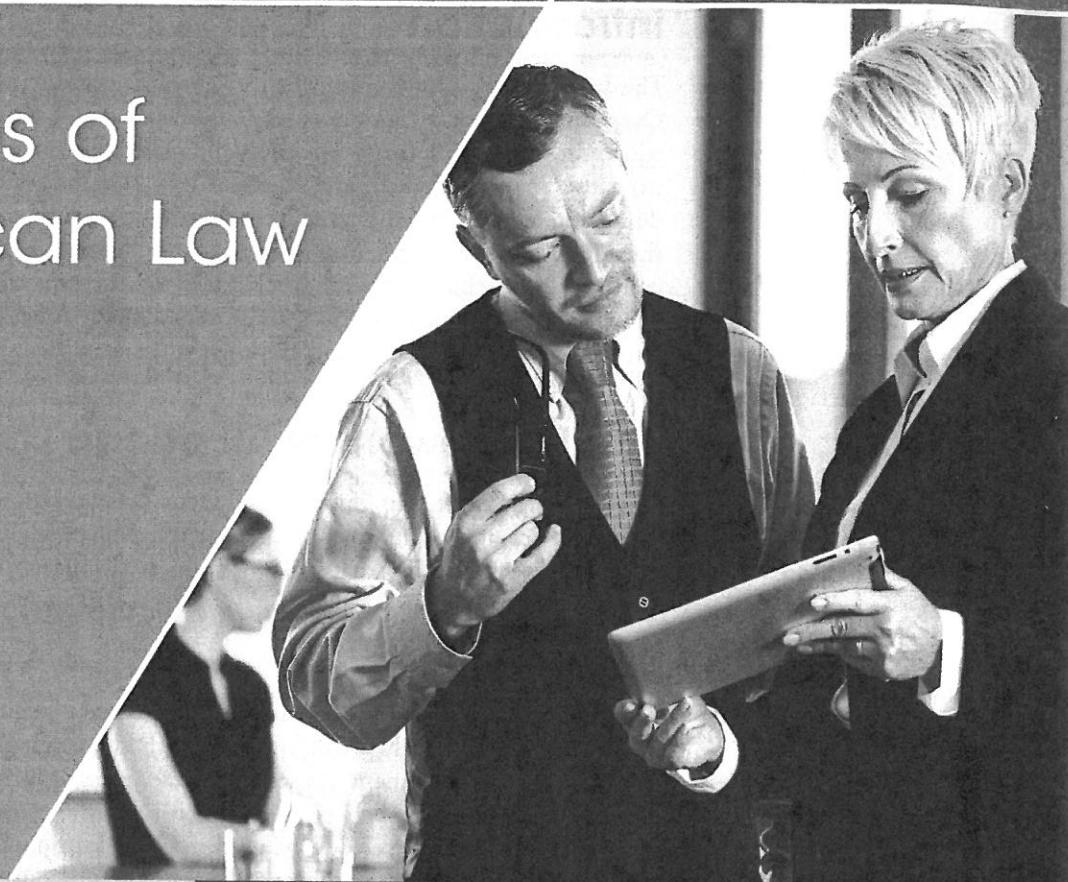


CHAPTER 5

Sources of American Law



CHAPTER OUTLINE

Introduction
The Framework of American Law
Case Law and the Common Law Tradition
Constitutional Law
Statutory Law
Administrative Law
National and International Law

CHAPTER OBJECTIVES

After completing this chapter, you will know:

- The meaning and relative importance in the American legal system of case law, constitutional law, statutory law, and administrative 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 U.S. courts.

Introduction

The first English colonists brought the law of England with them to the New World. Over time, American law developed its own unique characteristics. As Americans adopted the law in their new environment and as the nation grew, they absorbed ideas from the Spanish, French, and Mexican legal systems. We open this chapter with a discussion of the nature of law and then examine traditional law and its significance in the American legal system. Next, we focus on other sources of American law, including constitutional, statutory, and administrative. We also explain how the law of other countries and international law affect decision making in American courts. Another major part of the American legal structure—the court system—will be examined in Chapter 6.

The Framework of American Law

The law means different things to different people. Before beginning your study of American law, it is useful to have an understanding of what law is and some of the different approaches to law that influence courts' decisions. These topics are covered in the following subsections.

What Is the Law?

How a person defines *law* frequently depends on the person's views on morality, ethics, and truth. Generally, we define law as a body of rules of conduct established and enforced by the government of a society. These "rules of conduct" may consist of written principles of behavior, such as those established by ancient societies. They may be set forth in a comprehensive code, as used in many European nations. They may consist of a combination of legislatively enacted statutes and court decisions, as in the United States. Regardless of how the rules are created, they establish rights, duties, and privileges for the citizens they govern.

One of the most important functions of law in any society is to provide stability, predictability, and continuity so that people can arrange their affairs. If a democratic society is to be credible, its citizens must be able to determine what is legally right and wrong.

EXAMPLE 5.1 Citizens must know what penalties will be imposed on them if they commit wrongful acts. If people suffer harm as a result of others' wrongful acts, they need to know whether and how they can receive compensation for their injuries.

By setting forth the rights, obligations, and privileges of citizens, the law enables people to go about their business and personal lives with confidence and a certain degree of predictability.

Primary Sources of American Law

American law has numerous sources. **Primary sources of law**, or sources that establish the law, include the following:

1. Case law and common law doctrines.
2. The U.S. Constitution and the constitutions of the various states.
3. Statutes—including laws passed by Congress, state legislatures, and local governing bodies.
4. Regulations created by administrative agencies, such as the U.S. Food and Drug Administration (FDA) or state insurance commissions.

We describe each of these important sources of law in the following pages. Note that treaties with other nations are also a primary source of law, although most legal practitioners do not deal with them directly but instead retain an attorney from the foreign jurisdiction to assist. We discuss international law near the end of the chapter.

law

A body of rules of conduct established and enforced by the controlling authority (the government) of a society.

primary source of law

In legal research, a document that establishes the law on a particular issue, such as a case decision, legislative act, administrative rule, or presidential order.

Secondary sources of law are books and articles that summarize, synthesize, and explain the primary sources of law. Examples include legal encyclopedias, treatises, articles in law reviews, and compilations of law, such as the *Restatements of the Law* (discussed later in this chapter). Courts often refer to secondary sources of law for guidance in interpreting the primary sources of law discussed here. They are also useful research tools that aid in locating primary sources.

Case Law and the Common Law Tradition

An important source of law consists of the decisions issued by judges in cases that come before the courts. Lawyers call this **case law**. As mentioned earlier, because of our colonial heritage, much American law is based on the English legal system. Our reliance on reported court decisions is a key part of our English heritage.

The English **common law** is a body of general rules applied by the courts. In deciding common law cases, judges attempt to be consistent by basing decisions on principles from earlier cases. By doing this, they seek to ensure that they decide similar cases in similar ways. Each decision becomes part of the law on the subject and serves as a **legal precedent**. Later cases that involve similar legal principles or facts are decided with reference to precedents.

