

Chapter 1 : Introduction to the American Legal System | LexisNexis

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The Code of Federal Regulations, the codification of federal administrative law Congress often enacts statutes that grant broad rulemaking authority to federal agencies. Therefore, federal agencies are authorized to promulgate regulations. Under the principle of Chevron deference, regulations normally carry the force of law as long as they are based on a reasonable interpretation of the relevant statutes. Eventually, after a period for public comment and revisions based on comments received, a final version is published in the Federal Register. The regulations are codified and incorporated into the Code of Federal Regulations CFR which is published once a year on a rolling schedule. Besides regulations formally promulgated under the APA, federal agencies also frequently promulgate an enormous amount of forms, manuals, policy statements, letters, and rulings. These documents may be considered by a court as persuasive authority as to how a particular statute or regulation may be interpreted known as Skidmore deference, but are not entitled to Chevron deference. Common law, case law, and precedent[edit] Further information: United States Reports and National Reporter System Unlike the situation with the states, there is no plenary reception statute at the federal level that continued the common law and thereby granted federal courts the power to formulate legal precedent like their English predecessors. Federal courts are solely creatures of the federal Constitution and the federal Judiciary Acts. Prior to a major change to federal court rules in 1937, about one-fifth of federal appellate cases were published and thereby became binding precedents, while the rest were unpublished and bound only the parties to each case. Judges saw themselves as merely declaring the law which had always theoretically existed, and not as making the law. Justice Brandeis once observed that "in most matters it is more important that the applicable rule of law be settled than that it be settled right. And that willingness could itself threaten to substitute disruption, confusion, and uncertainty for necessary legal stability. We have not found here any factors that might overcome these considerations. This trend has been strongly evident in federal substantive due process [47] and Commerce Clause decisions. *Tompkins*, there is no general federal common law. Although federal courts can create federal common law in the form of case law, such law must be linked one way or another to the interpretation of a particular federal constitutional provision, statute, or regulation which in turn was enacted as part of the Constitution or after. Federal courts lack the plenary power possessed by state courts to simply make up law, which the latter are able to do in the absence of constitutional or statutory provisions replacing the common law. Only in a few narrow limited areas, like maritime law, [53] has the Constitution expressly authorized the continuation of English common law at the federal level meaning that in those areas federal courts can continue to make law as they see fit, subject to the limitations of *stare decisis*. The other major implication of the Erie doctrine is that federal courts cannot dictate the content of state law when there is no federal issue and thus no federal supremacy issue in a case. State law United States The fifty American states are separate sovereigns, [60] with their own state constitutions, state governments, and state courts. All states have a legislative branch which enacts state statutes, an executive branch that promulgates state regulations pursuant to statutory authorization, and a judicial branch that applies, interprets, and occasionally overturns both state statutes and regulations, as well as local ordinances. They retain plenary power to make laws covering anything not preempted by the federal Constitution, federal statutes, or international treaties ratified by the federal Senate. Normally, state supreme courts are the final interpreters of state constitutions and state law, unless their interpretation itself presents a federal issue, in which case a decision may be appealed to the U. Supreme Court by way of a petition for writ of certiorari.

Chapter 2 : Formats and Editions of Using American law books [calendrierdelascience.com]

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Chapter 3 : Basic Legal Citation

An Introduction to American Law from University of Pennsylvania. This course will give you a glimpse into six different areas of American law: Tort Law, Contract Law, Property, Constitutional Law, Criminal Law, and Civil Procedure.

