### Chapter 1

#### THE NATURE AND SOURCES OF LAW

**RESTATEMENT**

This chapter provides the students with a look at the nature, origin and importance of individual rights and how those rights are protected by laws and judicial process. The chapter provides a historical look at the evolution of rights of individuals and how technology requires that laws be revised to provide protection for those rights.

Students are introduced to the various sources of law and their interrelationships. Constitutional law, statutory law, administrative regulation, and case law (along with the principle of *stare decisis* and concept of precedent) are explained along with the role and historical significance of common law. The nature and role of the uniform state laws are explained along with a discussion of the distinction between substantive law and procedural law. The distinctions between legal and equitable remedies are also explained.

**STUDENT LEARNING OUTCOMES**

LO.1: Discuss the nature of law and legal rights.

LO.2: List the sources of law.

LO.3: Describe the classifications of law.

**INSTRUCTOR’S INSIGHTS**

Break the chapter down into three components – related Learning Outcomes are indicated in ( ):

1. *What is the nature of law and legal rights?* (LO.1)

* Discuss the nature and origin of rights: legal rights; individual rights; right of privacy
* Present the evolution of the protection of rights

2. *What are the sources of law?* (LO.2)

3. *What are the classifications of law?* (LO.3)

* Discuss the types of laws: substantive and procedural
* Cover the origins and current status of equitable relief
* Explain uniform laws

**CHAPTER OUTLINE**

I. What is the Nature of Law and Legal Rights?

A. Legal rights are part of the law – principles that govern conduct and can be enforced in courts or by administrative agencies

B. Individual rights

1. Freedom of speech

2. Right to due process

3. Duties accompany rights

C. The right of privacy

1. An example of a legal right developed by courts

2. Provides protections against unreasonable searches and seizures

3. Privacy affords protection against intrusion by others

a. Educational privacy on grades – Buckley Amendment

b. Abortion stems from privacy right

c. Banking privacy rights

D. Privacy and technology

1. New rules are needed as technology evolves

2. E-mail, EDI

3. Some criminal sanctions

**CASE BRIEF:** *Fawcett v. Altieri*

960 N.Y.S.2d 592 (2013)

**FACTS:**  Gina L Fawcett (plaintiff) and her then-minor son, John, sued Sea High School and the parents of Nicholas Altieri (defendants) to recover damages for John’s eye injury that he sustained in an altercation with Nicholas during a tennis match with St. Joseph High School. The defendants made a discovery request for access to John’s social media accounts, including Facebook, MySpace, Friendster, Flickr, and others. Ms. Fawcett moved for protective order to prevent discovery of the information on these sites because John’s sites were not publicly available.

**ISSUE:** Are social media accounts discoverable?

**HOLDING AND**

**REASONING:**  The court held that a variety of factors must be considered before granting broad access to social media accounts, including privacy settings by the holder of the account, relevancy of the information to the litigation, and protections afforded by the various social media sites. The court’s decision provides the guidelines for determining whether the litigants in such cases will be able to have discovery access to each other’s social media sites. The parties will have to do depositions and then renew the request once more factual information is available for the analysis of the request for access.

**DISCUSSION POINTS: Ethics & the Law**

**Maybe a Little Too “LinkedIn”**

This feature will generate great discussion among students. Most of them are encouraged by their colleges and universities to get on LinkedIn in order to establish connection and have a network of support. LinkedIn can be a great resource, but what is on the page is publicly available and, for free. The premium service allows potential employers to get unvarnished information about applicants by checking with others who worked at the company at the same time. Some interesting questions to think about are the fact that we have to resort to such means to get the truth because we cannot get the truth from the references that applicants provide. Is this more of a question of solving a problem with references vs. whether employers should be permitted to use the information posted on the site?

All LinkedIn users have agreed to have their profiles available. The information is there – users are trying to hone its use or perhaps require notification when others are accessing information not generally available through the use of the site.

For employers, there is the issue of possibly tainting the hiring process – they find out more information on some applicants and not on others, which is disparate treatment and could result in inaccurate information and perhaps charges of discrimination because of different scrutiny given to different applicants.

