



Part I

the sources of law

“The Constitution of the United States was made not merely for the generation that then existed, but for posterity—unlimited, undefined, endless, perpetual posterity.”

– Henry Clay

Think of the law as a collection of broad principles and specific rules concerning freedom, conduct and property that establishes rights and duties designed to help people live together in communities, states, and nations. The law didn’t appear overnight, but evolved over centuries from the human desire for order. As people began living closer together, this desire gave rise to customs that became accepted by the larger group and eventually became law.

The law is really not as mysterious as some people perceive, and it can be broken down into four classifications:

- constitutional law—the fundamental law of the land as spelled out in the Constitution of the United States and state constitutions;
- statutory law—laws adopted by legislative bodies such as the U.S. Congress, the Ohio General Assembly or a city council;
- administrative law—written rules adopted by various government agencies under limited authority granted by legislative bodies; and
- common law—a large body of law that has grown out of previous court decisions, customs, and usage, rather than resulting from specific legislation (statutory law).

Constitutional Law

The U.S. Constitution outlines the federal government’s structure and powers and establishes basic law in the United States. Similarly, the Ohio Constitution establishes basic law for the people of Ohio. Should a conflict arise between the state and federal constitutions, the U.S. Constitution takes precedence.

The U.S. Constitution

Our federal government is a union of 50 separate states. The basic purposes of the U.S. Constitution are to effectively govern the entire nation while preserving a measure of state sovereignty, and to promote the general welfare and protect the individual rights of all citizens. To achieve these ends, the U.S. Constitution defines the powers granted by the people to the federal government, reserves all other powers to the states and spells out how the states relate to each other and to the federal government. It establishes three branches of the federal government: the legislative, or lawmaking branch (Congress); the executive branch, (the president and the president’s subordinates), whose duty is to see that the laws made by Congress are carried out; and the judicial branch, (the national court system headed by the U.S. Supreme Court), whose duties are to interpret the laws and to administer justice.

The first 10 amendments to the Constitution, known as the Bill of Rights, guarantee individual rights and liberties such as the right to speak or gather freely. The U.S. Constitution is the standard against which all other laws are judged and administered.

The Ohio Constitution

The Ohio Constitution is the supreme law of the state and is like the U.S. Constitution in many respects. It establishes the government of Ohio and provides for legislative, executive and judicial branches; spells out the powers of state government; and lists fundamental individual rights. The Ohio Constitution, however, addresses more issues than the U.S. Constitution. For example, it establishes the right of *referendum*, whereby the people can adopt and repeal laws by direct vote; contains detailed provisions for

financing public works and various state programs; and establishes the organization and operation of local government. Still, the Ohio Constitution is subordinate to the U.S. Constitution. Thus, it would not be possible, for example, to amend the Ohio Constitution to require criminal defendants to testify at their trials, because the Fifth Amendment to the U.S. Constitution specifically states that no person shall be compelled to testify against himself or herself.

Statutory Law

Laws written by federal and state legislative authorities are known as *statutes*. The U.S. Congress enacts those statutes affecting the entire nation, while the Ohio General Assembly enacts Ohio's statutes. City or village councils enact local laws called *ordinances*.

Federal laws are compiled in the *United States Code* and deal with subjects such as the armed forces, bankruptcy, patent law and interstate commerce. State statutes are compiled in the *Ohio Revised Code*, and individual cities and villages maintain a code of municipal ordinances.

Federal Statutes

Federal laws are enacted by the Congress and affect the entire country. They are compiled in the *United States Code*, which, like the *Ohio Revised Code*, is arranged according to subject matter. Under the U.S. Constitution, only the U.S. Congress may deal with certain subjects, such as the armed forces, bankruptcy, patent law and interstate commerce. In other areas, federal law might govern some parts of an activity and state law might govern other parts. Sometimes both the state and federal government have similar laws covering the same subject. Usually, state law governs a particular activity within the state, and federal law governs the same activity in interstate and foreign commerce. For example, Ohio handles how firearms, explosives and drugs are

bought, sold and controlled within the state, while federal law steps in to handle how firearms, explosives and drugs are bought, sold and controlled in interstate and foreign commerce.

In some areas, states may create laws only so long as they fit within a federal outline of law. For example, the U.S. Constitution gives citizens the right to bear arms. So long as they do not exceed the limits of federal law, states are permitted to enact statutes that place certain limitations on that right to bear arms, such as those that prohibit carrying concealed weapons. Today, the media informs us of the tension between those who feel states should be able to regulate guns, and those who believe the federal system prohibits states from doing so. As this section is being written, that debate has not reached a conclusion, since the courts have not yet ruled on the extent to which federal law prohibits a legislative body—state or federal—from regulating guns.

