

Fifth Edition

Introduction to

Basic Legal Principles

A Student Study Guide

*Henszey/Myers
Bagby/Sharp*

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INTRODUCTION TO BASIC LEGAL PRINCIPLES

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Fifth Edition

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CHAPTER 1

THE LEGAL SYSTEM

I. Law

A. General Definition - a set of rules or guidelines within which various entities operate in an attempt to achieve fairness and harmony of existence.

B. Broadly Classified

1. Common Law - historical expressions of law and juristic theory that stem from England and are based upon ancient usages and customs, or judgments and decrees of courts recognizing, affirming, and enforcing such usages and customs.
2. Legislative or Statutory Law - law enacted by a governmental unit (federal, state, or local) which prescribes general rules of conduct designed to achieve fairness and harmony of existence between individuals and other entities.
3. Decisional or Case Law - law created by the courts as a result of deciding disputes between individuals and other entities. Stems from common law.
 - a. Stare Decisis - the policy of courts to adhere to principles of law established in previously decided cases.
 - b. Res Judicata - the rule that final judgment by a court is conclusive of all rights or claims arising out of the case.
4. Civil Law - protects private rights and prevents or provides redress for private wrongs.
5. Criminal Law - protects public rights and prevents or provides redress for public wrongs.
6. Substantive Law - creates, defines, and regulates rights.
7. Procedural Law - the method of enforcing rights or obtaining redress for their invasion.
8. Constitutional Law - the highest law of a state or the U.S., wherein certain basic individual rights are defined to which all other law must conform.
9. Relationship of Statutory and Case Law - unless it is unconstitutional, statutory law will take priority over case law subject to the court's interpretation of the statute. For example, the Uniform Commercial Code (U.C.C.) is a state statute controlling the sale of goods. With some variation, all of the states have adopted the U.C.C.; therefore, the law in this field has been substantially uniformized, subject to court interpretations of the statute.

C. Enforcement

1. Civil Law - by obtaining a judgment and, if it is not voluntarily paid, proceeding on it through a sheriff's sale.
2. Criminal Law - by fine or imprisonment or both.

D. Conflict of Laws - that part of the law of each state which determines what effect is given to the fact that the case may have a significant relationship to more than one state.

1. Choice of Law - subject to constitutional restrictions, courts will follow a statutory directive of its own state on choice of law.

a. Substantive Law - the traditional rule is that the local forum will apply the substantive law of the foreign jurisdiction where the occurrence takes place in that jurisdiction. The modern approach applies the substantive law of the state with the most significant relationships to the incident.

b. Procedural Law - The general rule is that procedural matters are governed by the local rule of the forum where suit is brought on a foreign cause of action.

II. The Courts - Backbone of the Judicial System

A. Purpose - Forums established by law with the authority to resolve differences between or among parties.

B. Court Systems - State & Federal (see Figure 1.1, Basic Legal Principles)

1. State courts

a. Minor or Specialized Trial Courts - courts which are in some way limited in the scope of the issues before them. Do not involve jury trials. Examples:

i. District Magistrate's Court (PA Approach)

(1) Civil Cases - limited in amount to \$4,000 or less.

(2) Criminal Cases - decides guilt or innocence in summary (minor) offenses. Determines whether there is "probable cause" if a misdemeanor or felony (serious offense) is involved.

ii. Arbitration Court

(1) Selection of Arbitrators

(a) Voluntary Arbitration - by agreement of the parties.

(b) Compulsory Arbitration - at the choice of either party where the amount involved is less than \$20,000, depending upon the county class. Seven attorneys are randomly selected by the clerk of courts. Two names are stricken by each side leaving three to decide the case (PA approach).

(2) Advantages

(a) Informal - formal rules of evidence tend not to be strictly applied.

(b) Technical knowledge and training of the arbitrators.

