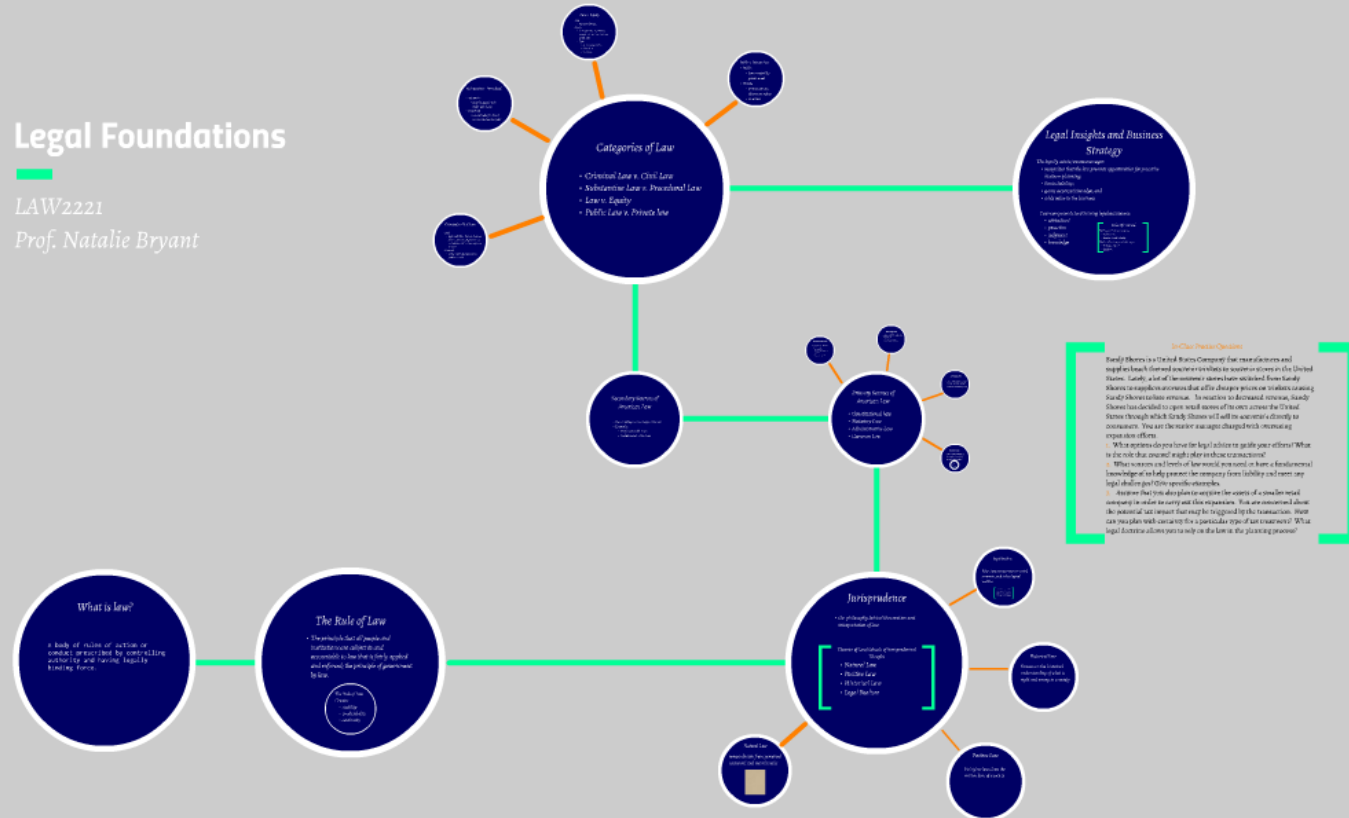


# Legal Foundations

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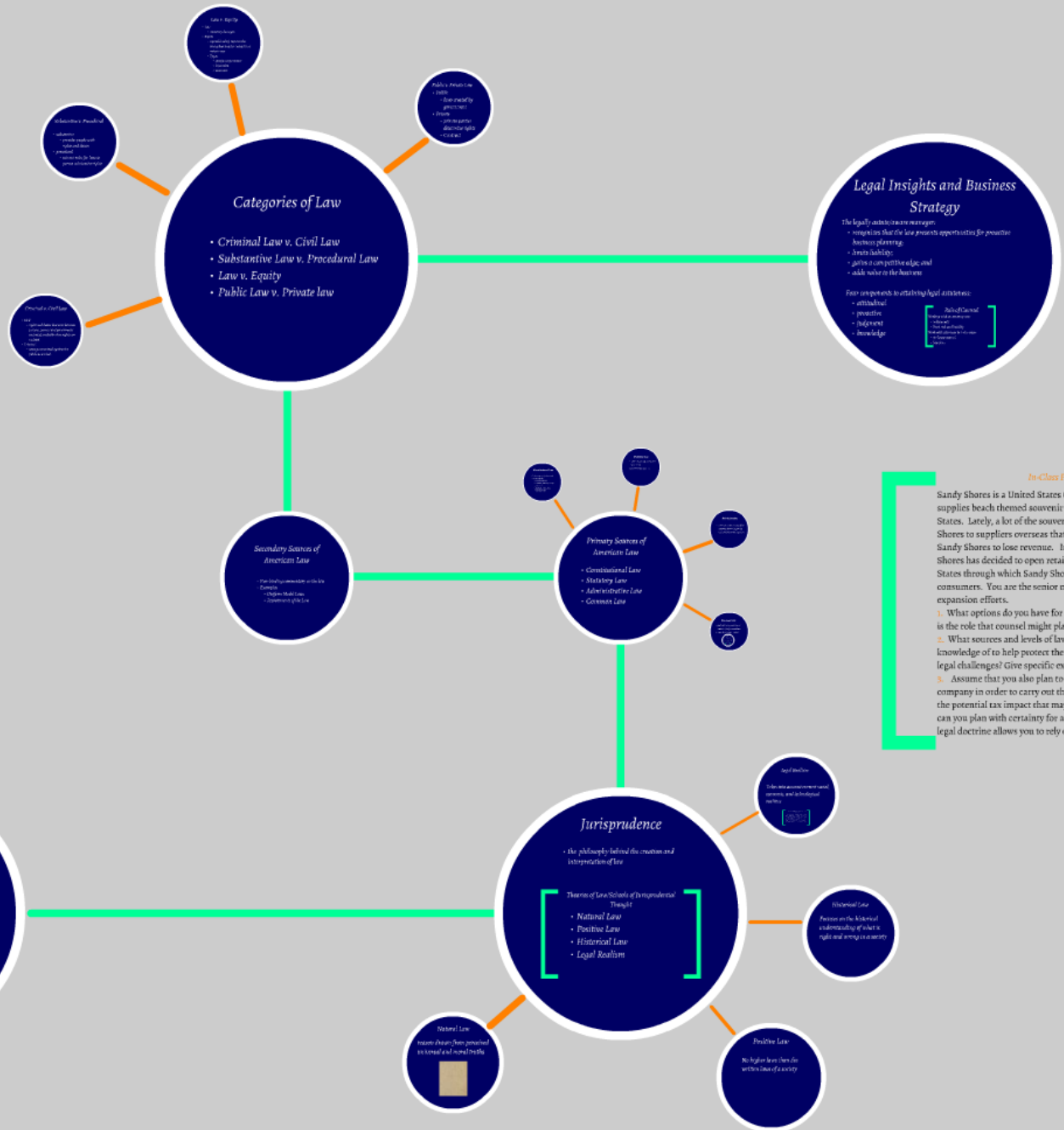
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## *What is law?*

A body of rules of action or conduct prescribed by controlling authority and having legally binding force.

