Elements of Law

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Goals

• Provide context for what you will be learning in law school
• May be a review for some and new information for others
• Level the playing field
• Have some fun and get to know each other
What do we mean when we say law?

• Black’s Law Dictionary definition
  1. The regime that orders human activities and relations through systematic application of the force of politically organized society, or through social pressure, back by force, in such a society.
  2. The aggregate of legislation, judicial precedents, and accepted legal principles; the body of authoritative grounds of judicial and administrative action; esp. the body of rules, standards, and principles that the courts of a particular jurisdiction apply in deciding controversies brought before them.
We will be focusing on definition 2!

- The three branches of government
- The structure of the Federal and state legal systems
- How a bill becomes a law
- Sources of law
- How lawyers and courts use the law
The three branches of government
Sources of Law

• **Enacted law**
  • Constitutions
  • Statutes
  • Regulations

• **Case law**
  • Judicial decisions Interpreting enacted law
  • Common law: law developed by courts when there is no statute
EPIODE 9

HOW A BILL BECOMES A LAW
Structure of Federal Court System
New York District Courts
Federal Courts

• **Trial Level**
  • 94 District Courts (4 in New York)
  • Each District also has a Bankruptcy Court
  • Court of International Trade
  • Court of Claims

• **Intermediate Level of Appeal**
  • 13 Courts of Appeal (New York is in Second Circuit)

• **United States Supreme Court**
Subject Matter Jurisdiction of Federal Courts

• Federal Question
  • Cases concerning US Constitution, Federal statutes and regulations, disputes between states, disputes between the US and foreign countries

• Diversity (minimum amount in controversy: $75,000)
  • Disputes between citizens of different states
  • May also be litigated in State court

• Specialized courts
  • International Court of Trade
  • Court of Claims
New York Civil Court Structure
New York Criminal Court Structure
How “law” develops

• Adjudication of Disputes
  • Interpretation of statutes
  • Common law: judge-made law when no statute applies
    • Much common law has been enacted into statute, especially criminal law
How do cases get to court: Civil

• Plaintiff files a law suit: complaint
  • Must state a claim
  • Court must have jurisdiction: right court
    • Geographic
    • Subject Matter

• Defendant files an answer or motion to dismiss

• Case may be disposed of at this stage
Discovery

- If case is not dismissed, parties generally conduct “discovery”
  - Exchange of relevant information to narrow the issues
  - Depositions (interview under oath) of parties and witnesses
- If no disputed facts after discovery, parties may file a motion for summary judgment
- If there are disputed facts after discovery, case will go to trial
Settlement

• Vast majority of cases are settled
• Cases can settle at any time
• Settlement encouraged: Why?
Trial

• May be before a jury or judge only (generally decision of plaintiff)
• Jury (or judge) decides facts
• Judge instructs the jury about the law
• No right to counsel in civil cases, generally
Appeal

• Losing party generally may appeal to intermediate appellate court as of right
• Appeals heard by more than one judge – Why?
• Appeals are heard on the trial record – no new information presented
• Further appeals may be limited by statute.
How to cases get to court: Criminal

• A person is charged with a crime (state or Federal)
• The Government (US Attorney or District Attorney) represents “the People” when prosecuting the case
• The Defendant has a right be represented in cases where the sentence could be more than one year (“right to counsel”).
Settlement - Criminal

• Many cases get resolved without trial: plea bargain
Appeal – Criminal

• Defendant has the right to appeal a criminal conviction

• The government may have the right to appeal a decision to dismiss the case before a trial, but generally is not able to appeal a not guilty verdict – Why not?
How judges decide cases

• Must decide the issue presented by the case
  • Holding: Judgment + relevant facts
  • Dicta: Discussion of the court which is not necessary to the resolution of the case
Precedent – *Stare Decisis*

• Consideration of similar cases in the past
• Binding precedent: very similar case in same court or higher court in same jurisdiction
• Persuasive authority: cases in different court or court in a different jurisdiction
Hierarchy of persuasiveness of precedent

• Binding
  • Higher court in same jurisdiction; very similar facts
  • Court in same jurisdiction; very similar facts; no higher court decision on point

• Persuasive
  • Court in same state, different jurisdiction, very similar facts
  • Highest court in another jurisdiction, very similar facts
  • Intermediate court in another jurisdiction, very similar facts
  • Same level court in another jurisdiction, very similar facts
When will a court overrule a prior decision?

• May only overrule the decision of a lower court in the same jurisdiction
• May overrule its own prior decision only if there is no controlling decision from a higher court or legislation
• Happens very rarely
• More likely that Court will distinguish facts in case before it from facts in controlling case
Appellate court decisions

- Majority opinion
- Concurring opinion
- Dissenting opinion
- *Per curiam* opinion
Legislatures may overrule or respond to a court decision by statute

- Americans with Disabilities Act
- Family Health Care Decisions Act
Hierarchy of enacted law: Federal

• US Constitution
• Federal statutes and treaties
• Federal executive orders and administrative regulations
• State constitutions
• State statutes
• State administrative regulations
• Municipal enactments
Citation

• Formula for referring to authority (primary sources)
• *Blue Book* contains the rules that are generally used in legal scholarship and in law school writing
• Courts have their own rules for citation – don’t forget this!
Citations – Why?

• Demonstrate assertions are supported by authority
  • In legal writing, most factual and all legal assertions require citations

• Supply bibliographic information so that reader can find the source

• Attribute borrowed words and ideas: avoid plagiarism