies Law issued by Royal Decree No. (M/132) dated 12/1/1443



*** Characteristics of commercial transactions :**

1- Speed and flexibility: Civil transactions differ from commercial transactions in that the former are characterized by slowness, while commercial transactions are characterized by speed, simple procedures, and avoidance of formalities, as is the case with freedom of proof for commercial transactions, while civil transactions require writing to prove most legal transactions.

2- Credit and trust: The credit that the merchant needs and the trust that must be available to others in order to grant credit to the merchant, as the merchant needs credit if he buys the goods necessary for his trade without being able to pay their price or part of it, and he also needs credit if he borrows for his business affairs, as credit is an essential element for him



*** Labor law:**

*Labor law is a set of legal rules that regulate the relationship **between workers and employers**.*

The idea of establishing labor law dates back to the Industrial Revolution and the emergence of the working class, which was subjected to social injustice for a period of time. The labor law was issued with the aim of preserving workers' rights and protecting them from arbitrary harm from employers.

Labor law includes many rules that regulate individual employment contracts and joint employment contracts, such as: determining the number of working hours, the worker's right to weekly or annual paid vacations, setting a limit for the minimum wage rate, the method of terminating the employment contract without arbitrariness, and compensating the worker in the event of arbitrary dismissal. It also regulates collective labor relations; such as: unions, their organization, workers' strikes, and collective labor disputes.

For example: Saudi Labor Law issued by Royal Decree No. M/51 dated 23/8/1426. and the Egyptian Labor Law No. 12 of 2003.

Private Law



- Private Party Relations
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*** Private international law:**

Private International Law or International Private Law governs: rules of nationality, rights and duties of foreigners, and the choice of law to apply when there are conflicts in the domestic law of different countries or nationalities related to private transactions.

For example a commercial contract between an Egyptian and British that will be executed in Egypt. So we need a rule in the private international law to define which law will govern the execution of that contract (the Egyptian or British law).

This means that there is a dispute or transaction that involves a foreign element with different nationality and needs defining the following: what jurisdiction applies - choice of court, choice of applicable law, and recognition or enforcement of a foreign judgment.

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*** Transportation laws:**

A- Maritime law: *Maritime law is a distinct legal framework that sets out the rules and regulations relating to activities taking place in navigable waters. In most countries, maritime law operates separately to other national legal systems.*

The laws, conventions and treaties that make up maritime law govern legal issues arising from a wide range of activities (e.g. commercial shipping, commercial ocean-based activities, and passenger transportation via commercial waterways) and define the rights and responsibilities of individuals and entities involved in maritime trade and transportation (e.g. passengers, crew, shipowners, etc) and maritime insurance).

For example: Saudi Commercial Maritime System issued by Royal Decree No. (M/33) dated 04/05/1440 AH

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* Transportation laws:

B- Aviation law. *Aviation law covers the legal aspects of air transport, the use and regulation of airspace, and air travel business, including airport operations. Legal issues range from aircraft accidents to noise complaints and air insurance.*

For example: Saudi Civil Aviation System under Royal Decree No. M/44 dated 7/18/1426.

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- **D- Main branches of public law** Issues regulated by the law

1- Constitutional law

- Form of state

- the powers of each of the public authorities of state: legislative (enacting ordinary legislation) judicial (applying law to solve disputes) and executive authority (it is the government applying laws in daily activities of state)
- individuals right and public liberties .

2- Public international law:

Public International Law is composed of the laws, rules, and principles of general application that deal with the conduct of states and international organizations among themselves as well as the relationships between nation states and international organizations with persons, whether natural or juridical.

Accordingly it is the law that the relations between states, international organization in peace, war and neutrality.

Public Law



- Government-Citizen Relations
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3- Criminal law

The Criminal law is the body of law that relates to crime. It prescribes conduct perceived as threatening, harmful, or otherwise endangering to the property, health, safety. accordingly, it regulates crimes, punishment, criminal procedures.

4- Taxation law

It regulates the imposition and collection of taxes.. It covers the application of existing tax rules on individuals, entities and corporations, for example. income tax, business tax, employment/payroll tax, property tax, donation tax and exports/imports tax.

Public Law



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5- Administrative law:

Regulating function of executive authority, public employees and administrative courts

it deals with what the next laws deal with : the labour law + civil law + commercial law in cases involving a public person.

Note: each of these parts is governed by different administrative law but all relations governed by them subject to administrative judiciary .

for ex: in work contracts: the law governing the governmental labor contract name is the law of state workers it is a part of administrative law and disputes resulting from this contract subject to administrative courts. while private labor contracts is governed by labor law and its disputes subject to ordinary courts.

