

## **Chapter 5**

### Sources of American Law

#### **Chapter Outline**

1. Introduction
2. The Framework of American Law
3. Primary Sources of American Law
4. Constitutional Law
5. Statutory Law
6. Administrative Law
7. Case Law and the Common Law Tradition
8. National and International Law

#### **Chapter Objectives**

After completing this chapter, you will know:

- The meaning and relative importance in the American legal system of constitutional law, statutory law, administrative law, and case law.
- How English law influenced the development of the American legal system.
- What the common law tradition is and how it evolved.
- The difference between remedies at law and equitable remedies.
- Some of the terms that are commonly found in case law.
- How national law and international law differ and why these bodies of law sometimes guide judicial decision making in American courts.

## Chapter 5 Sources of American Law

### Chapter Outline

- I. INTRODUCTION
  - A. The American legal system is based on English common law.
  
- II. THE FRAMEWORK OF AMERICAN LAW
  - A. What Is the Law?
    - i. Law has been defined variously over the ages.
    - ii. Basically, law consists of a body of rules of conduct with legal force and effect, prescribed by the controlling authority of a society.
  - B. Judicial Approaches to the Law
    - i. The Natural Law
      - 1. The *natural law school* is one of the oldest and most significant schools of jurisprudence.
      - 2. The theory of *natural law* states that moral and ethical principles are inherent in human nature, and a nation's written laws should reflect these universal principles.
    - ii. The Positivist School
      - 1. The *positivist school* theory is that there can be no higher law than a nation's positive law (the law enacted by the government).
      - 2. Under the positivist school, there is no such thing as "natural rights."
    - iii. The Historical School
      - 1. The *historical school* emphasizes the evolutionary development of law by concentrating on the origin and history of the legal system.
      - 2. Adherents of the historical school are more likely to strictly follow decisions made in past cases.
    - iv. Legal Realism
      - 1. *Legal Realism* is based on the idea that law is just one of many institutions in society and that it is shaped by social forces and needs.
      - 2. Legal realists believe that the law can never be applied with total uniformity.
  
- III. PRIMARY SOURCES OF AMERICAN LAW
  - A. The U.S. Constitution and the constitutions of the various states
  - B. Statutory Law, including laws passed by Congress, state legislatures, and local governing bodies

- C. Regulations created by administrative agencies (such as the U.S. Food and Drug Administration)
- D. Case law and common law doctrines
- E. *Secondary sources of law* are books and articles that summarize and clarify the primary sources of law (such as legal encyclopedias, treatises, and articles in law reviews).

#### IV. CONSTITUTIONAL LAW

##### A. The Federal Constitution

- i. The U.S. Constitution, as amended, is the supreme law of the land.
- ii. A law in violation of the U.S. Constitution will be declared unconstitutional and will not be enforced.
- iii. The U.S. Constitution sets forth the powers of the three branches of the federal government and the relationship between the three branches.
- iv. Constitutional Rights
  - 1. The first ten amendments to the U.S. Constitution are commonly known as the Bill of Rights.
- v. The Courts and Constitutional Law
  - 1. The broad principles enunciated in the Constitution are given form and substance by the courts.
  - 2. Courts Balance the Right to Free Speech
    - a. Even though the First Amendment guarantees the right to free speech, the Supreme Court has made it clear that certain types of speech will not be protected.
  - 3. Free Speech and the Internet
    - a. The Internet has raised new problems for the courts in determining how to define and apply the protections of free speech.

##### B. State Constitutions

- i. Each state also has a constitution that sets forth the general organization, powers, and limits of the state government.
- ii. A state constitution is supreme within the state's respective borders, so long as it does not conflict with the U.S. Constitution.

##### C. Constitutional Law and the Paralegal

- i. Paralegals often assist attorneys in handling cases that involve constitutional rights or provisions.
- ii. A knowledge of constitutional law is beneficial, because the authority and underlying rationale for the substantive and procedural laws governing many areas of law are found in the Constitution.

### Several Sources

Constitutional, statutory and case law—these are your tools. The United States Constitution is the overriding document. It is the Supreme Law of the Land. Each state has its own constitution. State and federal statutes are interpreted by judges through case law. These sources play in each practice area. For example: constitutional law governs searches and seizures in a criminal matter; statutes provide the framework for real estate transactions; and case law interprets and applies both constitutional and statutory law. There is much to learn. Chapter 16, Legal Research, will give you an overview of these sources of laws.

#### V. STATUTORY LAW

- A. *Statutes* are the laws enacted by legislative bodies at any level of government.
- B. Federal Statutes
  - i. Federal statutes are enacted by the U.S. Congress and apply to every state.
  - ii. Any federal statute that violates the U.S. Constitution will be held unconstitutional.
- C. State and Local Statutes and Ordinances
  - i. State statutes are laws enacted by state legislatures.
  - ii. Any state law that is found to conflict with the U.S. Constitution, or with that state's constitution, will be deemed unconstitutional.
- D. Uniform Laws
  - i. Uniform ("model") statutes are drafted for adoption by the states.
  - ii. A state can adopt or reject all or part of a uniform law, as the state legislature wishes.
  - iii. An example of a uniform law is the Uniform Commercial Code (UCC).
- E. The Expanding Scope of Statutory Law
  - i. Legislative bodies and administrative agencies assume an ever-increasing share of lawmaking.
- F. Statutory Law and the Paralegal
  - i. A paralegal may often assist in cases involving violations of statutory law.
  - ii. A paralegal working on cases governed by statutory law needs to know how to both locate and interpret the relevant state or federal statutes.

#### VI. ADMINISTRATIVE LAW

- A. Agency Creation and Function
  - i. Administrative agencies are created by legislatures to administer and enforce legislation and to issue rules to implement the goals of specific legislation.

