Chapter 5
Sources of American Law

Chapter Outline
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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.
• What the common law tradition is and how it evolved.
• The requirements that must be met before a lawsuit can be brought in a particular court by a specific party.
• The types of courts that make up a typical state court system and the different functions of trial courts and appellate courts.
• The organization of the federal court system and the relationship between state jurisdiction and federal jurisdiction.
• The difference between remedies at law and equitable remedies.
• The various ways in which disputes can be resolved outside the court system
Chapter 5  The American Legal System

Chapter Outline

I.  INTRODUCTION
   A. The American legal system is based on English common law.

II. WHAT IS THE LAW?
   A. Law has been defined variously over the ages.
   B. Basically, law consists of a body of rules of conduct with legal force and effect, prescribed by the controlling authority of a society.

III. PRIMARY SOURCES OF AMERICAN LAW
   A. The United States 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 United States 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 (i.e., legal encyclopedias, treatises, and articles in law reviews).

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.

IV. CONSTITUTIONAL LAW
   A. The Federal Constitution
      i. The United States Constitution, as amended, is the supreme law of the land.
      ii. A law in violation of the United States Constitution will be declared unconstitutional and will not be enforced.
      iii. The United States 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 United States 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 United States Constitution.

C. Constitutional Law and the Paralegal
   i. Paralegals often assist attorneys in handling cases that involve constitutional rights or provisions.
   ii. 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.

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 United States Congress and apply to every state.
   ii. Any federal statute that violates the United States 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 United States 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.
   B. Administrative Law and the Paralegal
      i. Paralegals frequently deal with administrative agencies.
         1. Paralegals may also work for administrative agencies, drafting new rules, mediating disputes, and 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. The Origins and Nature of the Common 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.
iv. The practice of deciding new cases with reference to former decisions, or precedents, is a cornerstone of the American judicial system.

v. *Stare decisis* means “to stand on decided cases.”

vi. Under this doctrine, judges are expected to abide by the law as established by previous court decisions.

vii. Sometimes a court will depart from precedent if it decides the precedent should no longer be followed.

B. 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.

ii. The common law governs all areas not covered by statutory law.

iii. When common law is *codified* it means that a statute has been enacted.

C. 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.

ii. Citation
   1. The citation indicates the reporters in which the case is referenced.

iii. Justices
   1. The terms *judge* and *justice* are usually synonymous and represent two designations given to judges in various courts.

iv. Opinions
   1. The *opinion* contains the court’s reasons for its decision, the rules of law that apply, and the judgment.
   2. The name of the judge who authored the opinion is typically listed.
   3. If any justice disagrees, he or she may write a separate dissenting opinion.

D. Common Law and the Paralegal

i. A basic understanding of common law is needed to research and analyze case law.

ii. The concepts of *stare decisis*, different types of remedies, will become real and meaningful when applied to real-life situations faced by clients.
Jurisdiction

It is a big word, and it plays a big part in the law. If you can define and apply the following types, you are well on your way to understanding the legal system:

1. Jurisdiction over persons
2. Jurisdiction over property
3. Jurisdiction over subject matter
4. Limited jurisdiction
5. General jurisdiction
6. Original jurisdiction
7. Appellate jurisdiction
8. Exclusive jurisdiction

VIII. BASIC JUDICIAL REQUIREMENTS
A. Types of Jurisdiction
   i. Jurisdiction Over Persons
      1. Generally, a court can exercise personal jurisdiction over residents of a certain geographical area.
      2. Personal jurisdiction is also known as *in personam* jurisdiction.
      3. Under a *long arm statute*, a court can exercise personal jurisdiction over a nonresident when the nonresident had sufficient contacts with the state.
   ii. Jurisdiction Over Property
       1. A court can exercise jurisdiction over property that is located within its boundaries.
       2. Jurisdiction over property is known as *in rem* jurisdiction.
   iii. Jurisdiction Over Subject Matter
        1. This is a limitation on the types of cases a court can hear.
        2. In both the state and federal systems, there are courts of general jurisdiction and limited jurisdiction.
           a. Courts of general jurisdiction can hear most types of disputes.
           b. Courts of limited jurisdiction are restricted in the types of actions they can decide.
        3. The subject-matter jurisdiction of a court is usually defined in the statute or constitution creating the court.
        4. In both state and federal courts, a court’s subject-matter jurisdiction can be limited by:
           a. The subject of the lawsuit
           b. The amount of money in controversy
c. Whether the case is a felony or a misdemeanor

d. Whether the proceeding is a trial or an appeal.

iv. Original and Appellate Jurisdiction
1. Courts of original jurisdiction are courts in which the trial of a case begins.
2. Any court having original jurisdiction is known as a trial court.
3. Courts of appellate jurisdiction are reviewing courts.
4. Appellate courts do not try cases anew; they review decisions of trial courts.