Idea-expression dichotomy[edit] Copyright law protects the "expression" of an idea, but copyright does not protect the "idea" itself. This distinction is called the idea-expression dichotomy. From the Copyright Act of 17 U. In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work. For example, a paper describing a political theory is copyrightable. But the theory itself is just an idea, and is not copyrightable. Reasonable people can disagree about where the unprotectable "idea" ends and the protectable "expression" begins. However, compilations of facts are treated differently, and may be copyrightable material. Copyright protection in compilations is limited to the selection and arrangement of facts, not to the facts themselves. Rural Telephone Service Co. The Feist case denied copyright protection to a "white pages" phone book a compilation of telephone numbers, listed alphabetically. In making this ruling, the Supreme Court rejected the "sweat of the brow" doctrine. That is, copyright protection requires creativity, and no amount of hard work "sweat of the brow" can transform a non-creative list like an alphabetical listing of phone numbers into copyrightable subject matter. A mechanical, non-selective collection of facts e. Copyright does not protect useful articles, or objects with some useful functionality. The Copyright Act states: Under these circumstances, Copyright Law only protects the artistic expression of such a work, and only to the extent that the artistic expression can be separated from its utilitarian function. Supreme Court granted certiorari in the case *Star Athletica, L.* First, one can identify the decorations as features having pictorial, graphic, or sculptural qualities. And imaginatively removing the surface decorations from the uniforms and applying them in another medium would not replicate the uniform itself. Indeed, respondents have applied the designs in this case to other media of expression—different types of clothing—without replicating the uniform. The decorations are therefore separable from the uniforms and eligible for copyright protection. Copyright status of work by the U. This restriction on copyright applies to publications produced by the United States Government, and its agents or employees within the scope of their employment. The specific language is as follows: Copyright protection under this title is not available for any work of the United States Government, but the United States Government is not precluded from receiving and holding copyrights transferred to it by assignment, bequest, or otherwise. A "work of the United States Government" is defined in 17 U. Note that government contractors are generally not considered employees, and their works may be subject to copyright. Likewise, the US government can purchase and hold the copyright to works created by third parties. The government may restrict access to works it has produced through other mechanisms. For instance, confidential or secret materials are not protected by copyright, but are restricted by other applicable laws. However, even in case of non-secret materials there are specific prohibitions against automatic access to work otherwise covered under 17 U. Edict of government Federal statutes are in the public domain and no copyright attaches to them. The same is true of court decisions. It is not difficult to see the motivations behind this: The citizens are the authors of the law, and therefore its owners, regardless of who actually drafts the provisions, because the law derives its authority from the consent of the public, expressed through the democratic process. Copyright Office will not register a government edict that has been issued by any state, local, or territorial government, including legislative enactments, judicial decisions, administrative rulings, public ordinances, or similar types of official legal materials. Likewise, the Office will not register a government edict issued by any foreign government or any translation prepared by a government employee acting within the course of his or her official duties. Org , in Federal court in Atlanta for copyright infringement. Malamud had posted the Official Code of Georgia Annotated on his website. To reproduce the work in copies or phonorecords; To prepare derivative works based upon the work; To distribute copies or phonorecords of the work to the public by sale or other transfer of ownership, or by rental, lease, or lending; To publicly perform the work, in the case

of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works; To publicly display the work, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work. To digitally transmit sound recordings by means of digital audio transmission. If a work is made "for hire" within the meaning of the Copyright Act, then the employer or commissioning party, is deemed to be the author and will own the copyright as though it were the true author. Work prepared by an employee within the scope of their employment. In *Community for Creative Non-Violence v. Works* created by independent contractors rather than employees can be deemed works for hire only if two conditions are satisfied. First, the work must fit into one of these categories: Second, the parties must expressly agree in a written, signed instrument that the work will be considered a work made for hire. The author generally is the person who conceives of the copyrightable expression and "fixes" it in a "tangible medium of expression. The US copyright law recognises joint authorship in Section A joint work is "a work prepared by two or more authors with the intention that their contributions be merged into inseparable or independent parts of a unitary whole. A collective work is a collection of independent, separately copyrightable works of authorship, such as a newspaper, magazine, or encyclopedia. Assignment Exclusive license Non-exclusive license The first two, assignment and exclusive licenses, require the transfer to be in writing. Nonexclusive licenses need not be in writing and they may be implied by the circumstances. Transfers of copyright always involve one or more of the exclusive rights of copyright. For instance, a license may provide a right to perform a work, but not to reproduce it or to prepare a derivative work adaptation right. This right to terminate the transfer is absolute and cannot be waived. Registration is not necessary. Registration is required before a lawsuit can be filed, and registration creates the possibility for enhanced "statutory" damages. The Copyright Office reviews applications for obvious errors or lack of copyrightable subject matter, and then issues a certificate of registration. The Copyright Office does not compare the authors new work against a collection of existing works or otherwise check for infringement. Deposit requirement[edit] The United States Copyright Office requires a deposit copy of the work for which copyright registration is sought. This deposit requirement serves two purposes. First, if a copyright infringement lawsuit arises, the owner may prove that the material that is infringed is exactly the same material for which the owner has secured a registration. Second, this requirement helps the Library of Congress build its collection of works. Failure to comply with the deposit requirement, as modified by Copyright Office regulations, is punishable by fine, but does not result in forfeiture of copyright. Copyright notice The use of copyright notices is optional. The Berne Convention , amending US copyright law in , makes copyright automatic. If the work was a "work for hire", then copyright persists for years after creation or 95 years after publication, whichever is shorter. For works created before , the copyright duration rules are complicated. However, works created before have made their way into the public domain. Works created before [edit] For works published or registered before , the maximum copyright duration is 95 years from the date of publication, if copyright was renewed during the 28th year following publication. Prior to , works had to be published or registered to receive copyright protection. Upon the effective date of the Copyright Act which was January 1, this requirement was removed and these unpublished, unregistered works received protection. However, Congress intended to provide an incentive for these authors to publish their unpublished works. To provide that incentive, these works, if published before , would not have their protection expire before The need for renewal was eliminated by the Copyright Renewal Act of , but works that had already entered the public domain by non-renewal did not regain copyright protection. Therefore, works published before that were not renewed are in the public domain. Before , sound recordings were not subject to federal copyright, but copying was nonetheless regulated under various state torts and statutes, some of which had no duration limit. The Sound Recording Amendment of extended federal copyright to recordings fixed on or after February 15, , and declared that recordings fixed before that date would remain subject to state or common law copyright. Subsequent amendments had extended this latter provision until Although these could have entered the public domain as a result of government authorship or formal grant by the owner, the practical effect has been to render public domain audio virtually nonexistent. Under the Act, the first sound recordings to enter the public domain will

