

FUNDAMENTAL LEGAL CONCEPTS (324-1)

Obj 1-1. THE TWO FORMS OF AMERICAN LAW:

1. Case law--represents those rules of conduct derived from individual controversies that are then generally applied to other, similar controversies, depending on the facts of each specific situation.
2. Legislative law--represents those laws and regulations created by legally constituted governmental bodies given authority to act in such manner.

Legislative law is usually very specific regarding when and how it will be applied.

Case law does *not* provide the same certainty as legislative law.

Obj 1-2. EIGHT TYPES OF LEGISLATIVE LAW:

1. Federal Constitution--establishes the framework of the government and sets forth the fundamental legal and political principles of the US society. It is the supreme law of the land.
2. Treaties--are entered into between the US government and the governments of other countries. Treaties define the expectations of rights between the two governments and their citizens. Federal treaties are superior to the state constitutions and state laws.
3. Federal Statutes--are enacted by Congress to provide more specialized rules and regulations than does the federal Constitution. Federal statutes are superior to the state constitutions and laws. Congressional statutes of general application are called public laws. Statutes that are solely for the benefit of specific individuals or groups are called private laws.
4. Federal executive orders and administrative regulations--prescribe general rules of conduct and are superior to all forms of state law. Executive orders are issued by the President, who has been given such power under Article II of the Constitution. Administrative regulations are issued by such governmental bodies as the Internal Revenue Service which have been given authority by Congress to promulgate such rules and regulations.
5. State constitutions--are the supreme laws (subject to the supremacy of those laws listed above) of the individual states within which they are created. State constitutions outline the frameworks of state governments, define and limit the authority of state officials, and provide the general rules of conduct for the acts of the state legislatures.
6. State statutes--are those laws enacted by the state legislatures. State statutes are presumed to be valid unless the state or federal constitutions specifically prohibit the state from exercising such power.
7. State administrative regulations--are created by various state administrative agencies that have been given the authority to create such rules by the state constitution or legislature. These rules and regulations have the force and effect of law.
8. Local ordinances--are those rules and regulations issued by individual cities, towns, and counties under the authority delegated by the state legislature.

Obj 1-3. CASE LAW represents those rules of conduct that are derived from individual controversies heard and decided by courts and administrative agencies. While the rule is specific to each case, the rules are generally applied to other controversies that contain similar sets of facts.

Over time, these rules are accepted as the common law of the land.

When cases come before the courts for which there are no existing rules, new rules are made, which will then become part of the whole body of law that the courts may use in the future (the doctrine of stare decisis).

COMMON LAW DIFFERS FROM CIVIL LAW in that common law comes from individual cases or controversies, whereas civil law is a set of rules derived from Roman law.

Where common law often provides uncertainty over whether and in which situations it will be applied, civil law offers certainty through a comprehensive code designed to cover every possible type of legal conflict.

LAW VERSUS EQUITY: **Law** provides remedy of money or property for injury or wrong suffered by one party, caused by another. **Equity** provides relief where money or property is inappropriate or insufficient to right the wrong. Some states have separate courts of law and of equity. Other states let courts combine and hear both types of cases. In terms of insurance contracts, equitable relief includes rescission and restitution, reformation or contracts, or modification of contracts. **Equitable issues** are *always* decided by the judge *only* (no jury). **Legal issues** usually involve juries who determine the facts while the judges apply the law.

THE ROLE OF COURTS IN INTERPRETING LEGISLATIVE LAW is to determine the meaning of the words and decide *if* the facts of the case come within the scope of the law created by the statute, *or if* the statute itself is in conflict with the federal or state constitutions.

Certain rules of interpretation, called **rules of statutory construction**, are followed in that process.

Wording that is clear and specific is given its “plain meaning” and is enforced by the courts regardless of the court’s opinion of the statute. Wording that is ambiguous or subject to different interpretations requires the courts to consider all parts of the statute, legislative history, conditions leading to the enactment of the law, and other such issues when interpreting the statute.

Any statute that changes the common law must do so clearly and explicitly or it will *not* be enforced.

The latter of two or more statutes dealing with the same issue is given precedent over previous statutes.

Obj 1-4. **THE FEDERAL COURT SYSTEM:** Article III of the US Constitution vests the judicial power of the US in one Supreme Court and gives Congress the authority to create inferior courts as necessary.