- (c) More private nature of proceedings.
 - b. General Trial Courts - courts, in the first instance, that resolve disputes between or among parties whether arising from fact or law. Can be resolved by jury or non-jury trial.
 - c. Appellate Courts - courts having authority to review and determine the propriety of decisions reached by other courts.
2. Federal Courts
- a. Exclusive Jurisdiction - where crimes arise under Federal statutes, cases arising on navigable waters, bankruptcy, postal or banking laws, etc.
 - b. Concurrent Jurisdiction (with state courts) - where (1) a Federal question is involved or (2) the amount in dispute exceeds \$50,000 and there is diversity of citizenship.
 - c. Doctrine of Sovereign Immunity - a foreign nation is not subject to the jurisdiction of the United States courts unless a claim arises from commercial activity of the foreign nation in the United States or the foreign nation has waived its immunity.
- C. Use of the Courts - Civil (see Figure 1.2 in Basic Legal Principles)
1. Cause to Sue - results from breach of a legal right or duty.
2. Parties - the persons who take part in or are directly affected by an act wherein certain legal rights and duties arise.
- a. Plaintiff - the party who brings or commences an action or law suit.
 - b. Defendant - the party against whom an action or law suit is commenced.
 - c. Appellant - the party who takes an appeal from one court or jurisdiction to another.
 - d. Appellee - the party against whom an appeal is taken.
3. Basis for Selection of a Court
- a. Jurisdiction - the power of a court to decide a case on its merits.
 - (1) Person - the court must have control over the parties before it.
 - (2) Case - the court must be authorized by statute to deal with the particular subject matter before it.
 - b. Venue - the physical location of court.
4. Available Remedies
- a. At Law - for compensatory money damages including tangible (out-of-pocket) losses and intangible (pain and suffering) losses.

- b. In Equity - not available when an adequate remedy at law for monetary damages exists. Demands the defendant to do something.
 - (1) Specific Performance - demands that defendant specifically perform a contract he has entered into.
 - (2) Injunction - demands that defendant do or not do a particular act.

5. Pleadings

- a. Definition - a written statement of accusation or defense presented alternately by the parties to a legal action.
- b. Purpose - serves to isolate the issues and notify the parties of the law suit.
- c. Examples
 - (1) Complaint - prepared by plaintiff and served upon defendant. It sets forth material facts plaintiff relies upon to support his demand for a remedy.
 - (a) Statute of Limitations - its purpose is to prevent the enforcement of stale claims by prescribing a period within which a cause of action may be started.
 - (2) Answer - prepared by defendant and served upon plaintiff. It generally responds to the statements made in plaintiff's complaint and may set forth "new matter" wherein defendant sets forth affirmative defenses such as contributory negligence or assumption of risk.

6. Preparation for Trial

- a. Pre-Trial Motions - requests made by either party to the court based upon the filed pleadings.
 - (1) Example - Motion for Judgment on Pleadings - filed when one of the parties believes that the pleadings are free from doubt with respect to the facts and applicable law.
- b. Discovery Procedures - helps to insure the fairness of a trial by allowing each party to ascertain from the other that which he previously did not know.
 - (1) Depositions - an out-of-court oral examination of a witness or other individual before an authorized agent of the court who takes down in writing the questions and answers thereto.
 - (2) Interrogatories - out-of-court written questions addressed to a witness or other individual who responds with written answers.
- c. Jury - the function of a jury which decides facts is to be distinguished from that of a judge or court who decides the law applicable to the facts and who presides over the case.

- (1) Function - A certain number of individuals who, under oath, determine the facts of a case.
 - (2) Selection - by some random method such as from the tax rolls.
 - (3) Challenges - to obtain as "impartial" a jury as possible, the parties are permitted to have any number of jury members removed for a specific prejudicial reason. This is called a challenge for cause. A limited number of jury members can be removed arbitrarily. This is called a preemptory challenge.
7. Trial - an examination of the facts and/or the law that pertains to the civil or criminal dispute between the parties.
 8. Judgment - the official decision of a court based upon the resolution and establishment of the respective claims and rights of the parties which have been submitted to it.
 - a. Purpose - establishes a definite basis on which the parties can proceed to satisfy their claims.
 - b. Appeal From - within a specified period of time and if provided for by law, a party dissatisfied with a judgment can take his case to a higher court. If no appeal is taken, the judgment becomes final.
 - (1) Grounds for Appeal - appeal to a higher court, where permitted by law, is not an automatic right. It must be based upon such things as the court permitting in improper evidence or not applying the correct rule of law or the verdict being against the weight of evidence.
 - c. Civil Enforcement Of - when a party against whom a judgment was rendered does not voluntarily satisfy the judgment, his property can be sold by an officer of the court, usually the sheriff, under the authority of a writ of execution, and the proceeds therefrom applied towards the judgment.
 - d. Confession of Judgment - where, by agreement of the parties, a judgment can be entered against the defendant without the institution of any legal proceedings. In recent years, its validity has been subject to attack as a constitutional denial of due process.

