

U.S. Law—Sources & Hierarchy

The U.S. Has 51 Legal Systems (at least)

- Federal gov't with its legal system.
- 50 states, each with some degree of independence, and its own legal system.

Sources of Law—By Type

1. Enacted Law (state & federal)

- Constitutions
- Statutes
- Treaties
- Court Rules
- Administrative Agency Rules

2. Caselaw (state & federal)

- Judicial:
 - Common Law Caselaw
 - Caselaw Interpreting Enacted Law
- Administrative Agency Decisions

3. Secondary Authorities

Caselaw Interpreting Enactments

1. Caselaw interpreting enacted law is at the same level of hierarchy as the enacted law it interprets.

E.g., *United States v. Lopez* (U.S. 1995) interprets the Constitutional provision that Congress has the power to “regulate commerce ... among the several states.”
Art. I, § 8, cl. 3

Common Law Caselaw

1. Defined: Body of law developed solely through judicial opinions
2. Common law caselaw is lowest level in hierarchy of sources of law, so it can be displaced by enactment.
3. State common law caselaw prevalent in many areas, such as torts, contracts, property.
4. Federal common law caselaw limited to (a) areas that Congress directs; and (b) areas of strong federal interests.

Hierarchy of Sources of Law

- a. U.S. Constitution.
- b. Federal statutes, treaties, and court rules.
- c. Federal administrative agency rules.
- d. Federal common law caselaw.
- e. State constitutions.
- f. State statutes and court rules.
- g. State agency rules.
- h. State common law caselaw.
- i. **Secondary authorities**

* Each level of enacted law includes caselaw interpreting enacted law.

Constitutional Basis for The Hierarchy

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.

--Art. VI, § 2

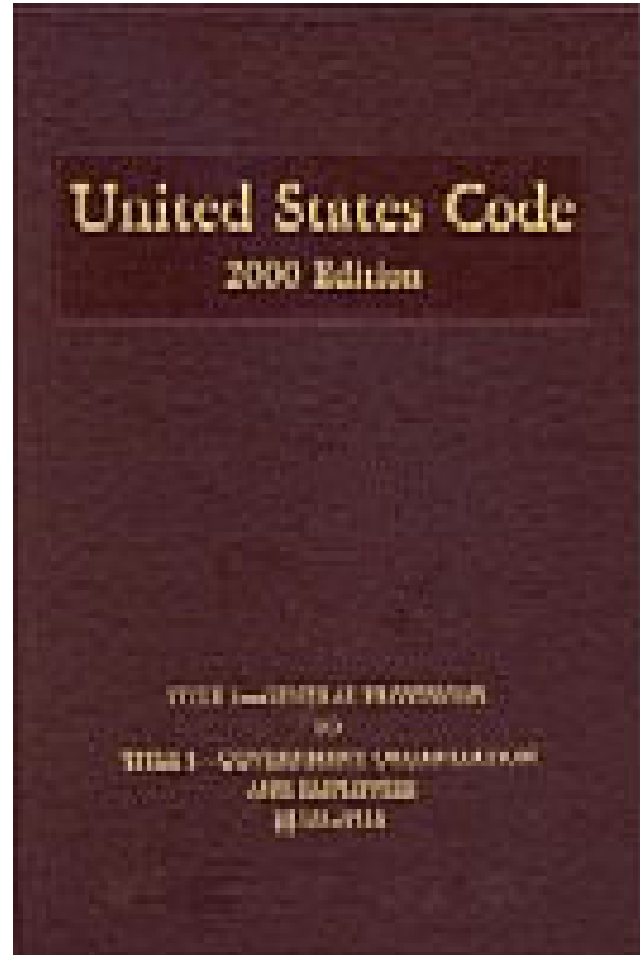
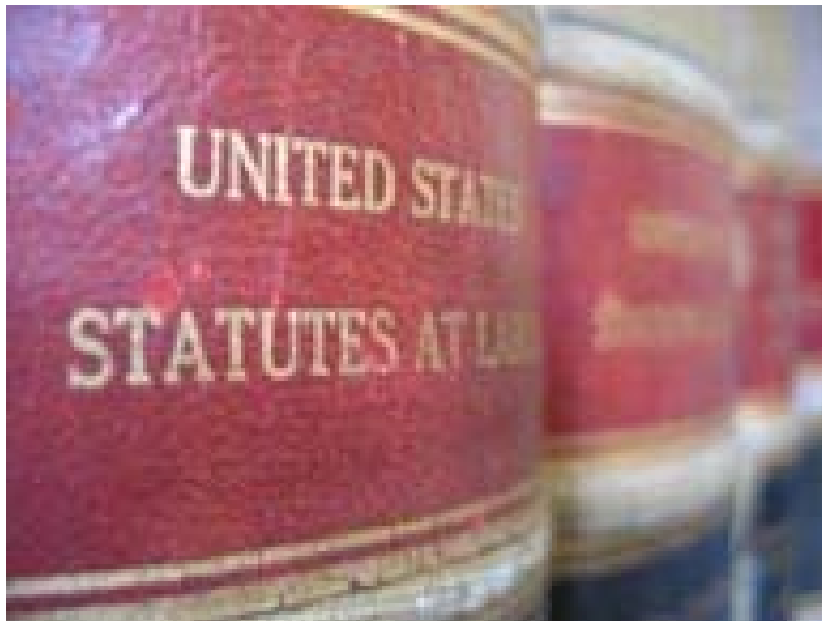
1. Enacted Law