As usual, the law on privacy has not yet caught up to the nuances of information use and refinement on the Internet.

**DISCUSSION POINTS: E-Commerce & Cyberlaw**

**A University's Access to Your Computer**

Discuss with the students college and university policies on use of campus servers. They have signed paperwork that indicates they understand that the university monitors their use – indeed, the university is required to do so, so as not to get cross-wise with copyright issues. Again, privacy rights are limited.

II. What are the Sources of Law?

A. Constitutional law – federal and state; historical development

B. Statutory law – federal and state

C. Administrative law

D. Private law

E. Case law, statutory interpretation, and precedent

1. Statutory interpretation

2. Principle of *stare decisis* – precedent is followed unless there is a change in facts or need for change (e.g., separate but equal was abandoned)

3. Common law is developed and refined by the courts

F. Other forms of law: treaties and executive orders

G. Uniform state laws

1. Written generally

2. Adopted on a state-by-state basis

3. Use the Uniform Commercial Code as an example; also include the Uniform Consumer Credit Code

III. What are the Classifications of Law?

A. Substantive vs. procedural

Explain the concept of common law as the body of unwritten principles based primarily on the usages and customs of the community that were organized and enforced by the courts. Describe how it fits into the legal system of today and how it is often altered by statute. The common law is referred to often in subsequent readings, and students tend to be confused about what it is, where it came from, and what role it plays in today’s legal system.

**DISCUSSION POINTS: Sports & Entertainment Law**

**When Players Break the Law and Owners Are Offensive**

Leagues and professional sports teams have their own sets of private laws.  For example, the NBA owners are the governing body for all teams.  That body must approve sales of the franchise as well as location of arenas along with all the other game-related issues, such as rules, sanctions, and fines.

Teams can discipline players, but so also can the league.  Those private law sanctions can be taken to court, as when Tom Brady took his four-game suspension for deflate-gate to court.  However, there was a union issue involved in that situation and the federal courts have jurisdiction over labor disputes.

B. Criminal law v. civil law

1. One (criminal) is harm to society

2. Other (civil) is harm to individuals

3. The red light: ticket v. damages to others

C. Law vs. equity

1. Initially remedies were separate

2. Now remedies are provided by the same courts

3. Injunctions – the red-soled designer shoes

**ANSWERS TO QUESTIONS AND CASE PROBLEMS**

1. *Privacy as a right*. The right is the student’s and is one that allows students to have their grades remain private. The schools have a duty to ensure grades are not released to third parties without permission of the student.

2. *Sources of law*. Statutory law such as ordinances, case law, precedent, common law, uniform state laws, constitutions, administrative regulations, treaties.

3. *Common law/sources of law*. Statutes are codified law; the common law evolves by case precedent and has existed in unwritten form since England in some areas of law.

4. *Classifications of law.*

a. Procedural

b. Substantive

c. Substantive

d. Procedural

5. *Uniform state laws*. Law is not uniform throughout the United States because of a historical accident: the United States was never a single nation. As of now, there are 50 state governments and a federal government within the area we call the United States. This means that 51 political bodies have the freedom to their own law (provided constitutional rights are not violated). As a practical matter, this has not resulted in 51 different sets of rules of law because the common law has tended to dominate the legal system of most communities. As stated in the text, the uniform laws have been a “nationalizing” force. It is likely that among areas that are truly “in business,” there will be greater uniformity in the near future. In contrast, as to other matters where the need for uniformity is not as great, we can expect local variations in the law, encouraged by local economic and cultural differences. The Uniform Commercial Code and Uniform Partnership Act are examples of uniform laws.

6. *Privacy.* Several issues should be raised:

a. Terms and conditions of dorm residency

b. Access issues and safety issues

There can be a right of privacy in a dorm room subject to disclosed university policies, processes and procedures. Just as landlords have access for emergencies, the university could have some limited access without breaching privacy.

7. *Privacy*. Professor Phelps is wrong. His musings on his employer’s e-mail system are not private. There is no expectation of privacy and anything written can be reviewed by his employer.