B. Jurisdiction of the Federal Courts
i. Federal Questions
1. When a lawsuit is based, at least in part, on some type of federal law, the case comes under the judicial power of the federal courts.

ii. Diversity Jurisdiction
1. Federal courts can exercise jurisdiction over claims involving one of the following:
   a. A federal question, which arises from the United States Constitution, a federal treaty, or a federal law.
   b. Diversity of citizenship, which involves a controversy exceeding $75,000 and arises between citizens from different states, citizens from a foreign country and citizens of a state or of different states, or citizens of a state and citizens or subjects of a foreign country.

iii. Exclusive versus Concurrent Jurisdiction
1. Exclusive jurisdiction exists when cases can be tried only in federal courts or only in state courts. Federal courts have exclusive jurisdiction in cases involving bankruptcy, federal crimes, patents, trademarks, copyrights, suits against the United States, and in some areas of admiralty law.
2. Concurrent jurisdiction exists when both federal and state courts have the power to hear a case. States have exclusive jurisdiction in certain subject matters, such as divorce and adoption.

C. Jurisdiction in Cyberspace
i. The Internet’s capacity to bypass political and geographical boundaries undercuts traditional basic limitations on a court’s authority to exercise jurisdiction.

ii. The “Sliding-Scale” Standard
1. This is a standard for determining when the exercise of jurisdiction over an out-of-state party is proper.
2. Three categories of Internet business contacts are reviewed:
   a. Substantial business conducted over the Internet
   b. Some interactivity through a Web site
   c. Passive advertising.
3. Jurisdiction is proper for the first category, is improper for the third, and may or may not be appropriate for the second.

iii. International Jurisdictional Issues
   1. The Internet is international in scope, so international jurisdictional issues apply.
   2. The emerging standard is a requirement of minimum contacts—doing business within the jurisdiction.

D. Venue
   i. Venue is concerned with the most appropriate geographical location for a trial.
   ii. The concept of venue reflects the policy that a court trying a suit should be in the geographic neighborhood in which the incident leading to the suit occurred or where the parties to the suit reside.

E. Standing to Sue
   i. To bring a lawsuit before a court, a party must have standing to sue, or a sufficient “stake” in a matter to justify seeking relief through the court system.
   ii. The “stake” in the matter means a legally protected and tangible interest in the litigation, having suffered harm as a result of the action about which the party is complaining.

F. Judicial Procedures
   i. Litigation in court must follow specifically designated procedural rules.
   iii. State rules of procedure vary from state to state.
   iv. Court procedural rules are different for civil cases than for criminal cases.

G. Basic Judicial Requirements and the Paralegal
   i. The paralegal’s value to the legal team is directly related to her knowledge of the concepts affecting litigation procedures.
   ii. Paralegals should be familiar with such concepts as jurisdiction and venue.
   iii. Paralegals should be familiar with the procedural rules of the specific court in which a case is filed.
iv. Paralegals need to have a basic understanding of the different types of courts that make up the American court system.

IX. STATE COURT SYSTEMS
A. Trial Courts
   i. The structure of state court systems varies from state to state.
   ii. A typical state court system may consist of several tiers.
   iii. On the bottom tier are courts of limited jurisdiction.
   iv. On the next tier are usually trial courts of general jurisdiction, such as county courts.
   v. Trial courts are courts of original jurisdiction; they are where lawsuits are initiated, trials are held, and evidence is presented.
B. Appellate, or Reviewing Courts
   i. Appellate courts are where trial courts' decisions can be appealed.
   ii. Appellate courts are reviewing courts; they do not retry cases.
   iii. The function of appellate courts is to review the trial courts’ decisions in cases that are appealed.
      1. Intermediate Appellate Courts
         a. About three-fourths of the states have intermediate appellate courts.
         b. These courts do not retry cases; instead, they review the record of the case on appeal and determine whether the trial court committed a prejudicial error of law.
      2. Highest State Courts
         a. The highest state appellate court is typically called the state supreme court, although there are exceptions.
         b. Cases can be appealed from state supreme courts to the United States Supreme Court only when issues of federal law are involved.
C. State Court Systems and the Paralegal
   i. Because each state has its own unique system of courts, paralegals must become familiar with the court system of their particular state.
   ii. Paralegals must also become familiar with procedural requirements of special courts to assist attorneys in drafting legal documents to be filed in those courts.

X. THE FEDERAL COURT SYSTEM
A. United States District Court
i. United States district courts are the trial courts of the federal court system.
ii. United States district courts are courts of general jurisdiction.
iii. There is a United States district court in every state.