# *The Rule of Law*

- *The principle that all people and institutions are subject to and accountable to law that is fairly applied and enforced; the principle of government by law.*

*The Rule of Law*

*Creates:*

- *stability*
- *predictability*
- *continuity*

# *The Rule of Law*

*Creates:*

- *stability*
- *predictability*
- *continuity*

# Jurisprudence

- *the philosophy behind the creation and interpretation of law*

## *Theories of Law/Schools of Jurisprudential Thought*

- *Natural Law*
- *Positive Law*
- *Historical Law*
- *Legal Realism*

Takes into account economic, and realities

*Natural Law*

*from perceived*

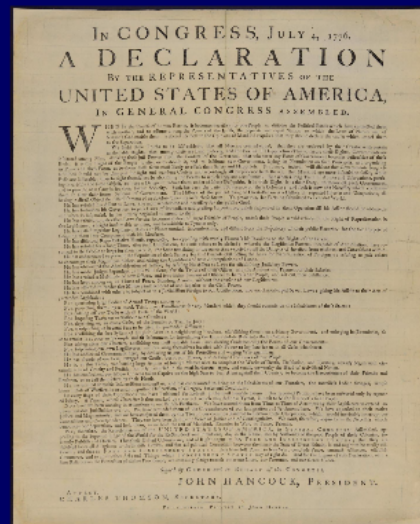
*Positive Law*

*Theories of Law/Schools of Jurisprudential  
Thought*

- *Natural Law*
