Sources of Law and the Structure of State & Federal Courts

Thursday, August 20, 2015
Willamette University College of Law

Orientation Week

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(Full presentation available on OSA website)
Sources of Law

- Constitution
- Statutes
- Administrative Rules
- Common Law
Sources of Law

Constitution
- Drafted, then ratified (usually by legislative or popular vote)
- Provides structure of government
- Outlines powers, duties, limits of government
- Establishes fundamental rights of people that gov’t cannot infringe upon
- Difficult, but possible, to amend
- Examples: U.S. Constitution, Oregon Constitution

Statutes

Administrative Rules

Common Law
“Supremacy Clause”

Article VI. .... This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.
Sources of Law

Constitution

Statutes

Administrative Rules

Common Law

- Enacted by legislature with executive branch approval (or veto override)
- Includes Civil and Criminal Law
- Limited by scope of Constitutional powers, restrictions
- Often preceded / accompanied by legislative committee reports, hearings
- Occasionally based on model codes
- Can be amended by subsequent legislative enactments
- Examples: U.S. Code, Oregon Revised Statutes (codified statutes)
- 16 U.S.C. § 347; O.R.S. 173.300
Administrative Rules

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Sources of Law

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Common Law

- (aka “regulations”) Promulgated by Administrative Agencies (which were created by statute)
- Most common form of interaction with public in the US
- Limited by scope of Constitutional and statutory authority
- Process of promulgation and application of rules is subject of Administrative Law
- Can be modified by later rules
- 36 C.F.R. § 13.920
Administrative Rules

Constitution

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Common Law

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• Can be modified by later rules
• Examples: Code of Federal Regulations; Oregon Admin. Rules

§ 13.920 Wildlife distance conditions.
  (a) Bears. The following are prohibited:
    (1) Approaching within 300 yards of a bear; or
    (2) Engaging in photography within 300 yards of a bear.
  (b) Other wildlife. The following are prohibited:
    (1) Approaching within 25 yards of a moose, caribou, Dall sheep, wolf, an active raptor nest, or occupied den site; or
    (2) Engaging in photography within 25 yards of a moose, caribou, Dall sheep, wolf, an active raptor nest, or occupied den site.
  (c) Prohibitions. The prohibitions in this section do not apply to persons—
    (1) Within a motor vehicle or a hard sided building;
    (2) Within 2 yards of their motor vehicle or entrance to a hard sided building that is 25 yards or more from a bear;

Rules: Rules of Proc. (FRCP, ORCP)
Sources of Law

- Constitution
- Statutes
- Administrative Rules

**Common Law**

- Law announced by Courts in certain fundamental areas
- Source of much law in nation’s first 100 years (rooted in English law)
- Much of First Year of Law School focuses on common law areas: Contract, Criminal, Tort, Property.
- Almost exclusively state-court issued opinions.
- Common law cases can be overruled by courts, or (most common now) codified - turned into statutes by legislatures.
- Model codes (seen in most areas) attempt to synthesize & write down common law principles
Sources of Law

Constitution

Statutes

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Judicial Interpretation

Judicial interpretation = “Common Law”? 

- Text & context
- Legislative history
- Legislative intent
- Interpretive canons
“Typical” US Court Structure

- Court of Last Resort
- Intermediate Appellate Court
- Trial Courts
U.S. Federal Court Structure

- U.S. Supreme Court
  (Washington, DC)

- U.S. Courts of Appeals
  (12 Geographic Circuits)

- U.S. District Courts
  (1–4 per state)
The Supreme Court of the United States
U.S. Courts of Appeals

Geographic Boundaries
of United States Courts of Appeals and United States District Courts
U.S. Court of Appeals for the Ninth Circuit (9th Cir.) (CA9)

James R. Browning Federal Courthouse, San Francisco, CA
(also in Pasadena, Portland, Seattle)
U.S. District Court for the District of Oregon (D. Or.)

