What is "law"?

- coercive nature of law (i.e., not voluntary)

- rules of the "sovereign" (<u>legitimate</u> authority) backed by force

- Problem:

    - who is the "sovereign" in US?

    - Congress, courts, executive?

    - federal versus state government

What is "law"?

Black's Law Dictionary:

"Law is a body of rules of action or conduct prescribed by the controlling authority, and having binding legal force. That which must be obeyed and followed by citizens subject to sanctions . . . is a law."

Different kinds of law:

- **criminal law**
  - willful and intentional acts
  - "beyond a reasonable doubt"
  - *mens rea* = "guilty mind"
  - enforced by criminal justice system
  - 2.2 million persons in prison in US (federal & state prison plus county jails) plus 4.2 million on probation
  - "People of California v. O.J. Simpson"

Different kinds of law:

- **civil law**
  - violations of rules and regulations that govern private action; enforced by agencies and courts
  - e.g., violations of securities law, tax law, environmental law; corporate, contracts, torts
  - no prison; penalties are $$$$$
  - different court system; different rules of procedure
  - "more likely than not" or "weight of evidence"

Different kinds of law:

- **public law vs. private law**
  - laws enacted by U.S. Congress, such as Securities Act of 1933, Clean Air Act of 1970, Sherman Antitrust Act of 1890, etc.
  - private contracts between individuals or tort committed by one individual against another

- **state law vs. federal law**
  - laws enacted by state legislature vs. Congress

Different Courts

- **Law Courts**
    - origin: William the Conqueror (1066)
    - uniform system of law; courts of the King
    - relief = monetary award for damages
- **Law courts follow the Common law**
    - where no statute, follow decisions of judges of law courts for last 900 years
    - *stare decisis* :   "stand by things decided"
    - **precedent**: lower courts must follow decisions of higher courts
    - provides stability and predictability to the law
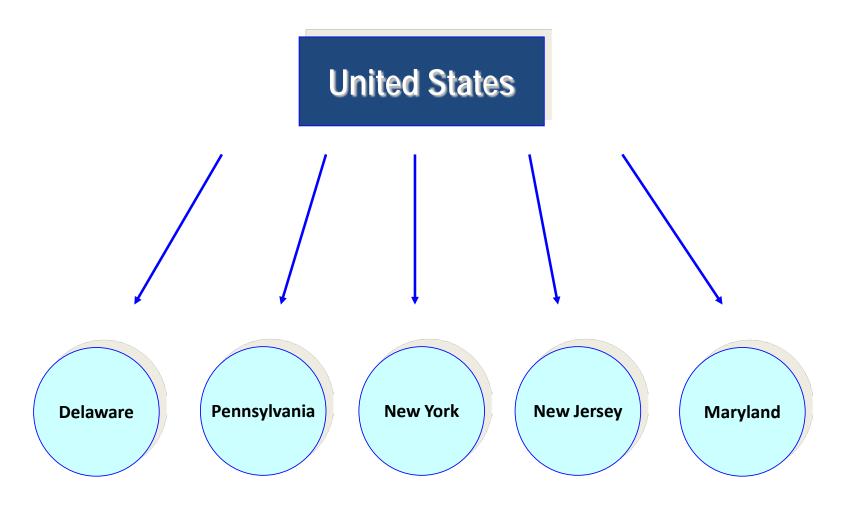
Different Courts

- **Courts of Chancery** (**equity courts**)
    - created by Lord Chancellor of England to provide remedies where none provided by law courts
    - equitable remedies shaped to fit each situation to achieve "fairness" and justice
    - e.g., injunction (order to stop doing something)
    - no juries; judge
    - five states still have separate courts of equity (including Delaware and New Jersey)
        - e.g., Delaware's Chancery Court

Peculiar Structure of United States

- **Federalism:**
  - 13 separate and independent political entities join together as a confederation
- first constitution = Articles of Confederation (1776-1787) = failure because too weak
- U.S. Constitution of 1787
  - stronger federal government but limited powers; enumerated powers
  - reserves all other powers to states

Sources of Law in the United States

- **Federal Constitution:**
  - **U.S. Constitution of 1787 =** supreme law of the land
  - Any law (state or federal) that conflicts with it is unconstitutional and unenforceable
  - Establishes structure of federal government
    - **Legislative branch**
    - **Executive branch**
    - **Judicial branch**
  - **Bill of Rights (1791):** ten constitutional amendments guarantee rights (e.g., free speech, press, religion, etc.)

Sources of Law in the United States

- **Federal Treaties:**
  - "supreme law of the land" along with U.S. Constitution

- **Federal Statutes**
  - Congress enacts laws
  - public law
  - Article I, Section 8: power of Congress to regulate interstate commerce; power of taxation
  - securities law, labor law, antitrust, tax code, environmental law, Dodd-Frank, civil rights laws

Sources of Law in the United States

- **Executive orders**
  - not really law; orders issued by the president to officials of federal government
  - power derived from President as chief executive of executive branch or commander in chief
  - e.g., Obama's executive order in 2014 that would bar deportation of 4 million illegal aliens
  - e.g., President Truman in 1948 desegregated U.S. military

Sources of Law in the United States

- **Administrative law**
    - agencies created by Congress
    - adopt rules and regulations to interpret and implement statutes; hear and decide disputes

- examples of administrative agencies:
    - Food and Drug Administration (FDA)
    - Environmental Protection Agency (EPA)
    - Securities and Exchange Commission (SEC)
    - Federal Trade Commission (FTC)

Sources of Law in the United States

- **Federal Courts**
  - decisions of federal courts = "judicial law"
  - decisions state the rationale used by the court in reaching that decision
  - published
  - applies to subsequent cases as precedent
  - courts "make law" when interpret federal statutes
    - e.g., federal courts interpret the federal tax code or securities law

Sources of Law in the United States

- **State Legal Systems**
  - State Constitutions
  - Statutes: state legislatures enact statutes
  - decisions of state courts: i.e., common law
  - state administrative law: very little

- **Ordinances**
  - enacted by local government bodies, cities, etc.
  - e.g., City of Newark: city ordinance banning public drinking, noise violations, etc.

Priority of Law in the United States

- U.S. Constitution and treaties take precedence over all other laws (federal or state)
- federal statutes take precedence over federal regulations
- federal judicial decisions take precedence over federal regulations of administrative agencies
- federal law takes precedence over conflicting state
- state constitutions = highest state law
- state statutes
- state administrative law