- *Positive Law*
- *Historical Law*
- *Legal Realism*

# Natural Law

*reason drawn from perceived  
universal and moral truths*







## *Positive Law*

*No higher laws than the  
written laws of a society*



## *Historical Law*

*Focuses on the historical  
understanding of what is  
right and wrong in a society*

# *Legal Realism*

*Takes into account current social,  
economic, and technological  
realities*

*The Equal Protection Clause of the 14th Amendment and  
Brown v. BOE*

*All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; **nor deny to any person within its jurisdiction the equal protection of the laws.***

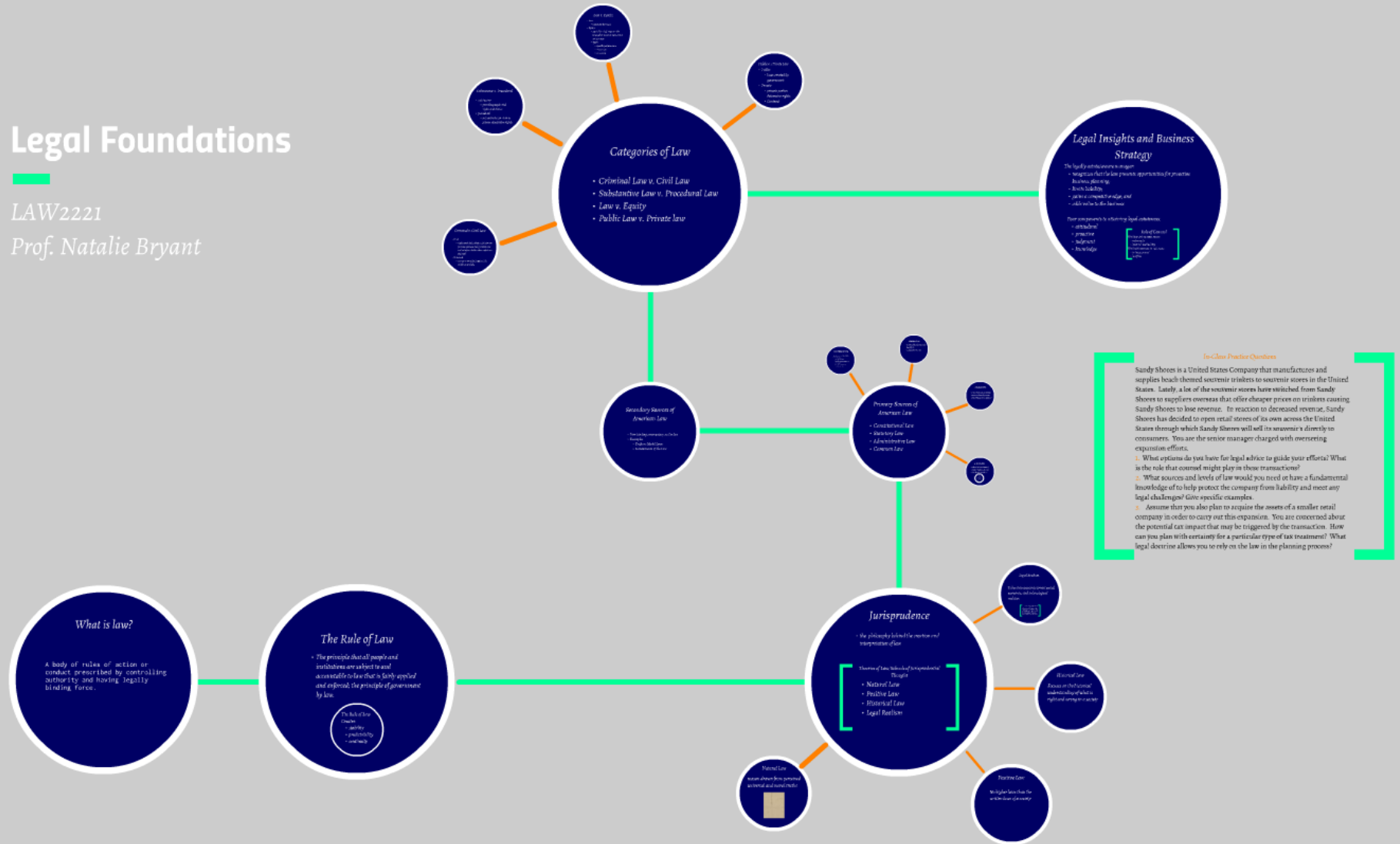
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## *Primary Sources of American Law*

