

NATURAL LAW AND POSITIVE LAW

- **Law:** A body of enforceable rules governing relationships among individuals and between individuals and their society.
- **Natural Law:** A system of universal moral and ethical principles that are inherent in human nature and that people can discover by using their natural intelligence (*e.g.*, murder is wrong; parents are responsible for the acts of their minor children).
- **Positive Law:** The conventional, or written, law of a particular society at a particular point in time (*e.g.*, the U.S. Constitution, the Texas Securities Act, the Internal Revenue Code, and published judicial decisions).

PRIMARY SOURCES OF AMERICAN LAW

- U.S. law primarily takes the form of
 - (1) **constitutions** setting forth the fundamental rights of the people living within the United States or a given state, describing and empowering the various branches of government, and prescribing limitations on that power;
 - (2) legislatively-enacted **statutes** and local **ordinances**;
 - A given state statute may be based on a **uniform law** (*e.g.*, the Uniform Commercial Code) or on a **model act** (*e.g.*, the Model Business Corporations Act). However, each state is free to depart from the uniform law or model act as it sees fit.
 - (3) **administrative rules and regulations** promulgated by federal, state, and local regulatory agencies; and
 - (4) **common law**, which is the body of judicial decisions that interpret and enforce any of the foregoing as well as those relationships among individuals or between individuals and their society which are not subject to constitutional, statutory, or administrative law.

HIERARCHY AMONG PRIMARY SOURCES OF AMERICAN LAW

- Laws emanating from the various primary sources of American law are enforced according to the following hierarchy:
 - (1) The **United States Constitution** takes precedence over
 - (2) **federal statutory law**, which takes precedence over
 - (3) a **state constitution**, which takes precedence over
 - (4) **state statutory law**, which takes precedence over
 - (5) a **local ordinance**, which takes precedence over
 - (6) **administrative regulations and rulings**, which take precedence over
 - (7) **common law**.

LAW VS. EQUITY

- From their origin in the late-Eleventh Century, common-law courts were typically classified as either “courts of law” or “courts of equity.”
- **Courts of Law** were empowered only to award wronged parties money or other valuable compensation for their injuries or other losses.
- **Courts of Equity**, by contrast, were empowered to award any manner of non-monetary relief, such as ordering a person to do something (a.k.a. “specific performance”) or to cease doing something (a.k.a. “injunction”).
- In most of the United States the courts of law and equity have *merged*. Nonetheless, American courts still recognize **legal remedies** and **equitable remedies**.
- **Remedy:** The means given to a party to enforce a right or to compensate for another’s violation of a right.

EQUITABLE MAXIMS

- A party's right to receive equitable relief and a court's power to grant it depends upon the following:
 - Whoever seeks equity must **do equity**;
 - Where the **equities favor both parties equally**, law must decide the dispute;
 - Whoever seeks equity must come to the court with **"clean hands"**;
 - Equitable relief will be awarded only when there is **no adequate remedy at law**;
 - Equity favors **substance over form**; and
 - Whoever seeks equity must **pursue the vindication of their rights vigilantly** or risk having their claims barred.

STARE DECISIS

- ***Stare Decisis***: The doctrine that obliges judges to follow established precedent within a particular jurisdiction.
- **Binding Authority**: Any source of law a court must follow when deciding a dispute, including constitutional provisions, statutes, treaties, regulations, or ordinances that govern the issue being decided, as well as prior court decisions that constitute controlling precedent in the court's jurisdiction.
- **Persuasive Authority**: Any primary or secondary source of law which a court may, but which the court is not bound to, rely upon for guidance in resolving a dispute.
- **Precedent**: The authority afforded to a prior judicial decision by judges deciding subsequent disputes involving the same or similar facts and the same jurisdiction's substantive law.
 - A prior judicial decision is *binding* precedent only when the subsequent court is applying the same law as the prior court; otherwise, the prior decision is only *persuasive* authority.
- **Departing from Precedent**: The highest court in a jurisdiction may depart from precedent it considers wrongly decided, contrary to ***public policy***, or outdated due to changes in **technology, social norms, or business practices**.

LEGAL REASONING

- **Legal Reasoning:** The process judges (and lawyers) use to decide what law applies to a given dispute and then apply that law to the facts or circumstances of the dispute.
- **Deductive Reasoning:** Reasoning that uses the device of *syllogism*, involving a major premise, a minor premise, and a conclusion.
- **Linear Reasoning:** Reasoning that proceeds from one point to another, ultimately reaching a conclusion which “ties” those points together.
- **Reasoning by Analogy:** Comparing the facts of the case at hand to the facts in other, previously-decided cases and, to the extent that the fact patterns are similar, applying the same rule(s) of law to the dispute at hand as was applied in the prior cases.

JURISPRUDENCE

- **Jurisprudence:** The study of different schools of legal philosophy and how each can affect judicial decisionmaking.
- **Natural Law Theory** presupposes that positive law derives its legitimacy from natural law and holds that, to the extent that natural law and positive law differ, natural law must prevail.
- **Legal Positivism** holds that there is no higher law than that created by legitimate governments and that such laws must be obeyed, even if they appear unjust or otherwise at odds with natural law.
- The **Historical School** emphasizes the evolutionary process of law by concentrating on the origin and history of a legal system and holds that law derives its legitimacy and authority through the test of time.
- **Legal Realism** contends that positive law cannot be applied in the abstract; rather, judges should take into account the specific circumstances of each case, as well as economic and social realities.
- The **Sociological School** views law as a tool for promoting social justice.