be those fixed before , which will enter the public domain on January 1, Recordings fixed between and February 14, will be phased into the public domain in the following decades. Some of the most important include: Copyright applies only to certain copyrightable subject matter, codified within 17 U. Works that are not "original works of authorship fixed in any tangible medium of expression" are not subject to copyright. Facts may not be copyrighted. Useful articles includes typeface designs Eltra Corp. Ringer , fashion designs, blank forms, titles, names, short phrases, slogans, lists of ingredients and contents, domain names and band names. The owner of a particular copy is entitled to "sell or otherwise dispose of the possession of that copy" and to "display the copy publicly Provisions for the Blind and Disabled. The Copyright Act, in 17 USC and 17 USC 8 , includes specific statutory exceptions for reproduction of material for the blind or other persons with disabilities. Section the "Chafee Amendment" permits the reproduction of copyright works in Braille , audio, electronic, Web-Braille , or other necessary formats. Fair use Fair use is the use of limited amounts of copyrighted material in such a way as to not be an infringement. It is codified at 17 U. There are no bright-line rules regarding fair use and each determination is made on an individualized case-by-case basis. Nonprofit educational and noncommercial uses are more likely to be fair use. This does not mean that all nonprofit education and noncommercial uses are fair use or that all commercial uses are not fair.

Chapter 4 : 30 Lawyers Pick 30 Books Every Lawyer Should Read

American Law Institute-American Bar Asso has 11 books on Goodreads with 3 ratings. American Law Institute-American Bar Asso's most popular book is Attain.

Summary of Basic American Legal Principles What follows are some of the fundamental principles that comprise the American legal system. Each of these is discussed in greater detail in this and other chapters of this book. They are summarized below in order to give the reader an overview of some of the basics of American common law.

Impact of Precedent—The Principle of Stare Decisis The defining principle of common law is the requirement that courts follow decisions of higher level courts within the same jurisdiction. It is from this legacy of stare decisis that a somewhat predictable, consistent body of law has emerged.

Court Hierarchy Court level or hierarchy defines to a great degree the extent to which a decision by one court will have a binding effect on another court. The federal court system, for instance, is based on a three-tiered structure, in which the United States District Courts are the trial-level courts; the United States Court of Appeals is the first level court of appeal; and the United States Supreme Court is the final arbiter of the law. Although the term most often is used in connection with the jurisdiction of a court over particular matters, one may also speak of matters being within or beyond the jurisdiction of any other governmental entity. For instance, while there is only one Supreme Court, the court of appeals is divided into 13 circuits, and there are 94 district courts. The issue of whether authority is mandatory or persuasive relates directly to the application of stare decisis principles.

Primary versus Secondary Authority The various sources of law may also be broken down into primary and secondary sources of law. Primary sources of law may be mandatory on a particular court, or they may be merely persuasive. Whether they are binding or persuasive will depend on various factors. Secondary authority is not itself law, and is never mandatory authority. A court may, however, look towards secondary sources of law for guidance as to how to resolve a particular issue. Secondary authority is also useful as a case finding tool and for general information about a particular issue.

Dual Court Systems The American legal system is based on a system of federalism, or decentralization. Most states have court systems which mirror that of the federal court system.

Interrelationship Among Various Sources of Law One of the more complex notions of American jurisprudence is the extent to which the various sources of law, from both the state and federal systems, interrelate with one another. There is a complex set of rules that defines the relative priority among various sources of law and between the state and federal systems.