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Also Commercial contract is governed by commercial law and their disputes subject to ordinary commercial courts , but a commercial contract between a merchant and the government is governed by administrative law and their disputes will subject to administrative courts.

An example of administrative law is the Saudi Government Tenders and Procurement law issued pursuant to Royal Decree No. (M/128) dated 11/13/1440.

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E-The practical effect of classifying laws into public and private:

- You should differentiate between your relation with public persons and your relations with private persons
- To know the next :
- 1- the **name of the law** governing this relationship and accordingly be able to define your rights and duties.
- 2 - the **kind of court** you may resort to in case of dispute.
- The discussion of this part will be Postponed to next lecture.

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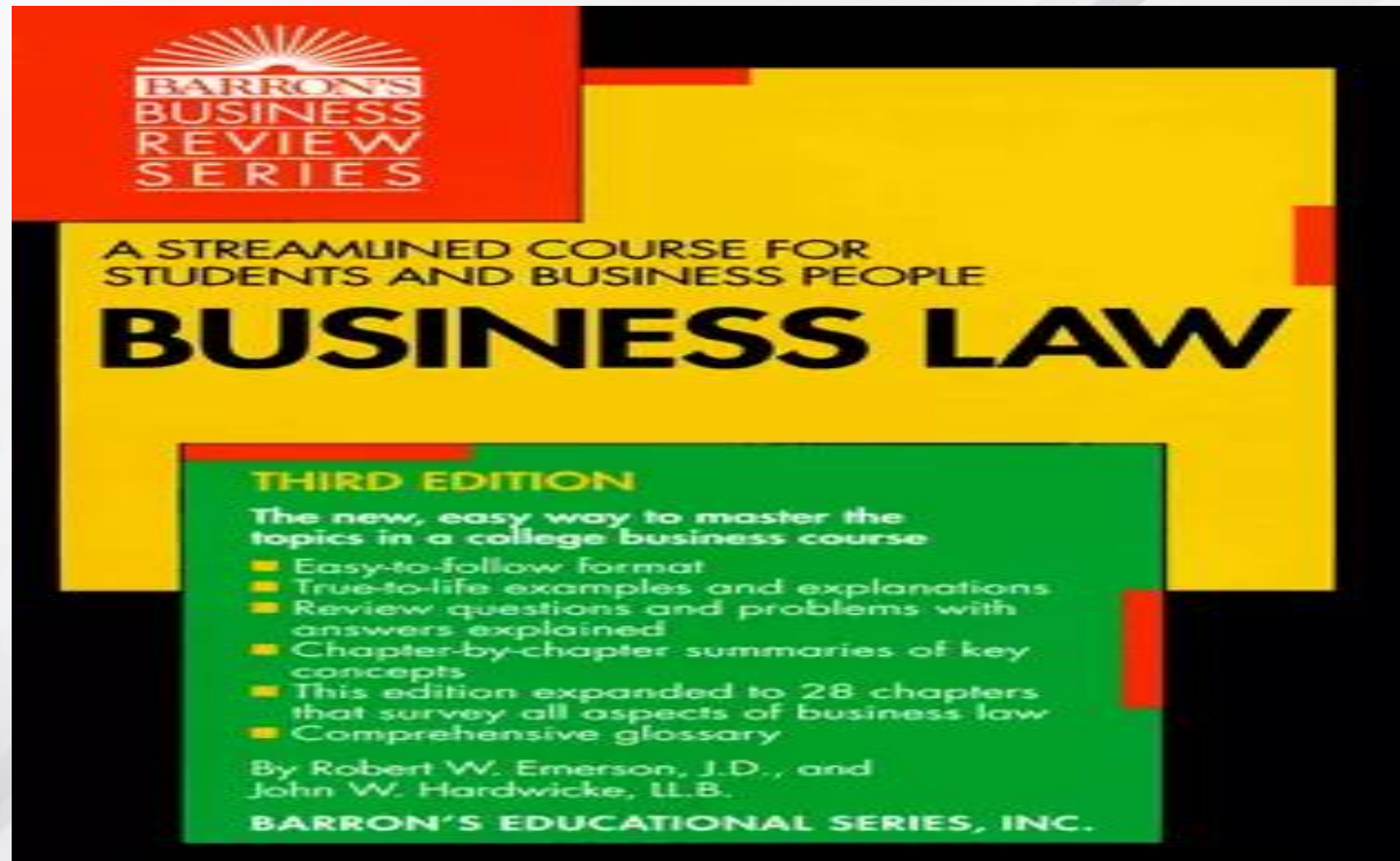
introduction

3- Conclusion



4- References

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Thank You