CLASSIFICATIONS OF LAW

■ Substantive vs. Procedural Law

- **Substantive law** consists of all laws that define, describe, regulate, and create legal rights and obligations.
- **Procedural law** consists of all laws that establish and regulate the manner of enforcing or vindicating the rights established by substantive law.

■ Civil vs. Criminal Law

- **Civil law** defines and enforces the duties or obligations of persons to one another.
- **Criminal law**, by contrast, defines and enforces the obligations of persons to society as a whole.
- **Cyberlaw:** A growing body of law that deals specifically with issues raised by cyberspace transactions.

FINDING STATUTORY LAW

- **Uncodified Statutes:** Shortly after a law is passed either by Congress or by a state legislature, it is reported in the form in which it passed. These uncodified statutes are typically reported in the order in which they are passed by the relevant legislative body, regardless of subject matter.
 - Uncodified statutes passed by Congress are reported in *United States Statutes at Large*.
 - Uncodified statutes passed by a state legislature are typically reported in a “session law” reporter (*e.g., Texas Session Laws*).
- **Codified Statutes:** Statutes are also typically collected and reported by subject matter.
 - Codified statutes passed by Congress are reported in the *United States Code*, which has a number of “Titles,” roughly corresponding to major subject matter areas (*e.g., the Internal Revenue Code*).
 - Codified statutes passed by a state legislature are typically reported by subject in that state’s code (*e.g., California Commercial Code*).

FINDING ADMINISTRATIVE LAW

■ **Federal Administrative Law**

- Rules and regulations adopted by federal agencies appear first in the *Federal Register*, which is published daily (except for weekends and holidays). Items appear in the *Register* as they are promulgated, and are only sorted as to the contents of a single issue of the *Register*.
- These newly-issued or revised rules and regulations are collected annually, along with all rules and regulations that remain unchanged and in effect, into the *Code of Federal Regulations*, which is arranged topically.

- **State Administrative Law:** The manner in which state administrative law is reported varies from state to state. Consult with your local law librarian or government documents reference librarian for help with a particular state's administrative law.

FINDING CASE LAW: STATE

- **Official Reporters:** Every state other than Alaska at one time published the decisions of its highest court – and, in many cases, its intermediate appellate court(s) and even trial courts – in one or more official reporters (*e.g.*, *Connecticut Reports*, *Illinois Appellate Court Reports*, *New York Miscellaneous Reports*). Official reporters are published for each state that uses them and counsel may be required to cite them in papers filed in the courts of a particular state.
- **Unofficial Reporters:** The most widely-used unofficial reporters – and, in many states, the only reporters currently being published – are the regional reporters that are part of West's *National Reporter System*.
- These regional reporters contain the published decisions of the highest appellate court(s) of each state, as well as, in many cases, the published opinions of each state's intermediate court(s) of appeals.

FINDING CASE LAW: FEDERAL

- **U.S. Supreme Court:** All opinions of the U.S. Supreme Court are published in *United States Reports* (“U.S.”), the Court’s official reporter. In addition, unofficial reports of Supreme Court decisions can be found in the *Supreme Court Reporter* (“S. Ct.”) and the *United States Reports: Lawyers Edition* (“L. Ed.” & “L. Ed. 2d”). The latter two sources, while “unofficial,” are more current and provide useful research and analysis aids not found in *United States Reports*.
- **U.S. Courts of Appeals:** Published opinions of the federal courts of appeals can be found in *Federal Cases* (“F. Cas.”), the *Federal Reporter* (“F.”, “F.2d” & “F.3d”).
- **U.S. District Courts:** Published opinions of U.S. district courts in the 50 states, the District of Columbia, and certain U.S. possessions and territories can be found primarily in the *Federal Supplement* (“F. Supp.” & “F. Supp. 2d”). Old U.S. district court opinions also appear in *Federal Cases* (“F. Cas.”) and the first series of the *Federal Reporter* (“F.”).
- ***Bankruptcy Reporter*** (“B.R.”): Reports bankruptcy decisions from all federal courts.
- ***Federal Rules Decisions*** (“F.R.D.”): Reports federal trial and appellate decisions on matters of civil and criminal procedure.

CASE TERMINOLOGY: PARTIES

- **Plaintiff/Petitioner:** The party who filed a court action or who seeks higher court review of a lower court's ruling by means of a *writ of mandamus*.
- **Defendant/Respondent:** The party against whom the plaintiff filed its action or who is opposing the plaintiff's mandamus petition.
- **Appellant/Petitioner:** The party challenging the trial court's disposition of the action.
- **Appellee/Respondent:** The other party to a disposition that has been appealed.

CASE TERMINOLOGY: OPINIONS

- **Judgment:** The court's disposition of an action.
- **Opinion:** The court's reasons for its judgment.
 - **Unanimous Opinion:** An opinion joined by all of the judges who heard a case.
 - *Per Curiam Opinion:* A unanimous opinion that does not indicate which judge wrote it.
 - **Majority Opinion:** An opinion joined by the majority (but not necessarily all) of the judges who heard a case.
 - **Plurality Opinion:** An opinion joined by the largest number (but less than a majority) of the judges who heard a case.
 - **Concurring Opinion:** An opinion by one or more judges who agree with the majority's judgment, but not necessarily with its reasoning.
 - **Dissenting Opinion:** An opinion by one or more judges who disagree with the judgment of the majority.