

TYPES AND SOURCES OF LAWS

Court Systems and Practices

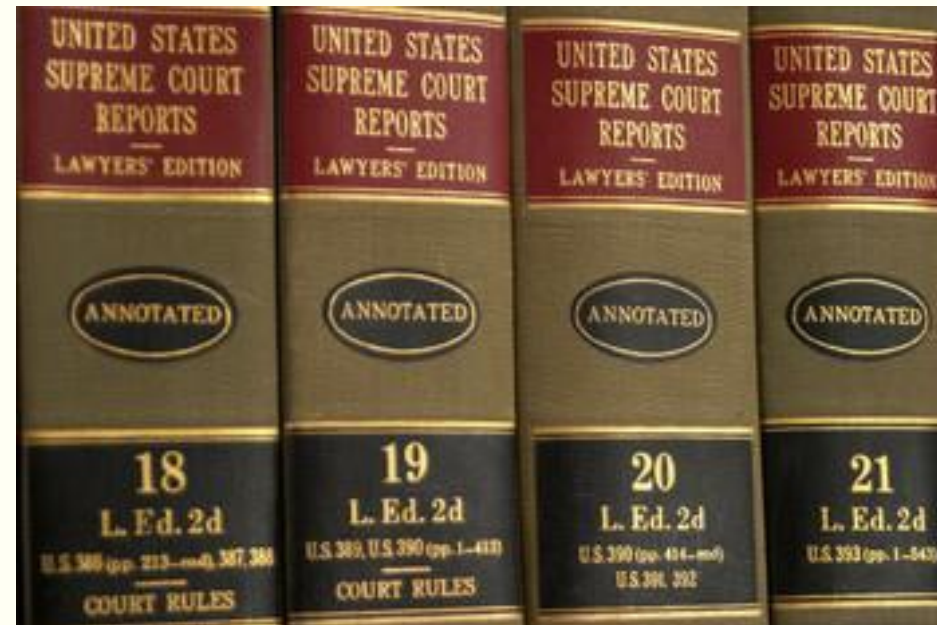


Types of Laws

- Criminal Law
- Civil Law
- Administrative Law

Sources of the Law

- Constitutions
- Statutes
- Case laws
- Administrative Regulations



Constitutional Law

- U. S. Constitution: Supreme law of the land
- Texas Constitution: Cannot conflict with the federal constitution

The fundamental rules that determine how those who govern are selected, the procedures by which they operate, and the limits of their powers



Statutory Law

- Enacted by Federal or State Legislatures
- Found in Codes (Ex: Penal Code)
- Examples: murder, rape, robbery, and terrorism.



Judicial Law/Case Law

Precedent or *stare decisis* (“let the decision stand”)

- Court’s Interpretation of Statutory Law
- Appellate Court Decisions
- Can include rulings on
 - Procedural matters
 - Evidentiary hearings



Administrative Regulations

Rules and regulations adopted by administrative agencies that have the force of law

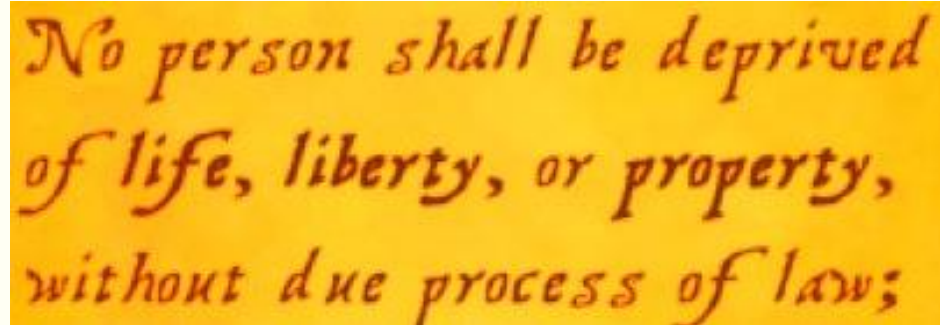
- Administrative law: Law that governs the duties and proper running of an administrative agency
- Examples:
 - State Boards
 - Licensing
 - Taxes
 - OSHA
 - EPA



Due Process

Due process is mentioned twice in the Constitution.

