



# The Nature of the Law

Tom Hazlet  
Winter 2008  
Pharm 543

With thanks to Martha Dye-Whealan

1



## Objectives:

- Identify and distinguish the sources of law in the United States.
- Understand the hierarchy of laws.
- Understand the basic differences between common, statutory, and administrative (& Napoleonic) law.
- Understand the basic structure of the federal and Washington State courts.

2



## Sources of US Law

- US Constitution + Amendments / State Constitutions
- International Treaties: President signs, 2/3 Senate ratifies, then incorporated into our body of law (e.g., controlled substances)
- Statutory Law (laws made by legislatures)
- Administrative Law (laws made by executive agencies)
- Common Law (laws made when courts interpret laws from the sources above or “previous” case law: precedent, *stare decisis*)
- Napoleonic Code (Louisiana and many other countries) – “codification”

3



## Hierarchy of Statutory Law

- US Constitution
  - Federal Statutes (USC)
    - State Constitutions
      - State Statutes (RCW)
        - County/City Ordinances

All result from action of legislature =  
**legislative process**

4

## Full Faith and Credit Clause, US Constitution

- *Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.* (Article IV, Section 1)
- The legislative acts, public records, and judicial decisions of one state must be recognized by another.

5

## Full Faith & Credit Exceptions

- Authority of a court to exercise judicial power.
- Exceptions, on occasion. Usually issues with personal jurisdiction. Example: Washington (State 2) would not recognize divorce decree in Virginia (State 1) if neither party was a resident of Virginia when decree was entered.

6

## Constitutional Amendments

- Bill of Rights – I – X
  - I – religion, free speech, assembly, petition
  - VIII – cruel & unusual punishment
  - IX – unenumerated rights
  - X – powers not delegated ... reserved to States
- XIV – civil rights

7

## Where do States get the power to make laws?

- Article X
- Gives states the right to legislate in all areas except those specifically prohibited or given to Congress by the US Constitution.
- Prohibited:
  - treaties
  - raise armies
  - coin money
  - regulate interstate commerce
- Preemption


8



## What types of laws do states make?

- Broad powers to pass laws to protect
  - public health,
  - safety,
  - welfare
- Handled by the states:
  - marriage/family law,
  - regulation of professions (including medicine and pharmacy),
  - property law (including wills and trusts),
  - licensing.

9



## Counties and municipalities (cities, towns)

- Individual states can delegate law-making power to individual political subdivisions (created by the states).
- Laws made by counties, cities, and towns: ordinances
- Examples
  - Seattle Municipal Code supportive of tenants' rights, but property must be in the city limits (Seattle jurisdiction) for the law to apply
  - Anti-discrimination

10



## Administrative Law

- Body of law created by administrative agencies
  - Code of Federal Regulations (CFR)
  - Washington Administrative Code (WAC)
- Administrative Procedures (federal & state)
- Administrative agencies are created by legislatures
  - Promulgate regulations
  - Part of the executive branch of the federal government or individual states.


11



## Administrative Agencies

- Federal and state administrative agencies also have judicial power:
  - hold hearings
  - render decisions enforcing regulations they promulgate.
- Example: The Washington State Board of Pharmacy may hold disciplinary hearings

12



## Common Law: Law Made by the Courts

- Tradition derived from English Law
- US (except Louisiana), Canada (except Quebec), and UK
- Trial court (civil law): examines a dispute between parties, applies the proper law to the facts before it, renders a decision to resolve the matter.
- “Precedent” ... for that jurisdiction

13



## Basis for Appellate Review

- If one party feels that the trial court *erred* in making the decision, can file an appeal with a higher court.
- Higher court examines the decision and determines whether the ruling by the lower court was appropriate
  - *interpretation of the facts*
  - *resulting conclusions of law*

14



## Statutory Law and the Courts

- What do appellate courts look at when interpreting statutory laws? (May look at these factors for your group project).
  - The “plain language” of the law.
  - Legislative intent: why was the law passed? What did the legislature intend for the law to accomplish? Did the legislature intend for the law to apply to the specific set of facts before the court?
  - Whether the law is too broad or vague (and thus practically impossible to enforce in an equitable manner).
- Example: *Western States v. Shalala*
  - Held: The FDAMA’s prohibitions on soliciting prescriptions for, and advertising, compounded drugs amount to unconstitutional restrictions on commercial speech.