U.S. Constitution

State Constitutions

- Enacted around time of Declaration of Independence
- May provide greater rights than U.S. Constitution

How Federal Statutes are Published



Session laws: Statutes at Large

Code: United States Code

Session Law v. Code

- “Session Law” = all laws published during a legislative session in chronological order
- “Code” = laws organized by subject matter.

Session Law v. Code

1. Old Code: “A person who steals an airplane will be imprisoned for 10 years.”
18 U.S.C. § 103 (2005).
2. Session law: “In 18 U.S.C. § 103, delete the word ‘10’ and insert in its place ‘15’.”
Airplane Crime Act, Pub. L. 110-245, 86 Stat. 982 (2007).
3. New Code: “A person who steals an airplane will be imprisoned for 15 years.”
18 U.S.C. § 103 (2007).

U.S. Code

1. Divided into 50 “titles” by subject. E.g.:
 - Title 8 Aliens and Nationality
 - Title 17 Copyrights
 - Title 22 Foreign Relations and Intercourse
2. Sample citation: 8 U.S.C. § 1101 (2005).

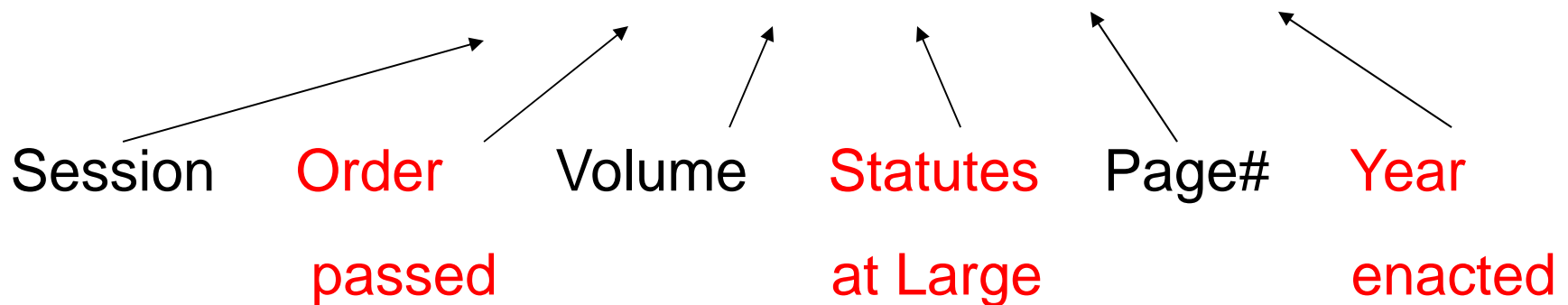
Annotated Codes

- “Annotated Code” = code plus annotations:
 - **Cross-references** to other statutes, constitutional provisions, or rules of court--may modify or supplement your statute.
 - **Collateral References** to legal encyclopedias, *American Law Reports*, some law reviews.
 - **Notes to Decisions:** Brief summaries of all reported state and federal decisions that construe your statute.
 - **Amendment Notes:** Details of changes made to the statute by the legislature.