- *Fifth Amendment*: “No person shall...be deprived of life, liberty or property without due process of law.”
- *Fourteenth Amendment*: “No state shall deprive any person of life, liberty or property without due process of law”

A rectangular image with a yellow background containing the text of the Fifth Amendment in a cursive, handwritten font. The text reads: "No person shall be deprived of life, liberty, or property, without due process of law;"

*No person shall be deprived
of life, liberty, or property,
without due process of law;*

Substantive Law vs Procedural Law

Two types of Due Process

Substantive Law: Law that defines crime and punishment. Governs behavior of individuals in society. Violation means a crime has been committed

- *Found in Penal Code, Health & Safety Code, Traffic Code, etc...*

Procedural Law: Lays out the step by step procedure to be followed by police officers, court personnel, corrections, others involved in processing the accused through the system

- *Found in Code of Criminal Procedure, & similar codes*

Substantive Law vs Procedural Law

Substantive Law: Protects Society from citizens who may harm them

Procedural Law: Protects citizens from any government effort to deprive them of any rights / freedoms without due process

Criminal Law

- Criminal courts exist to enforce the substantive criminal law
 - Two categories of crimes
 - *Mala en se*- inherently evil
 - *Mala prohibita* – not inherently evil but pose risk to society
 - Degrees of crimes in Texas
 - Felonies – imprisonment in state prison / fines/ execution
 - 1st degree
 - 2nd degree
 - 3rd degree
 - State Jail
 - Misdemeanors – imprisonment in county jail / fines
 - Class A
 - Class B
 - Class C



Presumption of Innocence

- Criminal Cases

- The “state” (prosecution) has the “burden” of proving a defendant guilty of alleged crimes
- Defendants are not required to prove themselves innocent
- Guilt **must** be “beyond a reasonable doubt”

- Civil Cases

- Civil cases have a “preponderance of the evidence” requirement



Bill of Rights

Bill of Rights: the first ten amendments to the U.S. Constitution

Key amendments linked to criminal law:

- 4th: search and seizure
- 5th: right to remain silent
- 6th: right to attorney and jury
- 8th: prohibition against cruel and unusual punishment



Elements of a Crime

- *Corpus delicti*: the body or substance of a crime, composed of two elements:
 - There was harm or loss to a victim
 - The harm or loss was caused by some criminal means
- *Actus reus*: the guilty act
- *Mens rea*: guilty state of mind- intent (or negligence)



Elements of crime

- Elements in order
 - Act / Acts resus
 - Intent / mens resus
 - Law prohibiting the act
 - Concurrence between act and intent
 - Social Harm
 - Act caused the harm
 - Punishment follows conviction

Civil Law

- **Tort:** a private or civil wrong, in which the defendant's actions cause injury to the plaintiff or to property
- **Contract:** a legally enforceable agreement between two or more parties
- **Property:** the legal right to use or dispose of particular things or subjects
- **Inheritance:** property received from a dead person, either by effect of intestacy or a will

Civil Law (continued)

- **Domestic Relations:** relating to the home, the law of divorce, custody, support, and adoption
- **Remedy:** vindication of claim of right
- **Judgment:** the official ruling of a court

Civil Suits (lawsuits)

- **Plaintiff:** the person or party who initiates a lawsuit
- **Defendant:** the person or party against whom a lawsuit or prosecution is brought
- **Damages**
 - Monetary
 - Compensatory
 - Punitive
 - Specific Performance



Civil Remedies

- Declaratory Judgment
 - Judicial determination of legal rights, e.g., prisoners rights, etc.
- Injunction
 - Court Order requiring action or restraint from action
- Types of Injunctions Include
 - Preliminary/Temporary
 - Permanent
- Sanctions include fines or jail



Civil Remedies to Fight Crime

- Civil suits against offenders
 - Drug dealers
 - Drunk drivers
- Rape and sexual assault cases
- Vindication
- Asset seizure forfeitures
- Sanctions against gang activity
- Community policing efforts: abatement



Civil Liability Against Criminal Justice Officials

- Federal
 - Title 42 of U.S. Code, Section 1983 – Civil Action for Deprivation of Civil Rights
 - Title 42 of U.S. Code, Section 1985 – Conspiracy to interfere with Civil Rights
 - Title 42 of U.S. Code, Section 1981 – Equal Rights under Law

- State
 - State Tort Law

- Administrative (TCOLE)
 - Rules and guidelines vary

Title 42 of U.S. Code, Section 1983 – Civil Action for Deprivation of Civil Rights

- Two Elements
 - Defendant was acting under color of law
 - Violation of a right given by the Constitution or federal law
- Common Defenses
 - Good Faith
 - Harlow v. Fitzgerald

Administrative Law

Federal Agencies

- Any Federal Agency that has rules and regulations that can be contested
- Ex: Social Security Administration
- Federal Administrative Law judges conduct hearings in contested cases

Administrative Law (continued)

State Agencies

- Any State Agency that has rules and regulations that can be contested
- Ex: Texas Alcoholic Beverage Commission
- State Administrative Law judges conduct contested cases

Administrative Law

(continued)

- Local Entities
 - Any local agency or entity that has rules and regulations that can be contested
 - Ex: County property taxes
 - The entity determines the overseeing of the contested issue