8. *Precedent*. Courts could disregard precedent when facts differ, circumstances change and social mores differ. Cases are examined for similarities as well as distinguishing factors. Courts don’t follow precedent when differences exist.

9. *Sources of law*. A statute is passed by an elected body. A regulation is passed by an administrative agency. An administrative regulation is one passed by a federal or state agency. Its procedures for adoption are different from a statute which is a law enacted by Congress, a state legislature or a city or county governing body. Statutes are generally passed by elected officials whereas regulations are the actions of appointed officials who are government employees. Administrative regulations must be grounded in statutory authority.

10. *Law and equity*. Equitable remedies suitable here; an injunction to stop the ad from being run. Legal remedies include money damages for use of Eminem's image. Now courts can award either legal or equitable remedies.

Eminem and 8 Mile obtained an injunction against Audi – the company was prohibited from running the ad because of a likelihood of confusion and the continuing problem of use of an image or likeness without permission. Emphasize that only equitable remedies help Eminem and 8 Mile – damages cannot recoup for the continuing use.

11. *Types of laws.* Local laws: zoning, dog licensing, bike licensing, traffic regulations, littering, loitering

Federal laws: securities laws, antitrust laws, federal income tax, Social Security, labor laws, equal employment laws, environmental laws

All laws are limited by constitutional constraints and protections. For example, local laws cannot take away rights afforded by the constitution. Federal laws also cannot violate constitutional rights. Later students will study preemption – areas that only the federal government can regulate under constitutional powers.

12. *Common law.* *Stare decisis* is “Let the decision stand” or following case precedent.

13. *Law and precedent.* The social media have resulted in many new laws (cyberbullying) as well as case law on issues such as whether Google, Yahoo, etc., must reveal identities. Throughout the remaining chapters you will study examples of issues evolving and precedent being set.

These forms of social media have expanded greatly how widespread personal information is available to many we would not necessarily voluntarily give it to. So, for example, when you are authorized as someone’s friend, you can click on the Facebook sites of their friends and obtain information without them realizing that so many have such access. Employers can gain information through a Google search and social media sites that you might not volunteer. As a result, laws have developed to require elections on privacy controls for these sites. Other laws have developed to provide access to information about who is posting what on certain sites when criminal activity results.

14. *Sources of law*. In this example, the court making the decision will be required to draw on any property law (personal) in the state as well as the common law on property ownership. There may also be some ordinances that cover sporting events or finding property. If there are intellectual property rights in the baseball, then federal law will apply. The areas of law that would govern would include state laws, statutes and case precedent on the transfer of property rights. There might also be some ordinances that would govern conduct and rights at public events such as a baseball game as well as rights on lost property.

## 15. *Types of laws.* The areas of law are private law (for her lease); state law for her CPA license renewal and incorporation; federal laws (Internal Revenue Code) for the knowledge and information for preparing the tax returns, state and federal employment law will apply to her relationship with her employee – wages, overtime, workers compensation, unemployment compensation, equality in the workplace, etc. That relationship will also have private law as Janice develops office rules and procedures. Local law applies to any use of the buildings and safety codes for the office and building. Credit and contract law (UCC and federal credit regulations) will apply to the contracts and purchases with Staples.

## LAWFLIX

*And Justice For All* (1979) (R)

An excellent film that gives an overview of the judicial system in Maryland. Rights, precedent and the role of lawyers are all topics for satire and analysis in the movie.

A number of scenes could be used for class viewing:

– Opening scene in which a defense lawyer (Al Pacino) fights to have a verdict set aside.

– Closing scene in which Al Pacino delivers a passionate opening statement in which he turns on his client who he believes to be a guilty man.

– Scene in the middle in which Pacino’s friend and colleague fails to follow procedure which results in the incarceration and suicide of Pacino's client.

*Random Hearts* (2000) (R)

A movie that explores the issue of privacy when a couple is killed in an airplane crash. Their spouses grapple with their privacy in the public eye as well as obtaining information on the couple’s travel plans and relationship.

To access additional videos that illustrate business law concepts, visit **www.cengage.com/blaw/dvl.**

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