

CHAPTER 1. LAW AND LEGAL REASONING

In today's business world, a knowledge of black letter law is not enough. Businesspersons are also pressured to make ethical decisions.

Ethics is defined as the principles governing what constitutes right or wrong behavior. Decision makers need to consider not only if a decision is legal, but also ethical.

SOURCES OF AMERICAN LAW

Primary sources of law, or sources that establish the law, include:

1. The US constitution and the constitution of the various states
 2. Statutory law—including law passed by congress, state legislatures or local governing bodies.
 3. Regulations created by administrative agencies, such as the food and drug administration.
 4. Case law and common law doctrines.
- A. **Constitutional Law:** The federal government and the states have separate written constitutions that set forth the general organization, powers and limits. Constitutional law is the law as expressed in these constitutions. According to Article VI of the Con.; the Con. is the supreme law of the land. The tenth amendment to the US Con. reserves to the states all powers not granted to the federal government. Each state has its own constitution
- B. **Statutory Laws:** are laws enacted by legislative bodies at any level of government, such as statutes passed by congress or by state legislatures. Statutory law also includes local ordinances which are statutes (laws, rules or orders) passed by municipal or county governing units to govern matters not covered by federal or state law. Ordinances commonly have to do with city or county land use, building and safety codes, etc. A federal statute applies to all states. A state statute applies only to that state
- To counter the problem of difficulties for businesspersons conducting trade between states. A group of scholars created the National Conference of Commissioners of the Uniform State Laws (NCCUSL). Each state has the option of adopting or rejecting a uniform law. The earliest uniform law is the Uniform Negotiable Instruments Law which was complete in 1896 and adopted by every state in 1920
 - One of the most important uniform acts is the Uniform Commercial Code (UCC). Issued in 1952. It facilitates commerce among the states by providing a uniform set of rules governing commercial transactions
- C. **Administrative Law:** consists of orders, and decisions of administrative agencies. An administrative agency is a federal, state or local government agency established to perform a specific function. Rules issued by various administrative agencies now affect almost every aspect of a business operation.

- At the national level, the cabinet departments of the executive branch include numerous executive agencies such as the food and drug admin. These agencies are subject to the authority of the president
- There are also major independent regulatory agencies at the federal level such as the federal trade commission (FTC), president power is less produced.
- There are administrative agencies at the state and local levels as well.

D. Case law and Common Law Doctrines: Are the rules of law announced in court decisions. These rules include interpretations of constitutional provisions, of statutes enacted by legislatures, and of regulations created by administrative agencies. Today, this body of judge made law is referred to as case law. Case-law the doctrines and principles announced in cases—governs all areas not covered by statutory law or administrative law and is part of our common law tradition

Secondary sources of law are books and articles that summarize and clarify the primary sources of law. Examples are legal encyclopedias, treatises, articles in law reviews, and compilations of law such as the Restatements of the Law.

THE COMMON LAW TRADITION

Early English Courts

Much of the US law is based on the English legal system.

Legal system date back to 1066.

Kings courts -> curiae regis.

Common law: a body of general rules that applied throughout the entire English realm. The common law tradition became part of the heritage of all nations that were once British colonies including the US.

Courts of law and remedies of law: Remedies were the legal means to enforce a right or redress a wrong. The kings court could award as compensation by: land, items of value, or money. The courts that awarded this compensation became known as courts of law, and the three remedies were called remedies of law. Today remedies at law take the form of monetary damages—an amount given to a party whose legal interests have been injured.

Courts of equity: Equity is a branch of law—founded on notions of justice and fair dealing—that seek to supply a remedy when no adequate remedy at law is available. An adviser to the king was called a chancellor.

Remedies in equity: the remedies granted by the equity courts became known as remedies in equity. These remedies include specific performance, an injunction, and rescission. Specific performance involves ordering a party to perform an agreement as promised. An injunction is an order to a party to cease engaging in a specific activity or to undo some wrong or injury. Rescission is the cancellation of a contractual obligation. Breach means the fail to fulfill an agreement.

Equitable Maxims: are propositions or general statements of equitable rules. Lach means negligent. A defense is an argument raised by the defendant (party being sued) indicating why the plaintiff (suing party) should not obtain the remedy sought. In equity proceedings, the party bringing a lawsuit is called the petitioner, and the party being sued is referred to as the respondent. Time periods for different types of cases are now usually fixed by statutes of limitations.

THE DOCTRINE OF STARE DECISIS

One of the unique features of the common law is that it is judge made law.

A precedent is a decisions that furnishes an example or authority for deciding subsequent cases involving identical or similar legal principles or facts.

By the 14th century important decisions were being gathered together in Year books. Today, cases are published or reported in volumes called reporters or reports

Stare decisis means to stand on decided cases. Under this doctrine judges are obligated to follow the precedents established within their jurisdictions. The term jurisdiction refers to a geographic area in which a court have the power to apply the law. Stare decisis has two aspects:

1. a court should not overturn its own precedents unless there is a compelling reason to do so.
2. Decisions made by a higher court are binding on lower courts.

Controlling precedents in a jurisdiction are referred to as binding authorities. A binding authority is any source of law that a court must follow when deciding a case. Binding authorities includes constitutions, statutes, and regulations that govern the issue being decided.

The doctrine of stare decisis helps the courts to be more efficient, it makes the law more stable and predictable too.

When there are no precedents in a cases, this cases are called cases of first impression. When deciding cases of first impression, courts often look at persuasive authorities (precedents from other jurisdictions) for guidance. Other factors to look at are fairness, social values, and customs, and public policy (governmental policy based on widely held societal values).

STARE DECISIS AND LEGAL REASONING