Chapter 15 Law in America

* *Law* is the set of rules and standards by which a society governs itself.
* In democratic societies, such as America, law resolves conflict between and among individuals and/or groups and also protects individuals against government power. It defines criminal acts and determines the punishments for them. (These are only some of its functions. Laws affect nearly every part of our daily lives—the food we eat, how we drive our cars, how we buy and sell things, and even what happens when we are born or die.)
* The main characteristic of democracy is the *principle that no one is above the law*, including government officials.
* The most well-known early written law is *The Code of Hammurabi*—laws collected by the Babylonian king, Hammurabi from 1792-1750 B.C. The *Code* characterized crimes and provided 282 examples and their punishments. (Another example of early written law is the Ten Commandments for the Israelites; social justice, individual and communal responsibility.)
* The laws that govern our lives and protect our rights are classified as follows:
	+ *Constitutional law-*the basic foundation of our society, it is the most important and fundamental source of law in the U.S.
		- The term “constitutional law” applies to laws that interpret state and national constitutions—first and foremost cases involving the limits of government power and the rights of the individual. (Who has the final authority on interpretation of the Constitution?)
		- One example of a constitutional law issue would be a battle between the president and Congress over executive privilege (*U.S. v. Nixon)*. This is because it involves separation of powers
	+ *Statutory law*-this is a law written by a legislative branch of government (U.S. Congress, state legislatures, and other governing bodies).
		- Here are some examples of citizen rights and limitations specified by statutes:
			* A senior citizen’s right to a Social Security check
			* A veteran’s right to hospital care
			* A consumer’s right to return merchandise
			* Speed limits
			* Food inspections
			* Minimum working age
* Most federal court decisions (including the Supreme Court) are related to statutory law. In these cases, the courts are deciding not only what a statute means but also whether it deprives a person of a basic constitutional right.
	+ *Administrative law* spells out the authority level and procedures of the many government agencies that administer programs and provide services.
		- Administrative laws often affect people very directly. (Will a social welfare agency decide that a certain family is eligible for Medicaid? Is a person who is laid off from work be eligible for unemployment benefits?) Because of their direct impact, people often dispute administrative laws in court. They might dispute their basic fairness or how these laws are being applied.
	+ *Common law*-this is law made by judges as they resolve individual cases. It is the single most important basis of the American legal system and is also called *case law*.
		- This originated in England in the 11th century when kings sent judges out to hold trials. The judges recorded the facts of the case and their decisions in books. Eventually, judges began comparing facts and rulings from earlier cases to a current case. When a new case was similar to one in the books, the judges followed the earlier ruling, or precedent. (This is the original basis for precedent that we still use today.)
	+ *Equity*-a certain set of legal rules or principles that developed over time to supplement and sometimes overrule common law or statutory law in a decision.
		- The word “equity” means fairness.
		- When civil lawsuits are decided on principles of equity, it often means that the remedy by the court alone is not enough, usually because a money payment would not fairly compensate the injured party. For example, a court might tell your neighbor that he or she cannot build a fence across your property. Merely having a money payment from your neighbor, does not get rid of the fence.
* Four basic principles underlie how both federal and state courts operate. These principles are:
	+ *Equal justice under the law*-this principle states that the goal of the American court system is to treat all people alike. Every person, regardless of wealth, social status, ethnic group, gender, or age is entitled to the law’s full protection. The 5th-8th amendments spell out these guarantees.
	+ *Due process of law*-this principle is has 2 parts:
		- *Substantive due process*-a kind of shorthand for rights that are specified or implied in the Constitution, such as free speech or the right to privacy. (Examples of laws the SC has found to violate substantive due process include a law limiting dwellings to single families, thus preventing grandparents from living with the grandchildren, and a school regulation preventing a female teacher from returning to work sooner than 3 months after her child was born.)
		- *Procedural due process*-this concerns fairness in the way a case is handled. It prohibits arbitrary enforcement of the law and provides safeguards to make sure that law enforcement is constitutional. At the most basic level procedural due process requires:
			* *Notice to a person that he or she is accused of wrongdoing and that the government intends to take action against that person*
			* *Giving the affected person the right to respond or to be heard on the accusation*
	+ *An adversary system of justice*-this means the American court room is an arena in which lawyers for the opposing sides are adversaries and that the lawyer who makes the better case will win.
	+ *The presumption of innocence*-people who are charged or accused are presumed innocent until proven guilty. Although the idea of presumed innocence is not mentioned in the Constitution, it is deeply rooted in the English legal tradition.