16



## Statutory Law and the Courts

- What do appellate courts look at (cont’d)
  - Public policy: is the law before the court consistent with public policy?
  - Constitutional rights of the individual: does the law before the court conflict with individual constitutional rights?

17

## Equal Protection Clause (in the XIV Amendment of the US Constitution)

- *No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*
- Basis for virtually all civil rights litigation and legislation since then. Also, interestingly enough, the basis for President Bush's argument before the Supreme Court in Bush v. Gore (2000).

18

## Criminal, Civil, or Administrative Proceeding?

- **Criminal:** ultimately, a "liberty issue" is at stake. One of the penalties can be incarceration. Look for Victim/Defendant.
- **Civil:** disagreement between two parties being settled before a court=lawsuit. Look for Plaintiff/Defendant

19

## Criminal, Civil, or Administrative Proceeding?

- Administrative action is initiated by an agency; e.g., Board of Pharmacy begins investigation against a pharmacist for alleged violation of a statute or regulation.
- Typical administrative sanctions:
  - Warnings
  - Fines
  - License suspension or revocation
  - Probationary period

20

## Federal Court System



21



## Federal Court Jurisdiction

- Original jurisdiction in cases involving a “Federal Question”: cases “arising under Constitution, laws, or treaties of the United States”.
- Original jurisdiction: United States is a party.
- “Diversity” jurisdiction over civil litigation if:
  - A citizen of one state is a party against a citizen of another, AND,
  - Amount in controversy must be at least \$75,000.

22



## Supreme Court Jurisdiction

- Original jurisdiction: all cases in which a state is a party.
- Appellate jurisdiction from lower courts. Some cases on appeal must be heard by the Court; others are voluntarily heard by the court if it grants *certiorari*.

Middle English, from Latin *certiorārī* (volumus), (we wish) to be informed (words in the writ) [American Heritage Dictionary]

23



## Amicus Brief

- Amicus briefs (“friend of the court”) can be filed by interested parties not directly involved in the case (true of any appellate court),
  - ACLU would likely file a brief in any major case involving 1st Amendment issues (“freedom of speech”)
  - Potential project -- Stormans v. Selecky
- Amicus briefs may be weighed by the justices when contemplating the ruling by the Court.

24

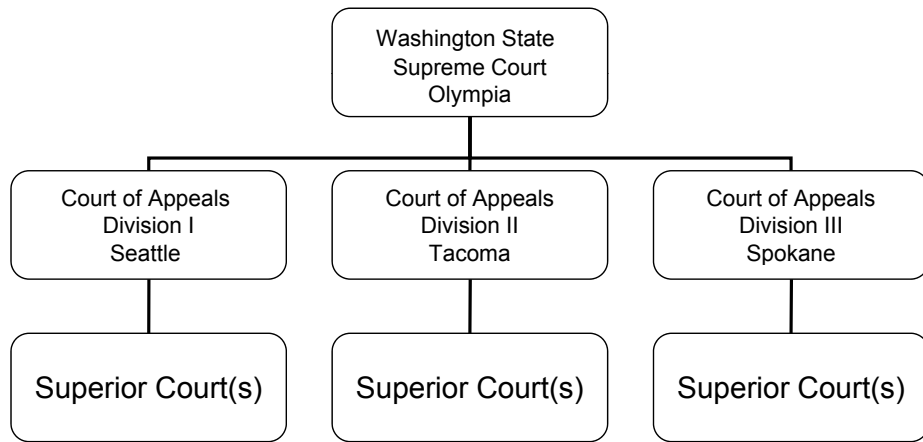


## US Court of Appeals

- Seattle is in the Ninth Circuit, which includes OR, CA, NV, AZ, ID, MT, HI, AK, and Guam. Two districts in Washington State:
  - Eastern in Spokane
  - Western in Seattle AND Tacoma (2 divisions)
- Ninth Circuit Court of Appeals in San Francisco
- “Splitting the Circuits”, e.g., possible for two circuits to rule differently on a federal question; circuit rulings are “split” until US Supreme Court resolves.