The Doctrine of *Stare Decisis*

The practice of deciding new cases with reference to former decisions, or precedents, is a cornerstone of the English and American judicial systems. It forms a doctrine called ***stare decisis***¹ (“to stand by things decided”). Under this doctrine, judges are obligated to follow the precedents established by their own courts or by higher courts in their jurisdictions (the areas over which they have authority—see Chapter 6). These controlling precedents are referred to as binding authorities.

A **binding authority** is a source of law that a court must follow when deciding a case. Binding authorities include constitutions, statutes, and regulations that govern an issue being decided, as well as court decisions that are controlling precedents within the jurisdiction. When no binding authority exists, courts will often review **persuasive precedents**, which are precedents decided in similar cases in other jurisdictions. The court may either follow or reject persuasive precedents, but these decisions are entitled to respect and careful consideration.

The doctrine of *stare decisis* helps the courts be more efficient because if other courts have carefully reasoned through similar cases, their legal reasoning and opinions can serve as guides. *Stare decisis* also makes the law more stable and predictable. If the law on a given subject is well settled and there are numerous precedents, someone wishing to bring a case is likely to be told by an attorney how the law will resolve the matter.

Departures from Precedent

Sometimes a court will depart from the rule of precedent. If a court decides that a precedent is wrong or that technological or social changes have made the precedent inappropriate, the court might overrule the precedent. These cases often receive a great deal of publicity.

EXAMPLE 5.2 In *Brown v. Board of Education of Topeka*,² decided in 1954, the United States Supreme Court expressly overturned prior precedent when it held that separate schools for whites and African Americans, which had been upheld as constitutional in previous cases, were in violation of the Constitution. The Supreme Court’s departure from precedent in *Brown* received tremendous publicity as people began to realize the impact of this change in the law. It helped encourage the civil rights movement, which included legal challenges to existing procedures.

secondary source of law

In legal research, any publication that indexes, summarizes, or interprets the law, such as a legal encyclopedia, a treatise, or an article in a law review.

case law

Rules of law announced in court decisions.

common law

A body of law developed from custom or judicial decisions in English and U.S. courts and not by a legislature.

precedent

A court decision that furnishes authority for deciding later cases in which similar facts are presented.

stare decisis

The doctrine of precedent, under which a court is obligated to follow earlier decisions of that court or higher courts within the same jurisdiction. This is a major characteristic of the common law system.

binding authority

Any source of law that a court must follow when deciding a case. Binding authorities include constitutions, statutes, and regulations that govern the issue being decided, as well as court decisions that are controlling precedents within the jurisdiction.

persuasive precedent

A precedent decided in another jurisdiction that a court may either follow or reject but that is entitled to careful consideration.

IN THE OFFICE

DAILY CLEANUP

A neat office is important. A messy desk presents a less-than-professional appearance. But, more importantly, staying neat forces us to stay organized. When papers are piled up on a desk or in a file cabinet, files might be lost even though we may not realize it. The only work item that should be on a desk is what you are working on that day. At the end of every day, the desk should be cleared.

As a part of that, all papers must be filed in their proper files (and copies made if they are needed). Don't presume you will do it tomorrow. Have everything put away where it belongs so you can start fresh the next workday. Most legal documents are confidential and should be put away except when being worked on so they are unlikely to be seen by unauthorized parties.

Cases of First Impression

Sometimes, there is no precedent on which to base a decision, as when a case involves a new technology. (See this chapter's *Technology and Today's Paralegal* feature on the facing page for a case of this kind involving the right to access videos made from police cars.)

EXAMPLE 5.3 A New Jersey court had to decide whether a surrogate-parenting contract should be enforced against the wishes of the surrogate parent (the birth mother).³ This was the first such case to reach the courts, and there was no precedent in any jurisdiction to which the court could look for guidance. (Note: The court invalidated the contract, but upheld the original agreement by treating it as a child custody case and awarded custody to the parents who hired the surrogate.)

Cases with no precedents are called cases of *first impression*. In these cases or when precedents conflict, courts may consider a number of factors, including legal principles and policies underlying previous court decisions or existing statutes, fairness, social values and customs, **public policy** (a governmental policy based on widely held societal values), and data and concepts drawn from the social sciences. Which of these sources receives the greatest emphasis will depend on the nature of the case being considered and the particular judge hearing the case.

Judges try to be free of personal bias in deciding cases. Each judge, however, has a unique personality, values or philosophical leanings, personal history, and intellectual attributes—all of which frame the decision-making process.

Remedies at Law versus Remedies in Equity

The early English courts could grant only limited remedies. If one person wronged another in some way, the court could award as compensation land, items of value, or money. The courts that awarded these things became known as courts of law, and the three remedies awarded by these courts became known as **remedies at law**.

This system helped to standardize the ways in which disputes were settled, but parties who wanted a remedy other than economic compensation could not be helped. Sometimes these parties petitioned the king for relief. Most petitions were decided by an adviser to the king, called a *chancellor*, who was said to be the “keeper of the king’s conscience.” When the chancellor thought that the claim was a fair one for which there was no adequate remedy at law, he would fashion a different remedy, called a **remedy in equity**. In this way, a new body of rules and remedies came into being and eventually led to the establishment of formal courts of chancery, or courts of equity.

case of first impression

A case presenting a legal issue that has not yet been addressed by a court in a particular jurisdiction.

public policy

A governmental policy based on widely held societal values.

remedy

The means by which a right is enforced or the violation of a right is prevented or compensated for.

court of law

A court in which the only remedies were things of value, such as money. Historically, in England, courts of law were different from courts of equity.

remedy at law

A remedy available in a court of law. Money damages and items of value are awarded as a remedy at law.

remedy in equity

A remedy allowed by courts in situations where remedies at law are not appropriate. Remedies in equity are based on rules of fairness, justice, and honesty.

court of equity

A court that decides controversies and administers justice according to the rules, principles, and precedents of equity.

EXAMPLE 5.5 A party agreed to sell a piece of land to a buyer who hired engineers and architects to design a building suited for the land. Right before the transaction was to be completed, and for no clear reason, the seller refused to go through with the property transfer. The buyer may sue for specific performance, asking the court to require the sale to proceed, due to the time and expense in planning for use of the property.

Specific performance is rarely granted in cases involving personal services, but see *Developing Paralegal Skills* on the facing page for a practical example of how the issue arises.

INJUNCTION. An injunction is a court order in equity directing the defendant to do or, more commonly, to refrain from doing a particular act. An injunction may be obtained to stop a neighbor from burning trash in his yard or to prevent an estranged husband from coming near his wife.

EXAMPLE 5.6 Jacqueline Kennedy Onassis asked a court to stop a photographer from stunts such as throwing a firecracker near her or getting someone to scream at her so he could get an unusual photograph to sell at a high price. The court agreed that money was not the issue and ordered the photographer to keep his distance and not to pull any tricks.

Persons who violate injunctions may be held in contempt of court and punished with a jail sentence or a fine.

The Common Law Today

The common law—which consists of the rules of law announced in previous court decisions—plays a significant role in the United States. As with contracts and property, the rules governing tort law (civil wrongs) are largely common law. Even where there is a statute, court decisions often play an important role by clarifying ambiguous statutory language. Federal and state courts frequently must interpret and enforce constitutional provisions, statutes enacted by legislatures, and regulations created by administrative agencies.