- *Constitutional Law*
- *Statutory Law*
- *Administrative Law*
- *Common Law*

# *Constitutional Law*

- *Exists at state and federal levels*
- *U.S. Constitution*
  - *provides structure*
  - *establishes federal system of government*
  - *establishes and protects individual rights*

## ***Statutory Law***

- *exists at federal, state, and local levels*
- *Codification process*



## *Administrative*

- *comes from rules created by executive branch agencies and administrative agencies*



*Stare decisis means "let the decision stand."*

- *Judges are obligated to follow precedent within their jurisdictions*

*Precedent*

- *a decision that furnished an example or authority for deciding subsequent cases involving identical or similar legal principles or facts.*
- *<http://www.cc.com/video-clips/99bavp/the-colbert-report-the-word---prece-don-t>*

*"Stare decisis channels the law. It erects lighthouses and [flies] the signals of safety...but the principle of stare decisis does not demand that we follow precedents which shipwreck justice." Flagiello v. Pennsylvania Hospital, 208 A.2d 193 (PA 1965).*

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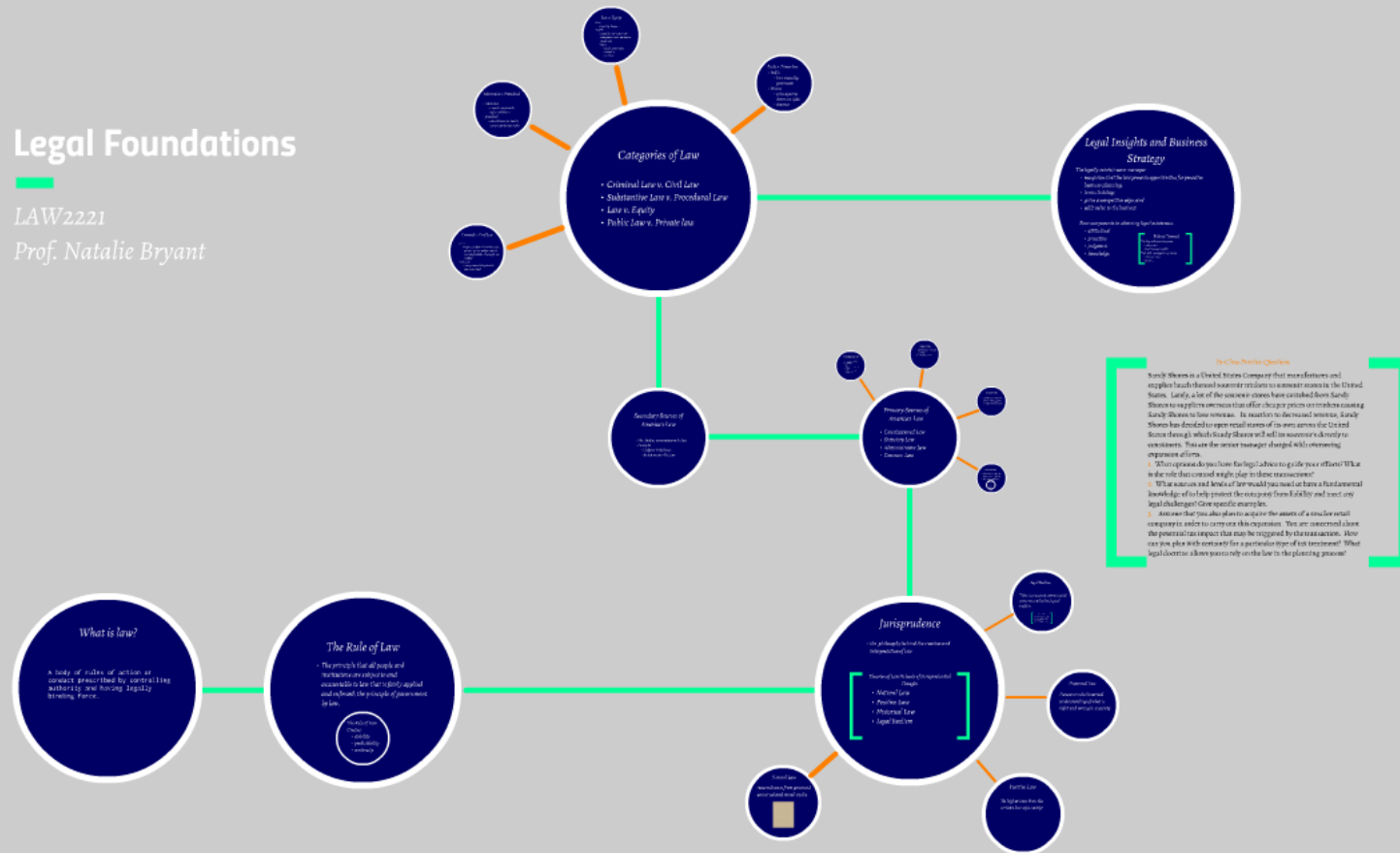
# *Secondary Sources of American Law*

- *Non-binding commentary on the law*
- *Examples*
  - *Uniform Model Laws*
  - *Restatements of the Law*

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determine ri  
• Contract

## *Categories of Law*

- *Criminal Law v. Civil Law*
- *Substantive Law v. Procedural Law*
- *Law v. Equity*
- *Public Law v. Private law*

# *Criminal v. Civil Law*

- *Civil*
  - *rights and duties that exist between persons, persons and governments and relief available when rights are violated*
- *Criminal*
  - *wrongs committed against the public as a whole*



## *Substantive v. Procedural*

- *substantive*
  - *provides people with rights and duties*
- *procedural*
  - *sets out rules for how to pursue substantive rights*

## *Law v. Equity*

- *Law*
  - *monetary damages*
- *Equity*
  - *equitable relief: requires the wrongdoer to act or not act in a certain way*
  - *Types*
    - *specific performance*
    - *injunction*
    - *rescission*