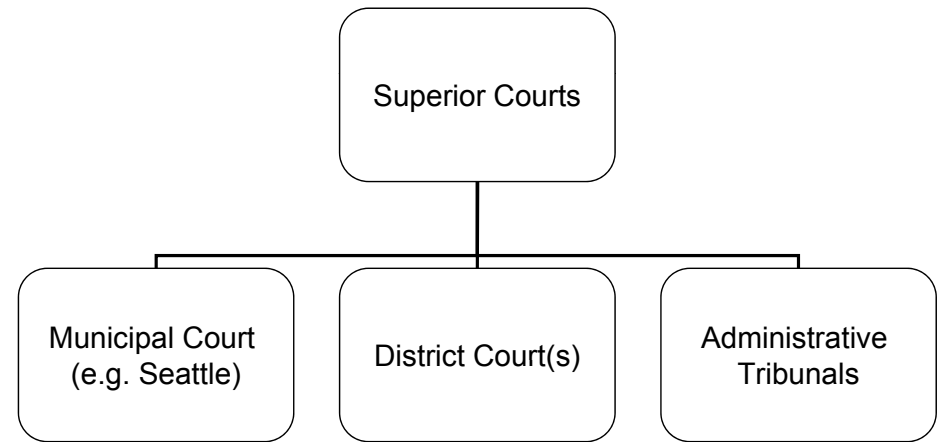
25

# Washington State Court System



26

# Washington State Court System (Continued)



27

# Washington State Judiciary

- Appellate level (including Supreme Court). Elected, not appointed. Only appointed in the case of resignation or death, then governor will appoint replacement until next election.
- Trial level, Superior Court=elected.
- District, municipal: elected or appointed.

28

# Washington Supreme Court Jurisdiction

- As an appellate court, Supreme Court decides only legal issues, and decides the case based on the factual record developed in the trial court.
- Review is discretionary. In a case already decided by the Court of Appeals, the Court will generally grant “review”
  - Involves a question which has given rise to conflicting appellate court decisions
  - Constitutional question
  - Question of substantial public importance
  - Direct review of Superior Court decisions is granted in limited circumstances.

29



## Washington State Court System: Superior Courts (30 judicial districts)

- Superior Courts are the courts of *general jurisdiction*; therefore, can hear virtually any claim arising under Washington state law.
- Superior Courts also hear appeals from courts of limited jurisdiction (district, administrative agencies, municipal).

30



## Washington State Court System: District Courts

- District Courts are courts of *limited jurisdiction*.
  - Concurrent jurisdiction with Superior Court over civil cases where amount of controversy is less than \$50,000 and for misdemeanor and gross misdemeanor cases.
  - Exclusive jurisdiction over small claims and traffic, non-traffic, and parking infractions.

31



## Washington State Court System: Municipal Courts

- Municipal courts are established by city ordinance.
  - Concurrent w/ Superior: misdemeanor, gross misdemeanor.
  - Exclusive: small claims and infractions.

32



## Jury Duty in Washington State

- Pulled from voter registration and DMV “identocard” records.
- Must be at least 18 years old, a US Citizen, and able to speak English.
- GETTING EXCUSED: if individual has an illness that would interfere with their ability to perform, or would suffer great hardship (usually financial) if required to serve.
- Voir dire: when lawyers from both sides interview potential jurors for jury service. Unlimited number can be excused “for cause”, limited number without cause.

33



# Review

- Important constitutional elements
- Checks & balances:
  - Legislature
  - Administration
  - Judiciary
- Hierarchical structure
- Relationship between
  - Statutes
  - Regulations
- Agency activities
  - Promulgate regulations
  - Licensure activities
  - Enforcement