To summarize and clarify common law rules and principles, the American Law Institute (ALI) has published a number of *Restatements of the Law*. The ALI, which was formed in the 1920s, is a group of highly regarded practicing attorneys, legal scholars, and judges. The *Restatements* generally summarize and explain the common law rules that are followed in most states with regard to a particular area of law, such as contracts or torts. Although the *Restatements* do not have the force of law unless adopted by a state's highest court, they are important secondary sources of legal analysis on which judges often rely in making their decisions. You will read more about the *Restatements of the Law* in Chapter 7, in the context of legal research.

The Terminology of Case Law

Throughout this text, you will encounter terms traditionally used to describe parties to lawsuits, case titles, and the types of decisions that judges write. Although details on how to research case law will be given in Chapter 7, it is worthwhile at this point to explain some of the terminology.

Case Titles

The title of a case, or the *case name*, indicates the names of the parties to the lawsuit. A case title, such as *Baranski v. Peretto*, includes only the parties' surnames, not their first names. The *v.* in the case title stands for *versus*, which means "against." In the trial court (the court in which a lawsuit is first brought and tried), Baranski is the plaintiff, so Baranski's name appears first in the case title.

injunction

A court decree ordering a person to do or to refrain from doing a certain act.

DEVELOPING PARALEGAL SKILLS

REQUIREMENTS FOR SPECIFIC PERFORMANCE

Louise Lassen, a wealthy heiress, buys a painting from an artist in New York for \$275,000. The artist agrees to ship the painting to Louise's home in Chicago within two weeks. After Louise returns home, she learns from the artist that he has changed his mind—he is no longer interested in selling the painting and is returning her payment.

Louise contacts the firm of Murdoch & Larson to have the contract enforced. Kevin Murdoch, one of the firm's partners, asks paralegal Ling Humboldt to assist him in determining whether the remedy of specific performance, which would require the artist to provide the painting, can be sought. Ling is to research case law on specific performance and prepare a research memorandum summarizing his results. Ling lets the attorney know

that he will have the memorandum on the attorney's desk by the next morning.

CHECKLIST FOR ANALYZING A LEGAL PROBLEM

- Gather the facts involved in the problem.
- Determine whether unique or rare articles are involved.
- Find out what type of remedy the client wants.
- Determine whether a remedy at law, such as money damages, will compensate the client.
- Apply the law to the client's facts to reach a conclusion regarding the appropriate remedy.

If the case is appealed to a higher court for review, the appeals court sometimes places the name of the party appealing the decision first, so that the case may be called *Peretto v. Baranski*. Because some appeals courts retain the trial court order of names, it is often impossible to distinguish the plaintiff from the defendant just by looking at the title of a reported decision. You must read the facts of the case to identify the parties.

When attorneys or paralegals refer to a court decision, they give the title of the case and the case citation. The citation indicates the reports or reporters in which the case can be found (reports and reporters are volumes in which cases are published, or "reported").

EXAMPLE 5.7 A citation to 251 Kan. 728 following a case name (*Tongish v. Thomas*) indicates that the opinion (the court decision) is found in volume 251 of the Kansas state court reports on page 728. You will read more about how to read case citations and locate case law in Chapter 7.

The Parties

The parties to a lawsuit are the plaintiff, who initiates (files) the lawsuit, and the defendant, against whom the lawsuit is brought. Lawsuits frequently involve multiple parties—that is, more than one plaintiff or defendant.

EXAMPLE 5.8 A consumer named Aiken, claiming to be injured by a product made by Toshiba that he purchased at Target, may sue both Toshiba and Target (the manufacturer and the retailer) to try to obtain compensation for injuries alleged to be caused by the product. The manufacturer and the retailer would be *co-defendants*. On appeal, the party asking for review is often called the *appellant* and the other party is called the *appellee*.

citation

A reference that indicates where a particular constitutional provision, statute, reported case, or article can be found.

party

With respect to lawsuits, the plaintiff or the defendant. Some cases involve multiple parties (more than one plaintiff or defendant).

Why is the common law important even in areas that are primarily governed by statutory law?



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Judges and Justices

The terms *judge* and *justice* usually mean the same and represent two designations given to judges in various courts. All members of the United States Supreme Court are referred to as justices. Justice is also the formal title usually given to judges of appeals courts, although this is not always the case. Different states use different terms. Justice is commonly abbreviated as J., justices as JJ, and Chief Justice as C.J. A Supreme Court case might refer to Justice Sotomayor as Sotomayor, J., or to Chief Justice Roberts as Roberts, C.J.

In a trial court, one judge hears a case. In an appeals court, normally a panel of three or more judges (or justices) sits on the bench to hear the appeal. Decisions reached by appeals courts are often explained in written court opinions.

Decisions and Opinions

The **opinion** typically contains a brief procedural history of the case, a summary of the relevant facts, the court's reasons for its decision, the rules of law that apply, and the judgment. There are five types of opinions. When all judges or justices agree on an opinion, the opinion is written for the entire court and is called a *unanimous opinion*. When there is not a unanimous opinion, a *majority opinion* is written, explaining the views of the majority of the judges deciding the case. Sometimes a majority agrees on the result but not on the reasoning. The opinion joined by the largest number of judges, but less than a majority, is called a *plurality opinion*.

A judge who feels strongly about making or emphasizing a point that was not made in the majority opinion writes a *concurring opinion*. In that opinion, the judge agrees (concur) with the decision given in the majority opinion but for different reasons. When an opinion is not unanimous, a judge who does not agree with the majority may write a *dissenting opinion*. The dissenting opinion may be important as it may form the basis of arguments used in the future to modify the law or even overrule the current majority opinion.

The Adversarial System of Justice

U.S. courts follow the **adversarial system of justice**, in which the parties act as adversaries, or opponents. Parties to a lawsuit come before the court as contestants, both sides presenting the facts of their cases in the light most favorable to themselves, in an

opinion

A statement by the court setting forth the applicable law and the reasons for its decision in a case.

adversarial system of justice

A legal system in which the parties to a lawsuit are opponents, or adversaries, and present their cases in the light most favorable to themselves. The impartial decision maker (the judge or jury) determines who wins based on an application of the law to the evidence presented.

attempt to win. The parties do not come to the courtroom with the idea of working out a compromise solution to their problems or of looking at the dispute from each other's point of view. Rather, they take sides, present their best case to the judge or jury (if it is a jury trial), and hope that the decision maker rules in their favor. Because both sides' positions are tested at trial, in theory the strongest case wins.

The Goal Is to Win

The role of the attorney is to discover and present the strongest legal argument on behalf of a client, regardless of personal feelings about the client or the client's case. Because of the adversarial nature of our system, you may be asked to work on cases that you do not believe in or for clients you do not like.

Constitutional Law

We turn next to other primary sources of law. The federal government and the states have separate written constitutions that set forth the general organization, powers, and limits of their respective governments. **Constitutional law** is the law made up of the text of a constitution and court decisions interpreting that text.

constitutional law

Law based on the U.S. Constitution and the constitutions of the states.