B. United States Courts of Appeals
i. Decisions from a district court can be appealed to the court of appeals of the circuit (geographical area) in which the district court is located.
ii. There are thirteen circuit courts of appeals.
iii. Decisions rendered by these circuit courts may be appealed to the United States Supreme Court.

C. The United States Supreme Court
i. The United States Supreme Court is the highest court and consists of nine justices.
ii. The United States Supreme Court has original, or trial court, jurisdiction in a small number of situations, such as those affecting ambassadors. Otherwise, the court has only appellate jurisdiction.
iii. There is no absolute right of appeal to the Supreme Court.
iv. If the Court decides to review a case, it will issue a writ of certiorari.
v. A writ of certiorari is an order to a lower court requiring it to send to the Supreme Court the record of a case for review.
vi. The Supreme Court generally reviews cases that raise important Constitutional questions, that conflict with other state or federal court decisions, or that issue and generate a decision to define the law on the matter.

D. The Federal Court System and the Paralegal
i. Paralegals deal occasionally with the federal court system.
ii. Paralegals should know the specific requirements of the particular federal court in which a client’s lawsuit is to be filed.

Deciding Disputes in an Alternative Fashion
Litigation is not always resolved in a courtroom. Alternative Dispute Resolution (ADR) is an advantage to litigation as it saves the expense and time of trying a case. ADR methods are increasingly popular and valuable. Look for on-line ADR methods to become available.

XI. ALTERNATIVE DISPUTE RESOLUTION
A. Negotiation and Mediation
i. Negotiation is the simplest method of alternative dispute resolution (ADR).
ii. The parties to the lawsuit simply try to work out their problems to avoid going to court.
iii. A settlement agreement is an out-of-court resolution to a legal dispute, which is agreed to by the parties in writing.
iv. Mediation is a form of ADR in which the parties attempt to reach agreement with the help of a neutral third party.
v. A mediator or panel of mediators helps the parties explore alternative possibilities for settling their differences as amicably as possible.
vi. Usually a mediator charges a fee, which can be split between the parties.
vii. The mediator proposes various solutions for the parties to consider.
viii. Many state and federal courts now require that parties mediate their disputes before bringing the disputes before the court.
ix. When mediation is required by the court, the court may appoint the mediator.
   1. A Nonadversarial Forum
      a. Mediation is not adversarial, as lawsuits are.
      b. As a result, the mediation process tends to reduce antagonism between the parties and allows them to resume their former relationship.
   2. Paralegals as Mediators
      a. Because a mediator need not be a lawyer, this field is open to paralegals who acquire training and expertise in the area.
B. Arbitration
   i. Arbitration is the most formal method of ADR.
   ii. Arbitration Clauses and Statutes
      1. Increasingly, parties are including provisions in their contracts by which they agree to arbitrate any disputes that may arise under the contract.
      2. The arbitration clauses will likely be enforced under a federal or state arbitration statute.
   iii. The Arbitration Process
      1. In arbitration, a neutral third party renders a decision after the parties present their cases and evidence in a hearing.
      2. In voluntary arbitration, the parties normally agree at the outset to be legally bound by the arbitrator’s decision.
      3. The final decision of the arbitrator is called the award, even if no money is conferred.
C. Other ADR Forms
   i. Binding Mediation
1. In this form of ADR, a neutral mediator tries to facilitate agreement between the parties, but if no agreement is reached the mediator issues a legally-binding decision on the matter.

ii. Mediation Arbitration (med-arb)
   1. In med-arb, an arbitrator first attempts to help the parties reach an agreement, just as a mediator would. If no agreement is reached, then formal arbitration is undertaken, and the arbitrator issues a legally-binding decision.

iii. Assisted Negotiation
   1. These forms involve a third party in what is essentially a negotiation process.
      a. Early Neutral Case Evaluation - The parties select a neutral third party to evaluate their respective positions. The parties explain their positions to the case evaluator. The case evaluator's assessment forms the basis of negotiating the settlement.
      b. Mini-Trial - Each party's attorney briefly argues the party's case before representatives of each firm who have the authority to settle the dispute.

D. Court-Referred ADR
   i. The majority of states either require or encourage parties to undergo mediation or arbitration prior to trial.
   ii. Several federal courts have instituted ADR programs.

E. Providers of ADR Services
   i. ADR services are provided by both government agencies and private organizations.
   ii. A major provider of ADR services is American Arbitration Association (AAA).

F. Online Dispute Resolution
   i. A number of companies and organizations offer dispute-resolution services via the Internet.
   ii. The settlement of disputes in these on-line forums is known as online dispute resolution (ODR).
      1. Online Negotiation
      2. Online Mediation
      3. Online Arbitration

G. ADR and the Paralegal
   i. Paralegals will play an increasing role in ADR in the future.
   ii. Some paralegals are qualified mediators and directly assist parties in reaching a mutually satisfactory agreement.