1. **The Supreme Court**--has original jurisdiction (is the first court to hear cases) over all cases involving ambassadors, ministers, and consuls and those cases in which a state is a party. In all other issues, the Supreme Court is an appellate court with discretionary power to choose which cases it will to hear. The Supreme Court has nine judges, appointed for life.
2. **Federal Appellate Courts (Courts of Appeals)**--are assigned to specific circuits consisting of states. There are currently 13 federal circuits. Each court has a minimum of 3 judges who preside as a group. Appellate Courts have the authority to review District Court cases on a discretionary basis. Decisions of the Appellate Courts are subject to review by the Supreme Court.
3. **Federal District Courts**--have original jurisdiction over cases arising under the federal Constitution or laws of Congress *and* over cases involving litigants with diversity of citizenship where the amount in disputes is in excess of \$75,000. There are more than 90 judicial districts, with each state having at least one district. Each district court usually has more than 1 judge.
4. **Other Federal Courts**--include the Court of Claims, the Tax Court, the federal military courts, and the Court of Customs and Patent Appeals. Some of those courts may have exclusive jurisdiction over their subject matter.

THE STATE COURT SYSTEM: State constitutions and legislatures have created state tribunals to decide matters of law and equity. Some states separate law and equity courts, others don’t.

1. **State Supreme Court**--is similar to the US Supreme Court, but for its state. Most state Supreme Courts have discretionary powers over the cases selected and heard. Most states name their highest court the Supreme Court. Some states call their highest court the Court of Appeals.
2. **Intermediate Appellate Courts**--may or may not have discretion over the cases they hear. Some states do *not* have intermediate appellate courts. Instead, the decision of the original court of jurisdiction is appealed directly to the State Supreme Court. Some states may have two layers of appellate courts before the State Supreme Court can be approached to hear a case.
3. **Original Jurisdiction Courts**--include general trial courts that hear both criminal and civil cases. Many states have separate probate courts to handle issues involving wills and estates.
4. **Other Courts**--include district, municipal, police, and magistrate courts with jurisdiction to hear specific types of cases such as those dealing with traffic violations, juvenile delinquency, domestic relations, or misdemeanor crimes. Their decisions may be appealed to intermediate courts.

Obj 1-5. **CONFLICTS OF LAWS**, also referred to as **choice of laws**, arises when where a court must decide which state's laws to apply to a controversy.

Such situations occur when the lawsuit involves citizens from two or more states.

Specifically, in insurance law, the home office, which generates the insurance contract, may be located in one state, while the policyowner resides in another state.

When a dispute arises over policy interpretation, the court must decide whether to apply the laws of the state in which the insurer's home office is located or the laws of the state where the policyowner resides.

Note: Even if a court applies the laws of a different state than that in which the court sits, the *interpretation* of those laws will be the court's own, *not* necessarily the interpretation as applied by the other state's courts.

SIX METHODS OF DETERMINING CHOICE OF LAW:

1. **The state with the most contacts**--The state with the most interest or contact with the dispute is the state whose laws are applied, regardless of where the suit is actually heard.
If contacts or relationships involve more than two states, this issue becomes highly complex.
2. **Place-of-making rule**--Unless otherwise agreed by the parties, the laws of the state in which the last act required to bring the contract into existence govern issues of validity and interpretation. Since this question might include the issue of delivery, where the first premium payment was made and/or received is important, and likely to determine which state's laws will be applied.
3. **State where performance takes place**--The traditional contract rule is that the laws of the state where performance takes place govern issues of contract performance.
This rule has *not* been adopted for insurance contracts.
4. **State's Conflict of Laws statute**--Many states have statutes (or case law) which mandate the choice of law decision.
If there is a question on which laws to apply, the courts apply these laws.
5. **Center of gravity or grouping of contracts theory**--A recent trend, and similar to the "most contacts" theory, is for courts to look *not* at the *parties'* intent, place of making, or performance, but *instead* to ascertain which *state* has the most significant contacts or interest with the matter. A disadvantage of this approach is that it affords less certainty to the process.
6. **Contract provision**--*If* the parties agree, through a contract provision, that a certain state's laws will apply, the courts will generally follow that provision, *even if* the state is neither the insurer's or policyowner's state of residence.
In insurance law, however, *if* such a provision benefits the insurer, the courts will disregard the provision and seek to use one of the more traditional approaches to the choice of law issue.
If the provision is more favorable to the insured or beneficiary, the provision may be invoked.