The Federal Constitution

The U.S. Constitution is often called the nation's highest law. This principle is set forth in Article VI of the Constitution, which states that the Constitution, laws, and treaties of the United States are "the supreme Law of the Land." This provision is commonly referred to as the **supremacy clause**. A law in conflict with the Constitution (including its amendments), no matter what its source, will be declared unconstitutional when challenged.

supremacy clause

The provision in Article VI of the U.S. Constitution that declares the Constitution, laws, and treaties of the United States "the supreme Law of the Land."

EXAMPLE 5.9 Congress is authorized by the Constitution to regulate trade with foreign nations. If a state passes a law to prohibit the import into the state of products from a particular country, or imposes taxes on imports, the state law would be unconstitutional, as it is in conflict with the Constitution.

The U.S. Constitution consists of seven articles. These articles, which are summarized in Exhibit 5.2 on the following page, set forth the powers of the three branches of government and the relationships among the three branches.

Constitutional Rights

Soon after the Constitution had been ratified by the states, the first Congress of the United States submitted amendments to the Constitution to the states for approval.

BILL OF RIGHTS. The first ten amendments, commonly known as the **Bill of Rights**, were adopted in 1791 and provide protections for individuals—and in some cases, business entities—against various types of government interference. Summarized below are the protections mentioned by the Bill of Rights. The full text of the Constitution, including its amendments (there are now twenty-seven), is presented in Appendix I.

Bill of Rights

The first ten amendments to the U.S. Constitution.

1. The First Amendment guarantees the freedoms of religion, speech, and the press and the rights to assemble peaceably and to petition the government.
2. The Second Amendment guarantees the right to keep and bear arms.
3. The Third Amendment prohibits, in peacetime, the lodging of soldiers in any house without the owner's consent.
4. The Fourth Amendment prohibits unreasonable searches and seizures of persons or property.

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EXHIBIT 5.2

The Articles of the
U.S. Constitution

Article I creates and empowers the legislature. It provides that Congress is to consist of a Senate and a House of Representatives and fixes the composition of each house and the election procedures, qualifications, and compensation for senators and representatives. Article I also establishes the procedures for enacting legislation and the areas of law in which Congress has the power to legislate.

Article II establishes the executive branch, the process for electing and removing a president from office, the qualifications to be president, and the powers of the president.

Article III creates the judicial branch and authorizes the appointment, compensation, and removal of judges. It also sets forth the jurisdiction of the courts and defines *treason*.

Article IV requires that all states respect one another's laws. It requires each state to give citizens of other states the same rights and privileges it gives its own citizens. It requires that persons accused of crimes be returned to the state in which the crime was committed.

Article V governs the process for amending the Constitution.

Article VI establishes the Constitution as the supreme law of the land. It requires that every federal and state official take an oath of office promising to support the Constitution. It specifies that religion is not a required qualification to serve in any federal office.

Article VII required the consent of nine of the original thirteen states to ratify the Constitution.

5. The Fifth Amendment guarantees the rights to indictment by grand jury and to due process of law and prohibits compulsory self-incrimination and double jeopardy. (This will be discussed in Chapter 13, which deals with criminal law and procedures.) The Fifth Amendment also prohibits the taking of private property for public use without just compensation.
6. The Sixth Amendment guarantees the accused in a criminal case the right to a speedy and public trial by an impartial jury and the right to counsel. The accused has the right to cross-examine opposing witnesses and to solicit testimony from favorable witnesses.
7. The Seventh Amendment guarantees the right to a trial by jury in a civil case involving at least twenty dollars.⁵
8. The Eighth Amendment prohibits excessive bail and fines, as well as cruel and unusual punishment.
9. The Ninth Amendment establishes that the people have rights in addition to those specified in the Constitution.
10. The Tenth Amendment establishes that powers neither delegated to the federal government nor denied to the states are reserved for the states.

APPLICATION TO STATE GOVERNMENTS. Originally, the Bill of Rights limited only the powers of the national government. That changed after the adoption of the Fourteenth Amendment to the Constitution. That amendment, passed in 1868 after the Civil War, provides in part: "No State shall . . . deprive any person of life, liberty, or property, without due process of law." The Supreme Court defines various rights and liberties guaranteed in the national Constitution as "due process of law," which is required of state governments under the Fourteenth Amendment. Today,

most of the rights in the Bill of Rights—such as the freedoms of speech and religion guaranteed by the First Amendment—apply to state governments as well as to the national government.

The Courts and Constitutional Law

The rights secured by the Bill of Rights are not absolute. The principles outlined in the Constitution are given form and substance by the courts. Courts often have to balance the rights and freedoms stated in the Bill of Rights against other rights, such as the right to be free from the harmful actions of others. Ultimately, it is the United States Supreme Court, as the final interpreter of the Constitution that gives meaning to constitutional rights and determines their boundaries.

COURTS BALANCE THE RIGHT TO FREE SPEECH. An instance of how the courts must balance the rights and freedoms granted by the Constitution can be found by looking at our right to free speech. Even though the First Amendment guarantees the right to free speech, we are not, in fact, free to say anything we want.

EXAMPLE 5.10 In interpreting the meaning of the First Amendment, the Supreme Court has been clear that certain speech will not be protected. Speech that harms the good reputation of another, for instance, is commonly considered to be a tort, or civil wrong. If the speaker is sued, she may be ordered by a court to pay damages to the harmed person.

FREE SPEECH AND THE INTERNET. The Internet raised new issues for the courts in determining how to apply the protections conferred by the Constitution, particularly with respect to free speech. For example, the Supreme Court ruled that obscene speech, though difficult to define, is not entitled to complete First Amendment protection. Regulating obscene online speech has proved to be difficult.

EXAMPLE 5.11 Congress attempted to prohibit online obscenity in the Communications Decency Act (CDA), which made it a crime to make available to minors online any “obscene or indecent” message.⁶ Civil rights groups claimed the CDA was an unconstitutional restraint on speech. The Supreme Court held that portions of the act were unconstitutional in *Reno v. American Civil Liberties Union*.⁷ Congress then passed the Child Online Protection Act (COPA).⁸ That law was struck down by a federal appeals court as being unconstitutional because it was too vague.⁹ The Supreme Court agreed with that ruling.¹⁰

State Constitutions

Each state has a constitution that sets forth the general organization, powers, and limits of the state government. The Tenth Amendment to the U.S. Constitution, which defines the powers and limitations of the federal government, reserves all powers not granted to the federal government to the states. Unless they conflict with the U.S. Constitution, state constitutions are supreme within the states’ border, so they are important sources of law. Many state constitutions are much more detailed than the federal Constitution; Alabama’s is 40 times longer than the U.S. Constitution.

Statutory Law

Statutes, which are laws enacted by legislative bodies at any level of government, make up a major source of law. The body of written laws created by the legislature is generally referred to as statutory law.

statute

A written law enacted by a legislature under its constitutional lawmaking authority.

statutory law

The body of written laws enacted by the legislature.