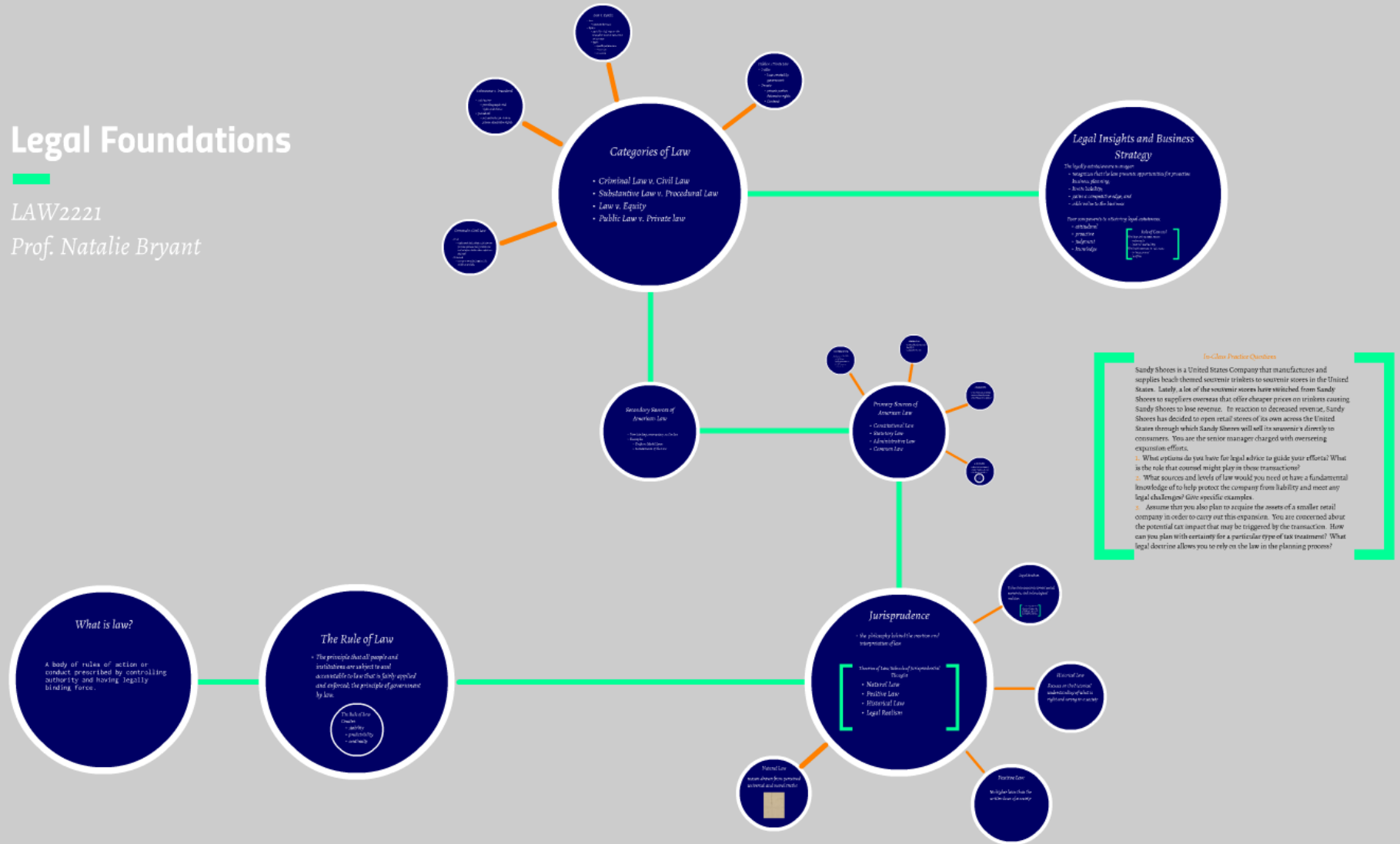
## *Public v. Private Law*

- *Public*
  - *laws created by government*
- *Private*
  - *private parties determine rights*
  - *Contract*

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# *Legal Insights and Business Strategy*

*The legally astute/aware manager:*

- *recognizes that the law presents opportunities for proactive business planning;*
- *limits liability;*
- *gains a competitive edge; and*
- *adds value to the business*