- ii. Examples of federal administrative agencies are:
  1. Environmental Protection Agency
  2. Occupational Safety and Health Administration
  3. Food and Drug Administration.
- iii. Administrative Law and the Paralegal
  1. Paralegals frequently deal with administrative agencies.
    - a. Paralegals may also work for administrative agencies, drafting new rules, mediating disputes, and performing numerous other tasks.

### Consulting Cases

Case law represents judicial opinions. Judicial opinions represent opinions written by judges on a particular case. Understanding case law can be difficult. It requires analytical skills. Such skills are acquired over time and after reading many cases. But do not despair. When you find that perfect case, it will be worth it.

## VII. CASE LAW AND THE COMMON LAW TRADITION

### A. Early English Courts of Law

- i. Common law originated in medieval England with the creation of the king's court.
- ii. Courts developed the common-law rules from the principles underlying judges' decisions in actual legal controversies.
- iii. Judges attempted to be consistent. When possible, they based their decisions on the principles suggested by earlier cases.

### B. The Doctrine of *Stare Decisis*

- i. *Stare Decisis* means "to stand on decided cases."
- ii. Under this doctrine, judges are expected to abide by the law as established by previous court decisions.
- iii. The practice of deciding new cases with reference to former decisions, or precedents, is a cornerstone of the American judicial system.
- iv. Departures from Precedent
  1. Occasionally a court will depart from precedent if the precedent is based on a clearly erroneous application of the law or if the political and cultural environment has changed so significantly that the precedent is no longer relevant.
- v. Cases of First Impression
  1. When there is no precedent on which to base a decision, or when there are conflicting precedents,

courts may consider a number of factors such as fairness, social values, and public policy.

- C. Remedies at Law versus Remedies in Equity
  - i. *Remedies at law* are remedy awards of items of value, usually money.
  - ii. *Remedies of equity* are remedies founded in justice and fair dealing, when no remedy at law exists.
  - iii. Equitable Principles and Maxims
    - 1. Judges are guided by so-called *equitable principles and maxims* when deciding whether to grant equitable remedies.
  - iv. Equitable Remedies
    - 1. A number of equitable remedies are available:
      - a. Specific Performance is a judge's order to perform what was promised.
      - b. Rescission is an action to undo a contract.
      - c. Injunction is a court order directing the defendant to do or to refrain from doing a particular act.
  - v. The Merging of Law and Equity
    - 1. Courts still distinguish between remedies at law and equitable remedies.
- D. The Common Law Today
  - i. The common law, which consists of the rules of law announced in previous court decisions, still plays a significant role in the United States today.
- E. Statutory Law and the Common Law
  - i. The common law governs all areas not covered by statutory law.
  - ii. When common law is *codified*, it means that a statute has been enacted.
- F. The Terminology of Case Law
  - i. Case Titles
    - 1. The title of a case, also known as the *style* of the case, indicates the names of the parties to the lawsuit.
    - 2. When attorneys and paralegals refer to a court decision, they give not only the title of the case but also the *case citation*. The citation indicates the reports or reporters in which the case can be found.
  - ii. The Parties
    - 1. The *parties* to the lawsuit are the plaintiff, who initiates the lawsuit, and the defendant, against whom the lawsuit is brought.
  - iii. Judges and Justices

1. The terms *judge* and *justice* are usually synonymous and represent two designations given to judges in various courts.
  2. All members of the United States Supreme Court are referred to as *justices*.
- iv. Decisions and Opinions
1. The *opinion* contains the court's reasons for its decision, the rules of law that apply, and the judgment.
  2. There are four types of opinions:
    - a. *Unanimous Opinion* - The opinion written for the entire court and all judges or justices unanimously agree.
    - b. *Majority Opinion* - An opinion where there is not a unanimous opinion, written to outline the views of the majority of the judges or justices deciding the case.
    - c. *Concurring Opinion* - An opinion that follows the majority opinion, where a judge or justice in the majority makes or emphasizes a point that was not made or emphasized in the majority opinion.
    - d. *Dissenting Opinion* - An opinion that follows the majority opinion, but written by a judge or justice in the minority who disagrees with the majority opinion.
  3. Common Law and the Paralegal
    - a. A basic understanding of common law is needed to research and analyze case law.
    - b. The concepts of *stare decisis*, different types of remedies, will become real and meaningful when applied to real-life situations faced by clients.
  4. The Adversarial System of Justice
    - a. The Goal Is to Win
      - 1) The goal of the attorney and paralegal is not so much to determine the truth as to win the case.
      - 2) An attorney's job is not to seek out or reveal the truth to judges. Rather, the role of the attorney is to discover and present the strongest legal argument on behalf of her client.
    - b. Criticisms of the Adversarial System
      - 1) Many people criticize our adversarial system of justice, believing that it

contributes to a lack of integrity in the legal profession.

- 2) Although the adversarial system is not perfect, it is fundamental to what we consider to be justice in the United States.

## VIII. NATIONAL AND INTERNATIONAL LAW

### A. National Law

- i. The law of a particular nation is referred to as *national law*.
- ii. In contrast to Great Britain and the common-law countries, most of the other European nations base their legal systems on Roman *civil law*, or “code law.”
- iii. In a *civil-law system*, the primary source of law is a statutory code, and case precedents are not judicially binding.

### B. International Law

- i. *International law* is a body of written and unwritten laws observed by independent nations and governing the acts of individuals as well as governments.
- ii. The key difference between national law and international law is that national law can be enforced by government authorities, whereas international law is enforced primarily for reasons of courtesy or expediency.

### C. International Law and the Paralegal

- i. An increasing amount of legal work has an international dimension.
- ii. Paralegals may be asked to research the law of a foreign country, assist clients with overseas businesses, or determine contractual provisions for international sales of goods.