Federal Statutes

Federal statutes are laws that are enacted by the U.S. Congress. As mentioned, any law—including a federal statute—that violates the U.S. Constitution will be struck down. Areas of federal statute law include protection of intellectual property rights, regulation of the purchase and sale of corporate stock, prohibition of employment discrimination, protection of the environment, procedure in bankruptcy proceedings, antitrust actions, and protection of consumers. As is discussed in the *Featured Contributor* box on pages 134 and 135, paralegals must know how to use a variety of legal sources to research federal, state, and local statutes pertaining to a given case.

The Federal Government's Constitutional Authority to Enact Laws

In the federal system of government established by the Constitution, the national government (usually called the federal government) and the state governments *share* sovereign power. The Constitution specifies, however, that certain powers can be exercised only by the national government. For example, the national government is authorized to regulate domestic and foreign commerce (trade).

The president of the United States is the nation's chief executive and commander in chief of the armed forces. And, as already noted, the Constitution makes clear that laws made by the national government take priority over conflicting state laws. At the same time, the Constitution provides for certain states' rights, including the right to control commerce within state borders and to exercise powers to protect public health, safety, morals, and general welfare.

To protect citizens from the national government using its power arbitrarily, the Constitution divided the national government's powers among three branches:

- The legislative branch, or Congress, which makes the laws.
- The executive branch, which enforces the laws.
- The judicial branch, which interprets the laws.

Each branch performs a separate function, and no branch may exercise the authority of another branch. Each branch has some power to limit the actions of the other branches. Congress, for example, can enact legislation relating to spending and commerce, but the president can veto that legislation. The executive branch is responsible for foreign affairs, but treaties with foreign governments require approval by the Senate. Although Congress determines the jurisdiction of the federal courts, the federal courts have the power to hold acts of the other branches of the federal government unconstitutional. With this system of checks and balances, no one branch of government should accumulate too much power.

The Federal Lawmaking Process

Each law passed by Congress begins as a *bill*, which may be introduced either in the House of Representatives or in the Senate. Often, similar bills are introduced in both chambers of Congress. In either the House or the Senate, the bill is referred to a committee and its subcommittees for study, discussion, hearings, and rewriting. If the committee does not approve the bill, it "dies" and goes no further. If approved by the committee, it is scheduled for debate by the full House or Senate. Finally, a vote is taken, and the bill is passed or defeated. If the two chambers pass similar, but not identical, bills, a *conference committee* is formed to write a compromise bill, which must then be approved by both chambers before it is sent to the president to sign. Once the president signs the bill, it becomes law.

During the legislative process, bills are identified by a number. A bill in the House of Representatives is identified by a number preceded by "HR" (such as HR 212). In the

federal system

The system of government established by the Constitution, in which the national government and the state governments share sovereign power.

checks and balances

A system in which each of the three branches of the national government—executive, legislative, and judicial—exercises a check on the actions of the other two branches.

Senate, the bill's number is preceded by an "S" (such as S 212). When both chambers pass the bill and it is signed into law by the president, the statute is initially published in the form of a *slip law*. The slip law is assigned a **public law number**, or P.L. number (such as P.L. 5030).

public law number
An identification number assigned to a statute.

At the end of the two-year congressional term, or session, the statute is published in the term's *session laws*, which are collections of statutes contained in volumes and arranged by year or legislative session. The statute is included in the *United States Code*, in which all federal laws are codified (systematized, or arranged in topical order). You may need to locate a statute by bill number, public law number, or U.S. Code section number in the course of your research. (See Chapter 7 for further details on federal statutes.)

State Statutes

State statutes are laws enacted by state legislatures. Any state law that is found by a court to conflict with the U.S. Constitution or with the state's constitution will be deemed unconstitutional. State statutes include state laws governing real property and insurance, estates and family law, the formation of corporations and other business entities, traffic laws, ownership of vehicles, and certain crimes (see Chapter 13), along with state versions of the Uniform Commercial Code (to be discussed shortly).

Conflicts between Federal and State Laws

If a state statute conflicts with a federal statute, the state law is invalid. Because some powers are shared, however, it is necessary to determine which law governs in a particular circumstance. *Concurrent powers* are those shared by the federal government and the states, such as the power to impose taxes or to establish courts.

Preemption occurs when Congress chooses to act exclusively in a concurrent area. In this circumstance, a valid federal law or regulation in the preempted area takes precedence over a conflicting state or local law. Often, it is not clear whether Congress, in passing a law, intended to preempt an entire area of law. In these situations, the courts must determine Congress's intention. No single factor determines whether a court will find preemption. Congress has recognized that the states regulate some areas of business, such as insurance. In those areas, Congress generally does not preempt state law. As the *Developing Paralegal Skills* feature on page 136 discusses, federal preemption of state law can be a critical issue.

preemption
A doctrine under which a federal law preempts, or takes precedence over, conflicting state and local laws.

The State Lawmaking Process

When passing laws, state legislatures follow procedures similar to those followed in Congress. All of the states except one have bicameral (two-chamber) legislatures (Nebraska has a unicameral, or one-chamber, legislature). Bills may be introduced in either chamber, or both chambers, of the legislature. As in the U.S. Congress, if the two chambers pass bills that differ from one another in any respect, a conference committee works out a compromise, which must then be approved by both chambers before being sent to the state's governor to sign into law. State constitutions often impose additional restrictions on state legislatures beyond what the federal constitution imposes on Congress. For example, many state legislatures operate under a state constitutional "single subject rule" which requires that each piece of legislation address only one subject, while Congress is free to combine multiple topics within a single bill.

Local Ordinances

Statutory law also includes local governments' ordinances. An **ordinance** is an order, rule, or law passed by a city, county, or special district government to govern matters not covered by federal or state law. As state governments create local governments,

ordinance
An order, rule, or law enacted by a municipal or county government to govern a local matter as allowed by state or federal legislation.



FEATURED CONTRIBUTOR

SOURCES OF LAW

John D. DeLeo, Jr.

BIOGRAPHICAL NOTE

John D. DeLeo, Jr. earned a B.A. from Penn State University and a law degree from Loyola of New Orleans College of Law. He is licensed to practice law in Louisiana and Pennsylvania. For the past 25 years, DeLeo has served as a professor and director of the Legal Studies Program at Central Penn College in Summerdale, PA, where he was Faculty Member of the Year for 1990, 1993 and 2005. He is the author of *The Student's Guide to Understanding Constitutional Law; Administrative Law*; and co-author of *The Pennsylvania Paralegal*, published by Delmar Cengage Learning.

SOURCES OF LAW

Imagine that authorities have quarantined one of your firm's clients because it is alleged that he or she was exposed to Ebola and thus poses a health risk to the public. What can be done? You are asked to do the legal research and draft a memo that gives the attorney options in assisting the client. You will learn the mechanics of doing research and finding sources of law in your legal research classes. For now, let's take a look at the *kinds* of legal sources that can give you answers.

The Constitution

The Constitution is the supreme law of the land, and all federal, state and local officials must operate within its bounds. The Constitution consists of seven articles that comprise the original text, in addition to the Bill of Rights (the first ten amendments) plus seventeen other amendments. The Constitution

is the source of many rights such as freedom of speech, due process, and equal protection. All states also have their own constitutions.