*Four components to attaining legal astuteness:*

- *attitudinal*
- *proactive*
- *judgment*
- *knowledge*

## *Role of Counsel*

*Working with an attorney can:*

- *reduce costs*
- *limit risk and liability*

*Work with attorneys in 1 of 2 ways:*

- *in-house counsel*
- *law firm*

# *Role of Counsel*

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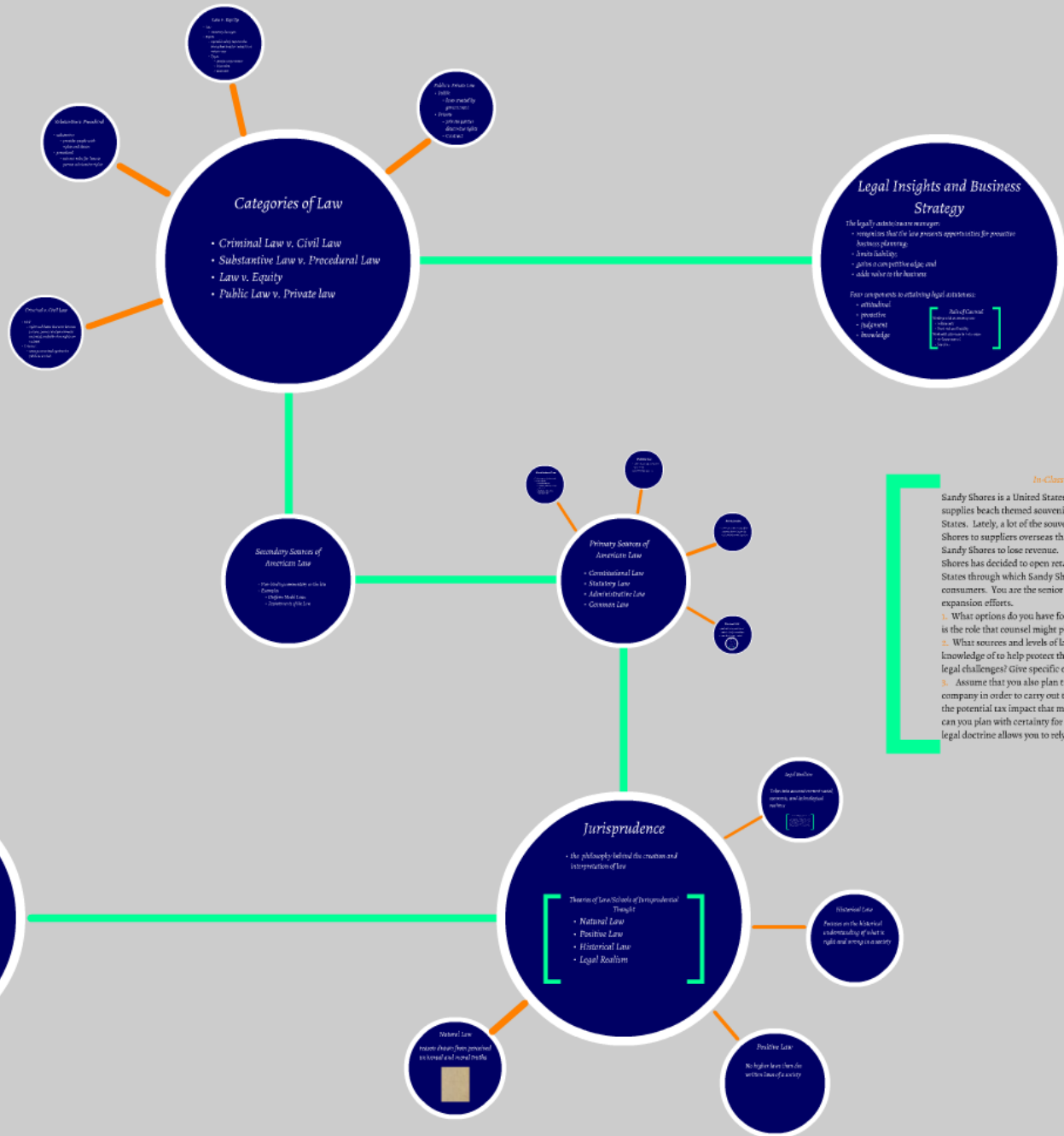
*Work with attorneys in 1 of 2 ways:*

- in-house counsel*
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## *In-Class Practice Questions*

Sandy Shores is a United States Company that manufactures and supplies beach themed souvenir trinkets to souvenir stores in the United States. Lately, a lot of the souvenir stores have switched from Sandy Shores to suppliers overseas that offer cheaper prices on trinkets causing Sandy Shores to lose revenue. In reaction to decreased revenue, Sandy Shores has decided to open retail stores of its own across the United States through which Sandy Shores will sell its souvenir's directly to consumers. You are the senior manager charged with overseeing expansion efforts.

1. What options do you have for legal advice to guide your efforts? What is the role that counsel might play in these transactions?
2. What sources and levels of law would you need or have a fundamental knowledge of to help protect the company from liability and meet any legal challenges? Give specific examples.
3. Assume that you also plan to acquire the assets of a smaller retail company in order to carry out this expansion. You are concerned about the potential tax impact that may be triggered by the transaction. How can you plan with certainty for a particular type of tax treatment? What legal doctrine allows you to rely on the law in the planning process?