State Statutes

Ohio statutes (or laws) are enacted by the General Assembly and affect the entire state. They take precedence over city ordinances, the regulations of government agencies and the common law of the state.

Ohio statutes are compiled in the *Ohio Revised Code* and cover a wide range of subjects including:

- the organization and operation of state and local governments
- agriculture
- financial institutions
- commercial transactions
- natural resources
- business organizations
- courts and procedures
- criminal law and procedure
- family law
- education
- elections
- health and safety
- insurance

- labor and industry
- licensing of driver
- liquor control
- motor vehicles and traffic
- occupations and professions
- protection of incompetents and children
- public utilities
- public welfare
- real estate
- roads
- taxation
- veterans and military affairs
- water and sanitation

Municipal Ordinances

Under the Ohio Constitution, municipalities (incorporated cities and villages) may adopt laws for their own self-government. These local laws are called ordinances and are adopted by the village or city council, which is the legislative branch of municipal government. Municipal ordinances are effective only within the municipality enacting them and are valid only if they do not conflict with state law.

The relationship between municipal ordinances and state law requires some explanation. Ordinances may duplicate or overlap state law, but ordinances can neither permit anything prohibited by state law, nor prohibit anything state law specifically permits.

Like state law, municipal ordinances may deal with a wide range of subjects, including the organization and operation of police and fire departments, housing, sanitation, licensing and inspection of various businesses, and many other matters.

Municipal ordinances commonly contain a traffic code, which is similar to, or even a duplicate of, the state traffic code. Further, municipal ordinances generally have many provisions similar to those of the state criminal code. This is allowed as long as the violation of a municipal traffic ordinance is not classified as a felony (whose potential penalties may include imprisonment for more than six months or even a death sentence) and provided a municipality does

not try to attach felony penalties to any of its ordinances. The only penalties that can be imposed for violation of a municipal ordinance are a fine or a term of not more than one year in the local jail or workhouse, or both.

Administrative Law

It's deer-hunting season in Ohio, so you traipse off into the woods and bag a 10-point buck. Feeling like frontiersman Simon Kenton, you begin hauling the deer away, when a park ranger asks to see your hunting license.

Oops. Forgot to buy yours? The ranger issues you a citation for violating a state administrative rule that requires you to purchase a hunting license issued by the Ohio Department of Natural Resources (ODNR). The fee to purchase the license was established by ODNR according to its authority to set rules for conserving Ohio's natural resources. The authority to establish the fee and adopt other rules was granted to ODNR by state statute.

Many activities governed by statutes or ordinances are so technical, or change so often or so fast, that they cannot effectively be regulated by statute or ordinance alone.

Adoption and Effect of Rules

The authority to adopt administrative rules is a kind of limited legislative power given to an administrative agency and is granted under both the U.S. and Ohio constitutions. Administrative rules supplement statutes and are useful because activities regulated by statutes and ordinances are numerous, technical and change so often that they cannot be effectively enforced by statute or ordinance alone. Administrative rules can cover only the specific subjects authorized by the statute or ordinance.

Our state's administrative rules are found in the *Ohio Administrative Code* and cover activities such as hunting, fishing, wildlife management, development of natural resources, public

recreation, pollution control, health, sanitation, liquor control, insurance, housing, building construction, land use and industrial safety.

It's important to note that many of these activities are also governed by federal administrative rules. Most of these rules are published in the *Code of Federal Regulations*. Federal income taxation is the best known of these activities and is governed by a long list of rules adopted by the Internal Revenue Service, called Tax Regulations.

The adoption of administrative rules in Ohio involves a detailed set of procedures, which include multiple public hearings. Once adopted, administrative rules carry the same force of law as statutes and can be enforced by the courts. Violating an administrative regulation may be a crime if the corresponding statute or ordinance says it is a crime and creates a penalty. If you fail to buy a hunting license, for example, you may be found guilty of a fourth degree misdemeanor. Because agencies don't have full legislative power, they cannot create new criminal classifications and criminal penalties. Limiting the power of the bureaucracy keeps the law-making functions of the state in the hands of the legislature, which is the intent of the Ohio Constitution.