Statutes

Congress and state governments pass statutes that may add to the rights found in the Constitution and state constitutions. The Civil Rights Act of 1964 that outlawed discrimination based on race, and national origin is one example. States pass statutes that control within state borders.

Judicial Rulings/Common Law

Courts from the United States Supreme Court on down to state courts interpret statutes and base their rulings on a body of common law known as judge-made law. For example, the law related to contracts has been developed by judges in the process of deciding cases.

ordinances may not violate the state or federal Constitution, or go beyond what is allowed by state law. Local ordinances often have to do with land use (zoning ordinances), building and safety codes, construction and appearance of housing, and other matters affecting a local area. Persons who violate ordinances may be fined, jailed, or both.

Uniform Laws

Many areas of state law vary from state to state. The differences were particularly notable in the 1800s, when conflicting statutes created problems for the rapidly developing trade among the states. To counter these problems, a group of legal scholars and lawyers formed the National Conference of Commissioners on Uniform State Laws (NCCUSL) in 1892 to draft uniform statutes for adoption by the states.

DEVELOPING PARALEGAL SKILLS

STATE VERSUS FEDERAL REGULATION

Stephanie Wilson works as a paralegal in the legal department of National Pipeline, Inc., whose business is transporting natural gas to local utilities, factories, and other sites around the country. Last month, one of National's pipelines, which ran under a residential street in Minneapolis, Minnesota, exploded, resulting in several injuries and one death.

The federal government has regulated pipeline safety and maintenance since 1968, under the Natural Gas Pipeline Safety Act. As a result of the explosion, the state of Minnesota wants to regulate pipeline safety as well. Stephanie's boss, the general counsel of the company, and several other executives believe that the federal act preempts this field of law, preventing the state from enacting another layer of safety legislation. Stephanie is assigned the task of researching the statute and relevant case law to determine if the federal law does in fact preempt the state's regulation.

TIPS FOR DETERMINING FEDERAL PREEMPTION

- Read through the statute to see if it expressly states that Congress intended to preempt (or not) the relevant field (in this case, pipeline safety).
- If there is no express provision, look for indications that Congress has impliedly occupied the field: Is the federal regulatory scheme pervasive? Is federal occupation of the field necessitated by the need for national uniformity? Is there a danger of conflict between state laws and the administration of the federal program?
- Locate and read cases discussing the issue of federal preemption in this area. Brief any cases that are relevant to this issue. (See Chapter 7 for instructions on how to brief a case.)

Administrative Law

administrative law

A body of law created by administrative agencies in the form of rules, regulations, orders, and decisions in order to carry out their duties and responsibilities.

administrative agency

A federal or state government agency established to perform a specific function. Administrative agencies are authorized by legislative acts to make and enforce rules relating to the purpose for which they were established.

Another important source of American law is administrative law. It consists of the rules, orders, and decisions of administrative agencies. An administrative agency is a federal, state, or local government agency established to perform a specific function, such as the regulation of food sold to consumers. Rules issued by administrative agencies affect most aspects of a business's operation, including the firm's financing, its hiring and firing procedures, its relations with employees and unions, and the way it manufactures and markets its products.

At the federal level there are many administrative agencies with a variety of missions.

EXAMPLE 5.13 The federal Environmental Protection Agency enforces federal environmental laws and oversees state environmental regulations. The states are authorized to customize regulations and enforce them at the state level. The Securities and Exchange Commission regulates purchases and sales of securities (corporate stocks and bonds). Congress has limited the ability of the state courts to handle many aspects of federal securities laws.

Some state administrative agencies work with a federal agency to regulate an area. State environmental agencies, as noted, play important roles in implementing regulations issued by the federal EPA. Other state agencies, such as those dealing with workers' compensation, mostly operate under state law. Just as federal statutes take precedence over conflicting state statutes, so do federal agency regulations take precedence over

conflicting state regulations. Because the rules of state and local agencies vary widely, we focus here exclusively on federal administrative law.

Agency Creation

Because Congress cannot possibly oversee the implementation of all the laws it enacts, it delegates such tasks to others, particularly when the issues relate to technical areas, such as air and water pollution. Congress creates an administrative agency by passing **enabling legislation**, which specifies the name, composition, purpose, and powers of the agency being created.

EXAMPLE 5.14 The Federal Trade Commission (FTC) was created in 1914 by the Federal Trade Commission Act. This act prohibits unfair and deceptive trade practices. It also describes the procedures the agency must follow to charge persons or organizations with violations of the act, and it provides for judicial review (review by the courts) of agency orders. The act also grants the agency powers to “make rules and regulations for the purpose of carrying out the Act,” to conduct investigations of business practices, to obtain reports from interstate corporations concerning their business practices, to investigate possible violations of the act, to publish findings of its investigations, and to recommend new legislation. The act empowers the FTC to hold trial-like hearings and to **adjudicate** certain kinds of trade disputes that involve FTC regulations.

Note that the FTC’s grant of power incorporates functions associated with the legislative branch of government (rulemaking), the executive branch (investigation and enforcement), and the judicial branch (adjudication). Taken together, these functions constitute *administrative process*.

Rulemaking

One of the major functions of an administrative agency is **rulemaking**—creating or modifying rules or regulations. The Administrative Procedure Act imposes procedural requirements that agencies must follow in their rulemaking and other functions.

The most common rulemaking procedure involves three steps:

1. The agency must give public notice of the proposed rulemaking proceedings, must announce where public hearings will be held, and must convey the subject matter of the proposed rule. The notice must be published in the *Federal Register*, a daily online publication of the U.S. government.
2. Following this notice, the agency must allow time for interested parties to comment in writing on the proposed rule. After the comments have been reviewed, the agency takes them into consideration when drafting the final version of the regulation.
3. The last step is the writing of the final rule and its publication in the *Federal Register*. (See Chapter 7 for an explanation of how to find agency regulations.)

Investigation and Enforcement

Many agencies have both investigatory and prosecutorial powers. When conducting an investigation, an agency can request that individuals or organizations hand over specific papers, files, or other documents. Firms subject to regulations often must file reports on a regular basis, including reports of violations. Agencies may conduct on-site inspections. Sometimes, a search of a home, an office, or a factory is the only way to obtain evidence needed to prove a regulatory violation.

EXAMPLE 5.15 The Environmental Protection Agency employs special agents, authorized to carry firearms, who investigate environmental crimes such as illegal dumping of untreated wastewater into a sewer system or disposing of toxic wastes in a municipal landfill.

enabling legislation

A statute enacted by a legislature that authorizes the creation of an administrative agency and specifies the name, purpose, composition, and powers of the agency being created.

adjudicate

To resolve a dispute using a neutral decision maker.

rulemaking

The actions undertaken by administrative agencies when formally adopting new regulations or amending old ones.

After investigating a suspected rule violation, an agency may take administrative action against an individual or a business. Most actions are resolved through negotiated settlements, without the need for formal adjudication. If a settlement cannot be reached, the agency may issue a formal complaint against the suspected violator, and the case may proceed to adjudication.