What Is Common Law? Civil law systems rely less on court precedent and more on codes, which explicitly provide rules of decision for many specific disputes. Cases are legal determinations based on a set of particular facts involving parties with a genuine interest in the controversy. In cases of pure decisional law, there is no applicable statute or constitutional provision that applies. Court interpretation may rely upon prior decisional law interpreting same or some other constitutional provision. Court interpretation may rely upon prior decisional law interpreting the same or similar statute. A higher level court opinion will in effect abrogate the lower level court opinion in the same case. Has it been followed? Applied in a specific way?

The American Judicial System: A System Based on Advocacy and the Presence of Actual Controversy The American legal system is adversarial and is based on the premise that a real, live dispute involving parties with a genuine interest in its outcome will allow for the most vigorous legal debate of the issues, and that courts should not have the power to issue decisions unless they are in response to a genuine controversy.

Threshold Issues Designed to Preclude Advisory Opinions Given the prohibition against advisory opinions by the federal courts, there are certain threshold prerequisites which must be satisfied before a federal court will hear a case. Issues surrounding the applicability of these prerequisites may also arise in state courts and on petitions for review of agency orders. The principal prerequisites to court review are the following:

- Standing**—The parties must have an actual, cognizable, usually pecuniary or proprietary, interest in the litigation.
- Finality**—In the case of appeals or agency review, the action by the trial court or administrative body must be final and have a real impact on the parties.
- Exhaustion**—The parties must have exhausted any possible avenues for relief available in the trial court or administrative body.
- Ripeness**—The dispute must present a current controversy which has immediate

rather than anticipated or hypothetical effects on the parties. Mootnessâ€”The dispute must not have been resolved. Nor must the circumstances have changed in any way that renders the dispute no longer subject to controversy. No Political Questionsâ€”Courts will not involve themselves in nonjusticiable disputes that are between the other two branches of the federal government and are of a political nature. While these prerequisites are well-established, the courts tend to apply them in a pragmatic way and allow exceptions to these requirements when warranted by the facts. Courts Generally Confine Themselves to the Dispute Presented for Resolution As a jurisdictional matter, courts are supposed to restrict their holdings to the narrowest terms possible in resolving a dispute. This limitation relates to the principle of dictum, under which portions of the opinion not required for the resolution of the precise issues before the court on the facts presented by the parties are of diminished precedential value. Tendency to Avoid Constitutional Issues When Possible Federal courts also tend to avoid deciding constitutional issues when they are able to decide a case on a procedural, statutory, or some other ground. Institutional Roles in the American Legal System 1. In each of these roles, the lawyer will need to engage in factual investigation. With respect to each of these roles, the lawyer will do the following: Lawyer will work with opposing counsel to try to get a favorable resolution for the client with respect to a pending dispute. The parties may already be in litigation when they negotiate, or the parties, through their attorneys, may be negotiating a resolution to a dispute not yet in court. The art of negotiating involves many techniques individual to particular attorneys and the circumstances. The client always retains the right to accept or reject a settlement negotiated or offered by the opposing party. In litigating, the attorney will help pick a jury and participate in pretrial motions. At trial, the attorney will present evidence through testimony of witnesses, documents and perhaps demonstrative evidence e. The lawyer will also present an opening statement and closing argument, and will make and respond to evidentiary objections lodged by the opposing party. The lawyer may also make motions, sometimes supported by a memorandum in support thereof before the court, and propose to the court a set of jury instructions. Judge The judge is the final arbiter of the law. The judge is charged with the duty to state, as a positive matter, what the law is. The judge must also make evidentiary rulings, and charge the jury as to the law to be applied. In addition, the judge is to maintain order in the courtroom. Occasionally, when the parties agree, the judge may also act as trier of fact. Many state court judges are elected by popular vote. Jury The jury, a group of local citizens, is the fact-finder in most trials. The jury will receive instructions from the judge as to the law, and its members will assess the facts as they perceive them in light of the law as instructed, to return a verdict. Have questions about law school? Check out our Facebook page , follow us on Twitter or start networking with law students and lawyers on LexTalk.

Chapter 5 : Finding Legal Materials in PDF | Duke University School of Law

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Chapter 6 : Home - Online Legal Resources - LibGuides at Cornell University

The American system is a "common law" system, which relies heavily on court precedent in formal adjudications. In our common law system, even when a statute is at issue, judicial determinations in earlier court cases are extremely critical to the court's resolution of the matter before it.

Chapter 7 : Copyright law of the United States - Wikipedia

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