

# Chapter 1

## Introduction to Law

### CHAPTER OVERVIEW

Chapter 1 provides an overview of the nature of law and its historical origins and philosophical theories. This chapter also explains some of the more common categories of law, including the sources of law, the distinction between substantive and procedural law and the differences between criminal and civil law.

### CHAPTER OBJECTIVES

1. Define the term law.
2. List some of the historical origins of law.
3. Explain the basic concepts of a civil law legal system.
4. Explain the basic concepts of a common law legal system.
5. List and describe three major philosophical theories of law.
6. List three important categories of law.
7. Explain the purpose of substantive laws.
8. Explain the purpose of procedural laws.
9. Provide examples of substantive criminal laws and substantive civil laws.
10. Compare and contrast procedures in a criminal case with procedures in a civil case.

### LECTURE OUTLINE

1. Case File – Centerville News: March 10
2. Introduction
3. What Law Is
4. Categories of Law
5. Chapter Cases
6. Case Summaries

### LIST OF CHANGES/TRANSITION GUIDE

Feedback from instructors and students who use this text confirmed that the basic organization and features of this textbook are successful. Students especially appreciate the extensive key term definitions in the margin, the interesting cases, and the wide use of common hypothetical cases to explain the application of legal principles. These features remain in the text. However, the law is not, nor will it ever be, a static entity. Any useful textbook dealing with the law must reflect these changes. As a result, our goal in this edition is to also provide students with the following.

- Updates to the law and exhibits containing current legal forms and court documents
- A broader view of some of the substantive and procedural areas of law
- Updated information on the use of technology in law practice
- Discussion of new court cases illustrating current trends in the development of our laws
- More practice in building critical thinking skills with additional case questions and end-of-chapter exercises.

All chapters have been reviewed, edited, and updated so as to contain current law and legal forms.

## QUESTIONS FOR REVIEW

### Suggested answers:

1. A set of rules and procedures usually intended to regulate some aspect of society.
2. Code of Hammurabi and the Napoleonic Code.
3. Stare decisis / Medieval England
4. A civil law legal system is based on written laws or codes. A common law legal system is developed through the courts.
5. Study of philosophy of law.
6. Natural theory of law is a philosophical theory holding that law reflects the moral and unchangeable laws of nature. Legal positivism is a philosophical theory holding that the validity of law is not related to morality. Legal realism is a philosophical theory that laws are created by judges and therefore subject to individual beliefs and prejudices.
7. U.S. laws generally stem from one of three sources: a constitution, a statute, or a case decision; they are known accordingly as constitutional law, statutory law, or case law.
8. Substantive laws are laws that define our rights and obligations. Procedural laws are laws that dictate how we enforce our rights and obligations.
9. Due process of law.
10. Procedural laws or rules tell us how we enforce substantive rights. Often, these rules deal with the court process. Where a lawsuit should be filed, what the time limit is for filing the action, and what type of papers must be filed in court are all questions of procedural law. The answers to these types of procedural questions are generally found in statutory law or rules of court. Rules of court are laws that are adopted by various courts with power given to the courts by the legislature. However, in both criminal and civil cases both constitutional and case law are sometimes important in determining the procedures that must be followed. In the area of criminal law, the U.S. Constitution specifies several procedures that must be followed by police, by prosecutors, and by the court. For example, in criminal cases, a defendant has the right to have an attorney. The defendant also has a right to due process of law. In the area of civil law, the selection of the proper court in which to initiate the lawsuit is sometimes a problem. Civil lawsuits must be filed in a court that has jurisdiction. Jurisdiction is a complicated legal subject, but refers to the fact that the court must have the power or authority to hear a case. The U.S. Constitution limits the types of cases that can be brought in federal courts. The concept of due process of law also applies to jurisdiction and limits the rights of courts to hear cases against defendants who do not reside within the state in which the court is located. This is an increasingly important issue with the amount of business done over the Internet. When constitutional procedural issues arise, courts are often required to determine how the Constitution applies to the specific facts of the case.

## APPLICATION AND ANALYSIS PROBLEMS

### Suggested Answers:

1. The landlord in Smith was not allowed to refuse to rent. The court stated that the landlord's religious beliefs "may not permit her to rent to unmarried cohabitants, but the right of free exercise does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes conduct that his religion prescribes." (p. 1161)

2. In 'North Coast Woman's Care Medical Group' the court stated that California has a civil rights law that prevents a business from discriminating based on sexual orientation. Because this is a valid and neutral law, the doctors had no First Amendment right to discriminate.
3. The action against the officers was civil and not involving the state or any criminal law.
4. This is a criminal case. It resulted from the commission of a crime and was brought by the state, not the victim.
5. Answers will vary.

#### ASSIGNMENTS AND PROJECTS

Suggested answers:

1. Answers will vary.
2. Answers will vary.
3. Answers will vary.

#### SKILLS ASSESSMENT

Suggested answers:

1. This is a civil case resulting from a civil lawsuit filed by a rape victim under 42 U.S.C. § 13981.
2. (a.) Criminal. (b.) Civil.
3. (a.) Criminal. (b.) Eighth and Fourteenth Amendments. (c.) The Court looked at recent history and examined how state legislatures and the international community had been eliminating the death penalty for juveniles. (d.) The Court considered the humanity of the death penalty, the national and international consensus against the use of the death penalty on juveniles and weighed the nature of the penalty against the immaturity and lack of judgment of juveniles.

## **Chapter 2**

### **The U.S. Legal System**

#### **CHAPTER OVERVIEW**

Chapter 2 provides an overview of the U.S. legal system. Included is a discussion of the concept of federalism. The different branches of federal and state governments are discussed. The three major sources of laws, constitutions, case law and statutory law, are defined and explained.

#### **OBJECTIVES**

1. Explain the concept of federalism.
2. Describe the power of the federal government to make laws and identify the source of that power.
3. Discuss the limits on the right of the states to make laws.
4. Explain the difference between exclusive and concurrent jurisdiction as related to the law-making process.
5. Explain how the Supremacy Clause relates to the law-making power of the states.
6. Identify and describe the function of each branch of the federal government.
7. Describe role of the U.S. Constitution and state constitutions.
8. Explain how the concept of precedent or stare decisis operates today.
9. Compare and contrast case law and statutory law.
10. Outline the legislative process for the enactment of laws.

#### **LECTURE OUTLINE**

1. Case File – The Richfield Matters
2. Introduction
3. Federalism – the Relationship Between Federal and State Government
4. The Federal Government and the Legal System
5. State Governments and the Legal System
6. Sources of U.S. Law
7. Chapter Cases
8. Case Summaries

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