Adjudication

administrative law judge (ALJ)

One who presides over an administrative agency hearing and who has the power to administer oaths, take testimony, rule on questions of evidence, and make determinations of fact.

Agency adjudication usually involves a trial-like hearing before an administrative law judge (ALJ). The ALJ presides over the hearing and has the power to administer oaths, take testimony, rule on questions of evidence, and make determinations of fact. Although the ALJ works for the agency prosecuting the case, he or she is required by law to be an unbiased adjudicator (judge). Hearing procedures vary from agency to agency. They may be informal meetings conducted at a table in a conference room, or they may be formal hearings resembling trials. Some agencies allow paralegals to represent clients at these hearings.

After the hearing, the ALJ issues a decision. The ALJ may compel the charged party to pay a fine or may prohibit the party from carrying on a certain activity. Either side may appeal the ALJ's decision through an internal agency review process. Once the agency has completed its procedures, a dissatisfied party may appeal to a federal court. If no party appeals the case, or if the commission and the court decline to review the case, the ALJ's decision becomes final.

National and International Law

Because business and other activities are increasingly global in scope, many cases now brought before U.S. courts relate to issues involving foreign parties or governments. The laws of other nations and international doctrines or agreements may affect the outcome of these cases. Many paralegals, particularly those who work for law firms with clients operating in foreign countries, may need to become familiar with the legal systems of other nations during the course of their careers.

For example, if you work in a firm in Arizona, California, New Mexico, or Texas, you may assist in the representation of clients who are citizens of Mexico. In this situation, you will want to have some familiarity with Mexican law and any international agreements that regulate U.S.-Mexican relations, such as the North American Free Trade Agreement (NAFTA).

National Law

The law of a particular nation is referred to as national law. Broadly speaking, however, there are two types of legal systems used by the various countries of the world. We have already discussed one of these systems—the common law system of England and the United States. Generally, countries that were once colonies of Great Britain retained parts of their English common law heritage after they achieved their independence.

In contrast to Great Britain and the common law countries, most European nations base their legal systems on Roman *civil law*, or “code law.” The term *civil law*, as used here, refers not to civil as opposed to criminal law but to *codified law*—which is an ordered grouping of legal principles enacted into law by a legislature or governing body. In a civil law system, the primary source of law is a statutory code, and case precedents are not judicially binding, as they normally are in a common law system. This is not to say that precedents are unimportant in a civil law system. Judges in such systems do refer to previous decisions as sources of legal guidance. The difference is that judges in a civil law system are not obligated to follow precedent to the extent that judges in a common law system are; in other words, the doctrine of *stare decisis* does not apply.

national law

Law that relates to a particular nation (as opposed to international law).

civil law system

A system of law based on a code rather than case law, often originally from the Roman Empire; the predominant system of law in the nations of continental Europe and the nations that were once their colonies.

KEY TERMS AND CONCEPTS

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Chapter Summary Sources of American Law

THE FRAMEWORK OF AMERICAN LAW

1. *What is the law?*—The law has been defined in many ways, but all definitions rest on the assumption that law consists of a body of rules of conduct established and enforced by the controlling authority (the government) of a society.
2. *Primary sources of American law*—There are four primary sources of American law: the common law

doctrines developed in cases; the U.S. Constitution and the constitutions of various states; statutory law, including laws passed by Congress, state legislatures, and local governing bodies; and regulations created by administrative agencies.

CASE LAW AND THE COMMON LAW TRADITION

Case law consists of the decisions issued by judges in cases that come before the court. Case law evolved through the common law tradition, which originated in England and was adopted in America during the colonial era.

1. *The doctrine of stare decisis*—*Stare decisis* means “to stand by things decided” and is the doctrine of precedent, which is a major characteristic of the common law system. Under this doctrine, judges must follow the earlier decisions of their courts or a higher court within their jurisdiction if the same points arise again in litigation.
 - a. A court will depart from precedent if the court decides that the precedent should no longer be

followed because the earlier ruling was incorrect or does not apply in view of changes in the social or technological environment.

- b. If no precedent exists, the court considers the matter as a case of first impression and looks to other areas of law and public policy for guidance.
2. *Remedies at law versus remedies in equity*—Historically in England, two types of courts emerged: courts of law and courts of equity. Courts of law granted remedies at law (such as money damages). Courts of equity arose in response to the need for other types of relief. In the United States today, the same court can typically grant either legal or equitable remedies.

3. *Remedies in equity*—Remedies in equity, which are normally available only when the remedy at law (money damages) is inadequate, include the following:
 - a. **SPECIFIC PERFORMANCE**—A court decree ordering a party to perform a contractual promise.
 - b. **INJUNCTION**—A court order directing someone to do or refrain from doing a particular act.
4. *The common law today*—The common law governs all areas of law not covered by statutory law. As the body of statutory law grows to meet different needs, the common law covers fewer areas. Even if an area is governed by a statutory law, however, the common law plays an important role because statutes are interpreted and applied by the courts, and court decisions may become precedents that must be followed by lower courts within the jurisdiction.
5. *The terminology of case law*—
 - a. **CASE TITLES**—A case title consists of the surnames of the parties, such as *Baranski v. Peretto*. The citation itself (such as 12 P.3d 385) indicates the volume and page number of the reporter in which the case can be found.
 - b. **PARTIES**—The plaintiff or the defendant. Some cases involve multiple parties—that is, more than one plaintiff or defendant.
 - c. **JUDGES AND JUSTICES**—These terms are often used synonymously. Usage of the terms varies among courts. The term *justice* is traditionally used to designate judges who sit on the bench of a supreme court.
 - d. **DECISIONS AND OPINIONS**—A document containing the court's reasons for its decision, the rules of law that apply, and the judgment. If the opinion is not unanimous, a majority opinion—reflecting the view of the majority of judges or justices—will be written. Concurring and dissenting opinions may also be written.
6. *The adversarial system of justice*—American courts, like English courts, follow a system of justice in which the parties to a lawsuit are opponents, or adversaries, and present their cases in the light most favorable to themselves. The impartial decision maker (the judge or jury) then determines who wins and who loses based on the evidence presented.

CONSTITUTIONAL LAW

Constitutional law is based on the provisions in the U.S. Constitution and the state constitutions. The U.S. Constitution creates and empowers the three branches of government, sets forth the relationship between the states and the federal government, and establishes procedures for amending the Constitution.

1. *The federal Constitution*—The U.S. Constitution is the supreme law of the land. A law in violation of the Constitution or one of its amendments, no matter what its source, will be declared unconstitutional and will not be enforced. A state constitution, so long as it does not conflict with the U.S. Constitution, is the supreme law within the state's borders.
2. *Constitutional rights*—The first ten amendments to the federal Constitution are known as the Bill of Rights.

These amendments embody a series of protections for individuals—and in some instances, business entities—against certain government actions. The Bill of Rights limited only the powers of the federal government. After the Fourteenth Amendment was passed, the Supreme Court applied the protections of the Bill of Rights against state government actions.