III. Alternative Dispute Resolution

- A. General Definition and Purpose - alternatives to litigation process or the traditional system of resolving disputes. The rationale is that it is less costly, less complex, more tailored towards the subject matter in dispute and faster.
- B. Method -
 1. Negotiations - direct bargaining between or among two or more parties for the purpose of arriving at a mutually satisfactory solution to a problem. It can be separate from, complimentary to or part of the adjudication process.
 2. Mediation - a process where an independent third party assists two or more persons in resolving a dispute.

3. Arbitration - a process where a dispute is submitted to a neutral party or parties who hear the evidence and render a binding or nonbinding decision.
4. Mini-Trial - a voluntary, private proceeding usually arranged to assist in resolving complex corporate disputes - often an "expert" acts as a judge.
5. Summary Jury Trial - similar to a mini-trial but it more closely resembles a traditional trial. Typically a judge or magistrate presides. A mock jury is selected and the jurors are given an opportunity to discuss the strengths and weaknesses of the case with the lawyers for each party.
6. Rent-a-Judge - the parties pay for or rent the services of a judge, usually a retired judge or lawyer.

CHAPTER 2

ADMINISTRATIVE LAW

- I. Enabling Legislation - statute creating agency, delegates power to regulate
 - A. Deference to agency expertise - technical matters are too complex for close legislative oversight; so regulated by expert administrators.
 - 1. Specialized agency oversight is more efficient than the courts.
 - B. Agency Functions - most agencies have the three basic government powers.
 - 1. Executive powers - set policy, gather information, investigate and prosecute violators.
 - 2. Legislative power - promulgate rules with the power of law.
 - a. Federal Register (Fed. Reg.) - chronological daily publication of all federal agency proposals, rules, notices.
 - b. Code of Federal Regulations (CFR) - annual compilation of all currently effective regulations.
 - 3. Judicial power - adjudication of controversies.
 - C. Agency Acronyms - most agencies named by acronym from first letters of its official title (see Figure 2-1).
 - D. State/Local Administrative Agencies - procedures vary considerably.
 - 1. Functions - license professionals, regulate banking institutions, set utility rates, regulate insurance, land use & zoning, collect taxes, administer prisons, environmental and labor regulation, education.
 - 2. Issues and general procedures are similar to the federal system.
- II. Reasons for Regulating
 - A. Laissez faire - resistance to government intervention in economic life.
 - 1. Regulation is natural political reaction to market imperfections.
 - B. Market failures:
 - 1. Natural Monopolies - in industries with large economies of scale, the market is best served by one producer (Ex: public utilities).
 - a. Marginal cost decreases over the relevant quantity of output.
 - b. Monopolist produces insufficient quantities at high prices necessitating regulation of rates or prices.

2. Externalities - firm shifts costs or benefits from its economic activity to society (side-effects) (Ex: pollution).
3. Destructive Competition - to gain market share, competitors cut prices forcing firms into bankruptcy, survivor left with monopoly.
4. Social Policies - correction of discrimination or redistribution of wealth through tax and welfare systems.

III. Control of Agency Actions - checks and balances prevent regulatory abuse

A. Judicial Controls - court restrictions of agency actions.

1. Delegation doctrine - prohibits legislature from surrendering its legislative responsibility to agency.
 - a. Agency may have only narrowly defined functions, must maintain accountability and provide due process.
 - b. Broader powers permitted if technical expertise is necessary.