Mark O. Hatfield Federal Courthouse, Portland, OR (also in Eugene, Medford, Pendleton)
“Typical” US Court Structure

- Court of Last Resort
- Intermediate Appellate Court
- Trial Courts
Oregon State Court Structure

Oregon Supreme Court
(Salem, OR)

Oregon Court of Appeals
(One court in Salem, OR)

Circuit Courts
(generally one per county)
Multnomah County
Circuit Court (Portland, OR)
Oregon Supreme Court (Or.) and Court of Appeals (Or. App.)
“Typical” US Court Structure

www.courtstatistics.org

- Court of Last Resort
- Intermediate Appellate Court
- Trial Courts
Massachusetts State Court Structure

- Supreme Judicial Court
  (Boston, MA)

- Appeals Court
  (Boston, MA)

- Superior Courts
  (14 divisions)
New York State Court Structure

Court of Appeals
(Albany, NY)

Appellate Divisions
of the Supreme Courts
(4 departments)

Supreme Courts
(12 districts)
Trial Courts

Court of Last Resort

Intermediate Appellate Court

Trial Courts

• State: Courts of “General Jurisdiction” (Federal = Limited J.)
• 1 or more judges on “court”
• Judges sit individually & manage cases filed by parties
  • Criminal: State or Prosecutor files vs. Defendant (the accused), who is “guilty” or not guilty (std. of proof: BARD)
  • Civil: Plaintiff or Petitioner files vs. Defendant or Respondent; D is “liable” or “not liable” Preponderance OTE
• Facts found by judge or jury based on affidavit & testimony / cross ex
• Many (90+%) filed cases are never tried, but settled or dismissed
• Occasional written opinions on motion; rarely reported @ state level, federal D.Ct. more common; 254 F. Supp.2d 1196 (D. Or. 2014).
“Typical” US Court Structure

- **Court of Last Resort**
  - Appeal “as of right” when losing party requests review
  - 5-20+ judges on court
  - Hear cases in groups (panels) of 3+
  - Limited by established factual record
  - Limited by issues presented by parties below or in briefs
  - Limited by “standard of review.” Don’t necessarily reverse just because disagree
  - Limited by “harmless error” doctrine
  - Focus on issues of law – disputes of fact rarely relevant
  - Written opinions, usually reported.

- **Intermediate Appellate Court**

- **Trial Courts**
“Typical” US Court Structure

- **Court of Last Resort**
  - Discretionary review + some appeals as of right (capital cases, e.g.).
  - 5-9 judges on “court”; sit *en banc*
  - Appellate decisions – attention to legal holdings, rather than facts.
  - Focus on areas of particular importance, conflict or uncertainty
  - Written, almost always reported opinions, often multiple opinions by different judges / justices

- **Intermediate Appellate Court**

- **Trial Courts**
Reported opinions – dominant source of reading material for your 1L year (and beyond), though supplemented by some statutes, rules, other commentary

- Mostly (though not all) appellate ct. opinions
- Multiple judges on a panel sometimes => multiple opinions.
  - Majority opinion (majority of court joins and agrees)
  - Concurring opinion (agrees with outcome, but has something else to say regarding reasoning)
  - Dissenting opinion (disagrees with outcome)
  - Will occasionally apply to different parts of opinion.
Understanding Multiple Opinions


  BREYER, J., delivered the opinion of the Court, in which KENNEDY, GINSBURG, SOTOMAYOR, and KAGAN, JJ., joined. ROBERTS, C. J., and ALITO, J., filed opinions concurring in the judgment. SCALIA, J., filed a dissenting opinion. THOMAS, J., filed a dissenting opinion, in which SCALIA, J., joined as to Parts I, II, and III–B.

- 5 justices support Breyer’s opinion for the Court.
- 2 more agree with outcome, not reasoning (and not necessarily with each others’ reasoning)
- 2 more disagree with outcome (don’t entirely agree with each other)
- “Per curiam” – unsigned; often (but not always) unanimous.
The Role of Precedent

- Precedent: The principle that a court’s legal decisions should be guided by relevant prior legal holdings by other courts.
  - Legal decisions, not factual ones.
  - Guidance can vary in strictness – depends on relationships between second court and first one.
  - Relevance can be tricky to determine
  - Holdings count, not “dicta.”
The Role of Precedent

- Precedent: The principle that a court’s legal decisions should be guided by relevant prior legal holdings by other courts.
- Applies to all types of decisions & legal principles (common law, statutes, constitutional interp., etc.)
- Note: Does not apply to degree that first court does not intend later courts to be bound. (So: unpublished, “non-binding” decisions or orders are often considered non-precedential.)
How Strict is Precedent?

1) Binding Precedent (slide 1)

- The second court has no choice but to follow the legal principles of the prior decision.
- Usually applies only to situations in which decisions by the second court can be appealed to the first court. Second court is “bound” by prior court’s precedent.

