

Sources of Law (Chp.1)

The most important primary source of law is The Constitution (it is supreme)

State constitutions are a primary source of law.

Statutory law, a primary source of law, involves the U.S. Congress and state and local legislatures.

The U.S. Congress passes federal statutes that apply to all states.

The Uniform Commercial Code is a uniform law adopted by all states that facilitates commerce.

Administrative agencies are created to perform specific government functions

Case law is derived from judges' decisions for actual cases.

Administrative Law the rules, orders, and decisions of federal, state, or local government administrative agencies

Statutory Law laws (statutes and ordinances) enacted by federal, state, and local legislatures

Constitutional Law the laws expressed in the US Constitution and state constitutions

Case Law judge made laws

Traditionally, courts of law offer three remedies, called remedies at law

Money, land, and items of value

Remedies in equity involve specific performance.

Part of the common law tradition relies on the doctrine of stare decisis

the Latin phrase for stare decisis means to stand on decided cases

stare decisis issue ruling that are consistent with precedents established in similar cases

Sources of Law (Chp.1) (cont)

one of the most important functions of law is to provide stability and predictability

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

A source of law that courts must follow when deciding a case is called a binding authority. A binding authority does NOT include opinions from trusted newspapers

Cases where there is no binding precedent in the jurisdiction are called cases of first impression .

court of law and equity no longer decide appropriate cases and provide the appropriate remedies.

Positivist there is no law higher than the laws created by the government

Historical doctrines that have withstood the passage of time help guide us in shaping present law

Natural Law universal law as applicable to all human beings

legal realism takes into account customary practices and the circumstances surrounding the particular transaction

One way to divide law is into procedural law and substantive law .

civil law the law the governs relations between people

a law against not performing an employee argument cannot be at issue in criminal law

cyberlaw is not a classification of law

When one country violates international law, enforcement can take the form of into persuasive tactics and severance of diplomatic relations

the primary source of law in a civil law system is statutory laws

Sources of Law (Chp.1) (cont)

cyberlaw consists of traditional legal principles that have changed because of technology and new laws that govern unique problems related to technology

define: remedy, substantive law, procedural law

Judiciary Role (Chp. 2)

the doctrine of judicial review allows the judicial branch to decide whether laws or actions of the other two branches are constitutional

the power of judicial review has remained unchallenged since Marbury v. Madison

Marbury v. Madison Case?

A long arm statute allows one state's court to exercise jurisdiction over a defendant from another state who has minimum contacts with the state in which the court is located.

concurrent jurisdiction cases involving federal questions and diversity of citizenship cases

exclusive state jurisdiction cases involving all matters not subject to federal jurisdiction

exclusive federal jurisdiction cases involving federal crimes, bankruptcy, patents, copyrights, trademarks, and suits against the US

venue *

standing to sue three elements: causation, remedy, and harm *

original jurisdiction exists with courts that have the authority to hear a case for the first time called trial courts



Judiciary Role (Chp. 2) (cont)

subject matter limits the court's jurisdictional authority to particular types of cases and can be either limited or general jurisdiction

appellate jurisdiction exists with courts of appeal and review

a federal court can exercise jurisdiction if a case involves a treaty, the Constitution, or a federal law

Order of most court systems trial court, intermediate appellate court, supreme court

trial courts often deal with questions of fact

appellate or reviewing courts deal with questions of law

the Supreme court has to issue a writ of certiorari before it hears a case

litigation is the process of moving a case through the courts

a default judgement is NOT involved in the two basic pleadings of a lawsuit

A deposition is given orally by a party to a lawsuit or a witness before a trial

pretrial conference a pretrial hearing after discovery. the goal is settlement

jury selection during the process of voir dire, prospective jurors can be challenged

At the conclusion of the plaintiff's case, the defendant's attorney may ask for a directed verdict.

When a jury reaches its decision, it typically issues a verdict in favor of one party.

When the jury clearly misapplied the law or misunderstood the evidence, a judge will grant a motion for a new trial

if someone loses a trial, they can make a motion for a judgement not withstanding the verdict

Judiciary Role (Chp. 2) (cont)

motion for a judgement not withstanding the verdict *

filing the appeal the appealing party files a notice of appeal with the trial court

appellate review the appellate court does not hear evidence. they may affirm or reverse the trial court's judgement or remand the case for further proceedings

Your attorney prepares a brief to present to the appellate court when you decide to appeal the trial court's decision.

The public has access to electronic court filings through a system called PACER

negotiation a process in which parties attempt to settle their dispute without going to court with or without attorneys to represent them; meet informally

mediation settling the disputes in which a neutral third part assists disputing parties in reconciling their differences

online dispute resolution the resolution of disputes with the assistance of organizations that offer dispute-resolution services via the internet; best for resolving small sized business claims

Judiciary Role (Chp. 2) (cont)

Alternative dispute resolution (ADR) the resolution of disputes in other ways than those involves in traditional judicial process (negotiation, mediation, and arbitration)

negotiation is the simplest form of ADR because it is informal and does not require a third party like arbitration, mediation, and facilitation

in arbitration, the arbitrator hears the dispute and imposes a solution on the parties

arbitration the parties present their argument and evidence to an arbitrator at a hearing and the arbitrator renders a decision resolving the dispute

arbitration clause a part of the contract that provides that the parties will submit the dispute to arbitration rather than litigate the dispute in court

award the arbitrator's decision

major non-profit ADR provider is the AAA

arbitrability involves a court deciding whether a matter is one that must be resolved through arbitration.

most states have adopted the uniform arbitration act

When one party files a lawsuit to compel arbitration, the courts must resolve the issue of arbitrability.

90% of cases are settled through some form of ADR

Marbury v. Madison
harm
causation
affirmative defense
discovery process
pretrial motions