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Section 2

* ***Civil law*** concerns disputes between two or more people, or between individuals and the government. Civil cases arise when people believe they have suffered an injury or want to prevent a harmful action.
* Civil law touches nearly every phase of daily life. About 90% of state court cases are civil cases.
* There are 4 important types of civil law:
1. ***Contract-***a set of voluntary promises, enforceable by the law, between parties who agree to do or not to do certain things. (We enter into contracts all the time; when we buy a car or join a gym. This is why there are so many civil suits over contracts.)
	* In an *expressed contract*, the terms are specifically stated by the parties, usually in writing.
	* In an *implied contract*, the terms are not stated but can be conditional based on the circumstances.
	* What makes a contract valid?
		1. Each party must be mentally competent
		2. Usually they must be adults
		3. No illegal activity
2. ***Property-***property law is the civil law that deals with the use and ownership of property. The Court defines property as either:
	* ***Real property***-land and whatever is attached to or growing on it (houses, trees, etc.)
	* ***Personal property***-all other property, including movable items like clothes, cars and intangible items like stocks and bonds.
3. ***Family law***-this is a branch of civil law that deals with family relationships, including marriage, divorce, child custody and child support issues.
4. ***Tort***-any wrongful act for which an injured person can sue for damages. Examples:
	* Suppose neighbors neglected to clear the ice from the sidewalk in front of their house and your mother fell and broke her hip. Your mother could sue in civil court for reasonable costs associated with the injury. She could even ask for money to punish the neighbors for their neglect. This additional money is called *punitive damages*.
	* There are 2 major types of torts:
		1. *Intentional*-a deliberate act that harms a person or property. Examples include assault and battery (these can also be tried in criminal courts.)
		2. *Unintentional*-doing harm without intending to, but the resulting harm was predictable. Example, negligence that involves careless or reckless action. A person is negligent when he or she fails to do something a reasonable person would have done.
* Civil cases are called *lawsuits*. The *plaintiff* is the person who brings charges in a lawsuit, called the complaint. The person against whom the suit is brought is the *defendant*. The plaintiff in a civil suit usually seeks damages, an award of money from the defendant.
* Lawsuits are the ultimate way to settle disputes, but they can be time-consuming and expensive with no guarantee of success.
* Stages of the lawsuit process:
	+ **Hiring a lawyer**
	+ **Filing the complaint**-the plaintiff sets forth the charges against the defendant in a *complaint*, a legal document filed with the court that has jurisdiction. Unless the case involves the U.S. Constitution or a federal matter, lawsuits are filed in state courts. The complaint states what the defendant allegedly did wrong, allowing the defendant to mount a defense. The defendant receives a *summons*, an official notice with the date, time and place of the initial court appearance. The defendant’s lawyer may file to *dismiss,* asking the court to end the suit. If the court says no, the defendant must then file an *answer*, or formal response to the charges within a certain time. Failure to answer gives the plaintiff victory by default. The defendant can also file a *counterclaim*, or a lawsuit against the plaintiff in which the defendant asserts that the plaintiff did something wrong.
	+ **Pretrial discovery**-this occurs when both sides prepare for trial by checking facts and gathering evidence for their case. The attorneys and private investigators in major cases interview witnesses, examine records and photos, and file motions against the other side. Discovery can be very expensive and time-consuming.
	+ **Resolution without trial**-90% of all civil lawsuits are settled before trial through one of several techniques:
1. Either party in a lawsuit can come to a *settlement* at any time, even during trial.
2. *Mediation*-each side is given the opportunity to explain its side of the dispute and must listen to the other side. A trained mediator acts as a neutral party, promoting communication, but he or she does not impose a solution.
3. *Arbitration* is conducted by a professional who acts somewhat like a judge. The arbitrator reviews evidence and decides on a solution; the decision usually applies to everyone.
* **Trial**-if all else fails, lawsuits go to trial. Civil cases, like criminal, may be heard by a judge only or by a jury.
* **Award**-when the plaintiff wins a case, the court can award monetary damages. An award might be more or less than the plaintiff wanted. A judge can also modify a jury’s award if he or she thinks it’s out of line. (McDonald’s coffee case, judge reduced award from $2.7 million to $640,000)
* Most states have created small claims courts as a legal alternative to the expensive and lengthy trial process.

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