B. Legislative Controls - legislature's restrictions on agency action.

1. Limitations in enabling statutes: create agency, define policies and its mission, design agency's organization, require special procedures, impose the laws which the agency enforces.
2. Sunset laws - law requiring periodic review of an agency's performance, automatically terminates agency unless renewed.
3. Agency funding - initial authorization of budget lines, thereafter annual budget appropriation necessary.
4. Indirect controls - "watchdog" committees, investigations and hearings, General Accounting Office (GAO) audit, Congressional Research Service (CRS) studies, Congressional Budget Office planning, Administrative Conference inquiries, annual self-reports.
5. Senate confirms agency heads (commissioners, cabinet secretaries)
6. Legislative veto is unconstitutional.

C. Executive Controls - executive's control of agency actions.

1. Agency heads are political appointees responsible to President.
 - a. President has power to hire/fire most agency heads at will.
 - i. Civil servants are insulated from political dismissal.
 - b. Independent agencies protected from political pressure: fixed terms of office, political party balance, staggered terms, and removal only for cause.
 - c. Justice Department responsible to President and controls all criminal prosecutions.

2. Executive Orders - inherent legislative powers of President.
 3. Reorganization of agencies by President - functions and powers transferred among agencies.
 - D. Indirect Controls - political, public interest groups, pluralist influences raise concerns and litigate, lobbyists, publicity, Freedom of Information Act, Sunshine laws.
- IV. Information - agency acquiring information for effective enforcement.
- A. Subpoena enforcement - subpoenas are not self-executing; recipient may refrain from testifying until ordered by court after hearing.
 1. Requirements for administrative subpoena enforcement:
 - a. Agency must have a legitimate purpose.
 - b. Agency must be pursuing a relevant inquiry.
 - c. Agency may not already possess the information.
 - d. Agency must follow its own proper administrative steps.
 - B. Privileges - permit the subpoena target to refuse to give testimony.
 1. Individuals have the Fifth amendment self-incrimination privilege.
 2. Attorney-client privilege - to encourage client's frank disclosure.
 - a. Information must pass, from client to practicing attorney, in confidence, not from another source, to receive professional advice, employee must be ordered to communicate, information gained within the employee's duties, information must not be immediately available to upper management.
 - C. Inter-Agency Information Exchange - efficiencies in sharing information
 1. Parallel investigations sometimes necessary.
 2. Grand Jury documents, transcripts, exhibits seldom available.
 - a. Exception: "attorney for the government" (Justice Department).
 - b. Court directs disclosure connected to a judicial proceeding.
 - D. Warrantless inspections - agency search of private business premises generally prohibited without a warrant.
 1. Permitted in emergencies, when consent is given, and for activities in conducted in open and plain view.
 2. Illegal as an unreasonable searches or seizures unless industry has long a history of pervasive regulation. (Ex: firearms, liquor, food and prescription drugs).

E. Warrant must be issued by federal magistrate required before most searches.

1. Administrative probable cause is necessary.

V. Hearings - formal adjudication of regulatory disputes

A. Due Process - constitutional requirement of fair hearing procedures protecting life, liberty, or property is applicable.

1. Flexibility is needed, considerable variations permitted.

2. Protection of property most common: economic impact on business.

3. Agency must weigh government interests against firm's interests: immediate public protection often outweighs private rights.

B. Form of Hearing - considerable variations permitted.

1. Procedural examples: notice, impartial tribunal, hearing record to facilitate appeal, oral hearings, limited cross-examination, presentation of evidence, legal representation, written decisions: findings and conclusions, public vs. private hearing, procedural and evidentiary rules, outsider participation, appeal.

2. Comparative hearing - mutually inconsistent competitive interests determined (Ex: FCC license assigning single broadcast frequency or TV channel).

3. Administrative Law Judge (ALJ) - presiding officer.

C. Presentation of Proof - similar to sequence of common law trial.

1. Ex: briefs, exhibits, witnesses, opening and closing arguments, hard evidence, written statements, affidavits, etc.

2. Adjudicative facts - concern past events; confrontation and cross-examination necessary.

3. Legislative facts - policy determinations derived from research or general knowledge; confrontation seldom necessary.

4. Only limited application of rules of evidence: hearsay, testimonial privileges, competency as necessary in judicial trials where jurors often overestimate their probative value. These risks are reduced in hearings before an expert ALJ.