Exceptions?
- If the law changes. Statutes changed or repealed.
- If you want to challenge / disagree with prior decision, you can – but chances are, you’ll be reversed.
How Strict is Precedent?

1) Binding Precedent (slide 2)

- Example: Decisions of the U.S. Supreme Court on the federal constitution and federal statutes are “binding precedent” on all federal and state courts.
- Example: Decisions of the U.S. Court of Appeals for the Ninth Circuit are “binding precedent” on all U.S. District Courts for districts in the Ninth Circuit (OR, WA, ID, CA, etc.)
- Example: Decisions of the Washington Supreme Court are “binding precedent” on all Washington Trial Courts.
- Unusual Example: A decision by one panel of U.S. Court of Appeals judges is binding on all subsequent panels unless **en banc** court overrules.
2) “Stare Decisis”
   ◦ To “stand on what has been decided”
   ◦ Principle that a court, in deciding a subsequent case, should follow its own legal holdings in prior cases.
   ◦ Why? Consistency, efficiency, fairness, predictability, encourages respect for the court.
   ◦ Not as strict as “binding precedent” because a court has absolute authority to overrule its own prior legal holdings.
   ◦ In most situations, a court will not overrule its prior cases without well-articulated reasons.
   ◦ Examples: Applies in U.S. Supreme Court to prior decisions of U.S. Supreme Court, applies in OR S. Ct. to prior decisions of OR S. Ct.
2) "Stare Decisis"

- "...[W]hen this Court reexamines a prior holding, its judgment is customarily informed by a series of prudential and pragmatic considerations designed to test the consistency of overruling a prior decision with the ideal of the rule of law, and to gauge the respective costs of reaffirming and overruling a prior case. ...[W]e may ask whether the rule has proven to be intolerable simply in defying practical workability; whether the rule is subject to a kind of reliance that would lend a special hardship to the consequences of overruling and add inequity to the cost of repudiation; whether related principles of law have so far developed as to have left the old rule no more than a remnant of abandoned doctrine; or whether facts have so changed, or come to be seen so differently, as to have robbed the old rule of significant application or justification."
How Strict is Precedent?

3) Persuasive Precedent.

No “obligation” to follow the decision of another court. Generally applies when the first decision is from a jurisdiction outside of the appellate process for the second court.

- Example: CA Supreme Court decisions are merely “persuasive” precedent for OR S.Ct.
- Depends on quality of reasoning, perceived quality of court, relevance of prior decision (“directly on point,” well-reasoned prior decision makes more difference than
- Often, persuasive precedent is largely irrelevant and courts don’t want to hear it. Clutters the brief. Tell them what they are obligated to do, and that’s it.

4) Other (“Secondary Sources”) – Statements that aren’t opinions deciding an issue in a case, or statements by entities other than courts, which may be useful to reasoning in a later case, but which doesn’t really have any precedential value at all. (Though some are more persuasive than others.)
Relationship Between Court Systems

- Highest court in a system has the “last word” on that sovereign’s law.
  - U.S. Supreme Court has “last word” on interpretation of U.S. Constitution, federal statutes, federal administrative rules
  - Oregon Supreme Court is bound by U.S. Supreme Court on interpretations of US Law, BUT OR S.Ct. is “last word” on interpretation of Oregon Constitution, statutes & rules (including common law).
  - U.S. S.Ct. won’t interpret Oregon’s Laws
  - Federal courts will apply Oregon laws on occasion, but are only attempting to apply/interpret law as OR S.Ct. would.
  - State courts must apply federal law (and US Supreme Court will review their interpretations of it)
  - Of course, if OR S.Ct. interprets OR Statute to require action unconstitutional under federal law, USSC can apply federal law and overrule state law.
Summary of Points

- Constitution; Statutes; Rules; Common Law (both traditional and interpretive)
- Multiple sovereigns – federal, state, local
- Higher controls the lower
- Court of Last Resort; Intermediate Court of Appeals; Trial Court
  - Trial = fact; Appellate = law
  - The higher court controls the lower by principles of precedent

- Civil case: Plaintiff sues defendant to determine liability by POTE
- Criminal case: Prosecutor charges the defendant to determine guilt BARD
- Majority (governs precedential effect) / Concurrence / Dissent
Questions?