Common Law

The common law is a large body of law that has grown out of society's customs and usage, and out of previous court decisions, customs, and usage, rather than resulting from specific legislation (statutory law). Because it is (and was) created by the courts, common law is a product of judicial rather than legislative power. It fills the gaps and helps unify constitutional, statutory, and administrative law, and it is therefore vital to an effective system of justice. Based on generations of the natural development of human experience, common law gives continuity and consistency to the law. It also allows the law to respond to the changing needs of society.

Case Law as Common Law

The common law is believed to have originated in England following the Norman Conquest (1066) and was brought to North America by English colonists, along with numerous English statutes. It owes its present vitality to the custom, begun in the 17th century, of recording judicial proceedings and decisions, as well as the principles and reasoning behind them. When a court decides a case and records its decision in a written opinion, that opinion, or case, becomes a *precedent*. That is, the principles on which the case was decided may be used to decide future cases with similar factual situations.

The following example illustrates how we deal with the concept of precedence on a daily basis: Let's say your immediate work supervisor issues an order about how to stack boxes. This order remains the precedent unless your supervisor's boss issues another order about stacking boxes, which replaces the first order and becomes the new precedent. Precedent might also change, for example, if a new system of packaging makes the old way of stacking boxes obsolete.

The common law provides a method called the "synthesis of decisions," whereby the principle of a case can be applied to different fact patterns. This method involves the careful formulation of principles for general application, coupled with the extension of those principles through logic to meet new fact patterns.

The impact of a case as precedent depends mainly on the court in which it is decided. A higher court is not bound to follow the precedents established by the lower courts in its jurisdiction. Lower courts, however, are bound to follow the precedents of all higher courts having jurisdiction over them. Courts of equal rank may use each other's precedents, just as the courts of one state may borrow from the precedents of another state or federal court. Courts often use the precedents of equal or lower courts, the courts of other states,

and the federal courts when such precedents are well reasoned or address new problems or create new or better solutions to old problems. (See *Part II, "The Courts,"* for more information on the ranking of courts.)

Scope of the Common Law in Ohio

Many major divisions of Ohio law are governed almost entirely, or in significant respects, by the common law. One important subject governed almost entirely by common law is *torts*. Torts is the division of the law dealing with civil remedies for injuries or damages caused by negligence, or other wrongful acts or omissions. For example, most of the law governing the question of liability for injuries suffered in automobile accidents is based on the common law of torts.

Contract law is covered partly by the common law and partly by statutes. Some areas of the law are based entirely on statute, such as conduct that is considered a crime, and benefits available under workers' compensation. However, the common law retains its importance even in the parts or divisions of the law based on statute. For example, common law principles and concepts are used to decide if, or how, a statute, ordinance, or

regulation applies to a particular situation. Further, when a statute, ordinance, or regulation is interpreted in a certain way, the interpretation itself becomes part of the common law and is thus entwined with the written law.

The Importance of Common Law

The common law is important because it prevents casual dismissal of society's established principles. At the same time, it forces society to look at outdated principles and replace or reshape them to address contemporary issues.

The landmark U.S. Supreme Court case of *Brown v. Board of Education* is a good example of how the law can change with time. In its 1954 decision, the high court ruled that separate educational facilities for white and black students were unconstitutional. That decision (which reflected changes in our society's views on race) overruled another decision rendered nearly 60 years earlier that found separate but equal facilities *were* constitutional. It can be argued that this particular decision illustrates the flexibility our founding fathers consciously built into the U.S. Constitution.

Chapter Summary

- The U.S. and Ohio constitutions outline the powers given to national and state government, respectively. When there is a conflict between the two, the U.S. Constitution takes precedence.
- The law is divided into constitutional law, statutory law, administrative law and common law.
- State law is made up of statutes created by the Ohio General Assembly. Local laws are ordinances adopted by incorporated villages and cities.
- Administrative law establishes governmental agencies with the authority to regulate activities and adopt rules.
- Common law has evolved over time and continues to do so. It unifies the gaps between constitutional, statutory and administrative law, while providing the law with essential flexibility to adapt to societal changes

Web Links:

U.S. Constitution:

<http://www.house.gov/Constitution/Constitution.html>

Ohio Constitution:

<http://www.legislature.state.oh.us/laws.cfm>

Ohio General Assembly:

<http://www.legislature.state.oh.us>

United States Code:

<http://www.gpoaccess.gov/uscode/>

Ohio Revised Code and Ohio Administrative Code:

<http://onlinedocs.andersonpublishing.com>