D. The Decision Process - various agency levels make pre-hearing reviews.

1. Hearing examiner - determines facts, applies law and policy.

2. ALJ - independent presiding officer at hearing, civil servants.

a. Issue initial decisions which become final unless appealed.

b. Recommended decisions overseen by appeal board or agency head(s), usually involving novel matters to develop policy.

- c. ALJ's findings and conclusions are included in the record.
 - d. Bias disqualifies ALJ - fixed opinion about litigant(s) or financial stake/direct pecuniary interest in outcome disqualifies. Ideological views on law or policy permissible.
 - e. Excessive pressure from Congress or Executive is improper.
- E. Ex Parte Contacts - off-the-record communications with regulators.
- 1. Prohibited in formal adjudication if other parties have no opportunity to refute.
 - 2. Taint proceedings, unduly influence decision maker, impossible to appeal accurately.
 - 3. Permissible by executive branch (president) in policy-making.
- VI. Rulemaking - substantive lawmaking by administrative agency.
- A. Rules defined - the whole or part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy ("regulation" similar).
 - B. Advantages - agency has experience and expertise to legislate, rules apply equally to all businesses, clear, legitimate source of policy-making, permits interested parties to participate, more efficient than piecemeal case by case policy-making.
 - C. Disadvantages: affected parties unite in strong opposition against public interest. Difficulty in clearly drafting general rules that have no unintended impact.
 - D. Exempted Rulemaking - public participation considered undesirable.
 - 1. Public notice and comment rulemaking procedures unnecessary for:
 - a. military or foreign affairs functions,
 - b. agency management or personnel functions,
 - c. public property, loans, grants, benefits, or contracts,
 - d. interpretative rules, policy statements, agency organization, procedure, or practice rules,
 - e. public procedures impractical, unnecessary, or contrary to public interest.
 - 2. Substantive rules - legislative rules with a substantial and direct impact on affected parties.
 - 3. Interpretive rules - explain meaning of terms and procedures.
 - B. Informal Rulemaking - notice and comment rulemaking.
 - 1. Requirements: publish notice of proposed rulemaking in Fed. Reg., state legal authority, solicit comments from interested persons.

2. Comments placed in public record for inspection: written data, views, or arguments. Agency must consider the relevant matter submitted but need not follow public comments, criticisms, or views. May revise and re-propose or terminate rulemaking.
 3. Final rule published in Fed. Reg. at least 30 days before effective date with concise general statement of rule's basis and purpose.
- C. Formal Rulemaking - formal hearing, on the record, trial-type proceedings, testimony and cross-examination, costly and time consuming, used in economic determinations (Ex: granting licenses, rate-making).
 - D. Hybrid Rulemaking - combination of particular features from formal and informal rulemaking as most useful.
 - E. Modifications of Rulemaking Process - legislative/executive changes.
 1. Executive Order No. 12,291 - federal cost-benefit/analysis (C-B/A).
 - a. Major rules - significant financial effect on economy, costs or price increases, or significant adverse effects on segments of economy require Regulatory Impact Analysis (C-B/A).
 - b. Office of Management and Budget (OMB) supervises process.
 - c. C-B/A Standards: consider adequate information, initial C-B/A all rule proposals, maximize net benefits to society, societal benefits must outweigh costs, consider alternative proposals, correlate all regulations.
 2. Executive Order No. 12,498 - policy conformance.
 - a. Requirements: agencies must conform all their regulatory programs to Presidential Administration overall policies.
 - b. Purpose: agency accountability, minimize duplication and conflicts in regulations, assure unified policy-making.
 - c. Publish semi-annual Unified Agenda: expected regulations.

VII. Agency Disclosures Under the Freedom of Information Act (FOIA)

- A. Purpose: public scrutiny of agency activities, agency accountability, permits public monitoring.
- B. Executive privilege - constitutional right to exempt sensitive information from public disclosure.
- C. FOIA requires public disclosure of any agency file unless exempt, must publish agency organization, functions, and decisions.
- D. FOIA Exemptions - permits agency to withhold disclosing information:
 1. National defense or foreign policy.
 2. Internal agency personnel rules and practices.