3. *The courts and constitutional law*—The rights secured by the Constitution are interpreted and defined by the courts, especially the United States Supreme Court.
4. *State constitutions*—Each state has a constitution that defines and limits the powers of state government. Most state constitutions are much more detailed than the U.S. Constitution.

STATUTORY LAW

Statutory law consists of all laws enacted by the federal Congress, a state legislature, a municipality, or some other governing body.

1. *Federal statutes*—Laws passed by Congress are *statutes*. Congress has power over areas declared in the Constitution to be within federal jurisdiction. The power of Congress is subject to checks and balances as the judicial branch interprets the laws and the executive branch helps to enforce the laws.
2. *State statutes*—Laws enacted by state legislatures under the powers granted by the state constitution. If a state statute conflicts with federal law, it will be stricken as unconstitutional, as federal law preempts state law.

Public laws must pass both branches of Congress and then be signed by the president to become part of the U.S. Code.

3. *Local ordinances*—Laws passed by local governing units (cities and counties) are called *ordinances*. Such laws may not violate either the federal or state constitution or conflict with laws at the state or federal levels.
4. *Uniform laws*—While laws vary in detail from state to state, many states have adopted uniform statutes, such as the Uniform Commercial Code, to reduce confusion as businesses operate across state lines.

ADMINISTRATIVE LAW

Administrative law consists of the rules, regulations, and decisions of administrative agencies at all levels of government.

1. *Agency creation*—Congress creates administrative agencies by passing enabling legislation, which specifies the name, function, and powers of the agency created.
2. *Administrative process*—Administrative agencies exercise three basic functions:
 - a. **RULEMAKING**—Agencies make rules governing activities within the areas of their authority. Typically, rulemaking procedure involves publishing notice of the proposed rulemaking, allowing a comment period, and then drafting the final rule.

b. INVESTIGATION AND ENFORCEMENT—Agencies conduct investigations of regulated entities to gather information and to monitor compliance with agency rules. When an entity fails to comply with agency rules, the agency can take administrative action. Most violations are resolved by negotiated settlements.

c. ADJUDICATION—If a settlement cannot be reached, the agency may issue a formal complaint and an administrative law judge (ALJ) conducts a hearing and decides the issue. Either party can appeal the ALJ's order to the board or commission that governs the agency if dissatisfied. Most agency decisions can also then be appealed to a court.

NATIONAL AND INTERNATIONAL LAW

1. *National law*—The law of a particular nation. National law differs from nation to nation because each country's laws have evolved from that nation's unique customs and traditions. Most countries have one of the following types of legal systems:
 - a. **THE COMMON LAW SYSTEM**—Great Britain was the originator of common law. Countries that were once colonies of Great Britain retained at least part of their English common law heritage after achieving independence. Under the common law, case precedents are judicially binding.
 - b. **THE CIVIL LAW SYSTEM**—Many of the continental European countries and the nations that were

formerly their colonies have civil law systems. Civil law (or code law) is a grouping of legal principles enacted into law by a governing body. The primary source of law is a statutory code. Although important, case precedents are not judicially binding. Judges focus on the code.

2. *International law*—A body of laws that governs relationships among nations. International law allows nations to enjoy good relations with one another and to benefit economically from international trade. Sources include international customs developed over time, treaties among nations, and international organizations.

■ QUESTIONS FOR REVIEW

1. Define law. What are the primary sources of American law?
2. Why is the doctrine of *stare decisis* the cornerstone of American common law, and what is its relationship to binding authority? May courts depart from precedent? What is a case of first impression?
3. What remedies were originally available from courts of law? Courts of equity? How did courts of equity evolve? Are the courts of law and equity still separate?
4. What is a statute? How is statutory law created? What is the difference between a statute and an ordinance? What happens when a state statute conflicts with a federal statute?
5. What is the supremacy clause and where is it located? Briefly summarize each article of the Constitution. What is the Bill of Rights?

ETHICS QUESTION

Paralegal Carlos is asked by his supervising attorney to do some research. Carlos is to review a new state statute exempting certified, ill persons from prosecution for medical marijuana use, in order to find out what the requirements are for becoming a certified medical marijuana user. Carlos looks up the relevant state statute and finds the requirements. He conveys this information to John, his

supervising attorney. Carlos has neglected to research the federal drug laws and fails to tell the attorney that there is not an exemption for the medical use of marijuana under federal law. The attorney, relying on Carlos's conclusion, advises the client that once she is a certified medical user, she will be exempt from prosecution. Have John and Carlos violated any ethical rules? Explain.

PRACTICE QUESTIONS AND ASSIGNMENTS

1. In the following hypothetical situations, identify the remedy being sought and whether it is a remedy at law or a remedy in equity:
 - a. Brianna files a petition with the court. She is seeking compensation from Travis, who failed to deliver new furniture as promised.
 - b. Juan sues Bob, seeking to be compensated for the cost of replacing several new trees that Bob's dog destroyed.
 - c. Laurie seeks to have a contract enforced for the sale of an antique Mercedes automobile.
 - d. Sam files a petition seeking to prevent the electric company from cutting down a large tree on his property.
2. Identify the type of law (common law, constitutional law, statutory law, or administrative law) that applies in each of the following scenarios:
 - a. LaToya strongly disagrees with the U.S. government's decision to declare war on a foreign country. She places an antiwar sign in the window of her home. The city passes an ordinance that bans all such signs.
 - b. An official of the state department of natural resources learns that the Ferris Widget Company has violated the state's Hazardous Waste Management Act. The official issues a complaint against the company for not properly handling and labeling its toxic waste.
 - c. Mrs. Sams was walking down a busy street when two teenagers on skateboards crashed into her because

- they were racing and not watching where they were going. As a result of the teenagers' conduct, Mrs. Sams broke her hip, and according to her doctor, she will never walk normally again. Mrs. Sams's attorney files suit against the teenagers for damages.
 - d. Joseph Barnes is arrested and charged with the crime of murder.
3. Look at the U.S. Constitution in Appendix I of this text. Identify the amendment and quote the relevant language in the Bill of Rights that gives U.S. citizens the following rights and protections:
 - a. The right to freedom of the press.
 - b. Protection from excessive bail and fines.
 - c. Protection against self-incrimination.
 - d. The right to counsel in criminal prosecutions.
 - e. The right to keep and bear arms.
4. Identify the constitutional amendment being violated in the following hypothetical situations:
 - a. A state imposes the death penalty on a 17-year-old.
 - b. The federal government suppresses political speech based on the speaker's identity as a corporation.
 - c. The police decide that because a house is located in a poor neighborhood, it must be a crack house. The police burst in, tear the house apart looking for drugs, and find nothing.
 - d. A local government bans handgun possession in the home.

GROUP PROJECT

This chapter describes uniform laws that were created to alleviate conflicting laws that hindered rapidly developing trade among the states. One such uniform law that was created was the Uniform Commercial Code (UCC), a core provision of which regulates the sales of goods. Trade problems

also arose among nations. For this project, the group should search the Internet to locate a uniform international law similar to the UCC. Student one will research the source of law to determine what entity created it and what form the law takes (case law, statutory law, treaty, etc.). Student two