Statutes at Large

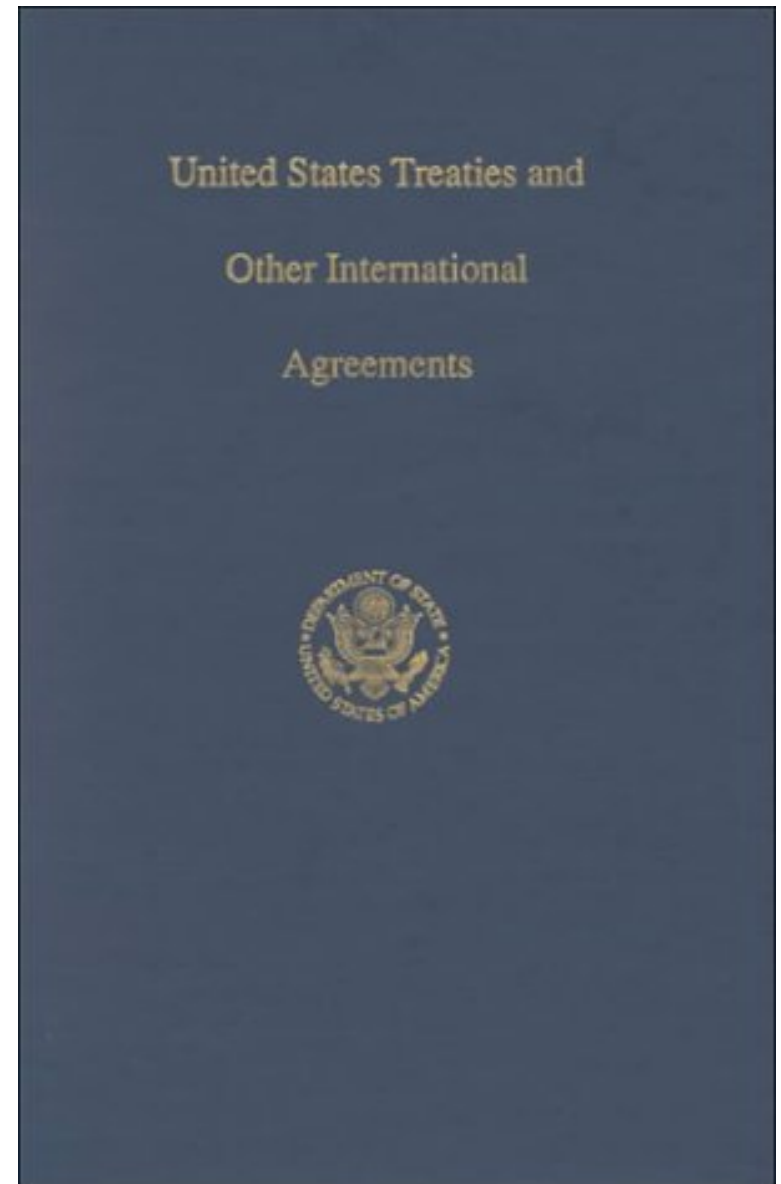
Sample citation:

National Environmental Policy Act of 1969,
Pub. L. No. 91-190, 83 Stat. 852 (1970).



Treaties

Signed by President &
Senate consents with
2/3 vote.



Court Rules

- Federal court rules adopted by Judicial Conference of the U.S.:
 - Federal Rules of Civil Procedure
 - Federal Rules of Criminal Procedure
 - Federal Rules of Appellate Procedure
 - Federal Rules of Evidence

Agency Regulations

Federal regulations
published each day in
Federal Register

Sample Citation: Federal
Acquisition Regulations
for National Aeronautics
and Space Administration,
55 Fed. Reg. 58,782
(Dec. 21, 1990)



Agency Regulations (cont'd)

Regulations
codified in *Code of
Federal
Regulations*

Sample citation: 7
C.F.R. § 319.76
(1999)



2. Caselaw

- Principle of *stare decisis*: Future cases should be decided the same way as similar past cases.
- Policy goals:
 1. Fairness: Equality before the law
 2. Predictability
 3. Judicial efficiency

Publication of Caselaw

1. All SCt decisions published.
2. For lower ct decisions, judge who decides case has option to publish it.
3. Cases published in “reporters.” E.g.:

United States v. Lopez, 514 U.S. 111 (1942).







Parties Volume Reporter Page # Yr Decided

4. Unpublished decisions generally can't be cited in arguments.

Shepardizing

Shepard's Citations allows a researcher to check whether case is still valid law, i.e., hasn't been overruled.

* Signal Legend:

-  - Warning: Negative treatment is indicated
-  - Questioned: Validity questioned by citing refs
-  - Caution: Possible negative treatment
-  - Positive treatment is indicated
-  - Citing Refs. With Analysis Available
-  - Citation information available

Precedent from Agency Adjudications

- Examples of agencies that adjudicate cases:
 - Board of Immigration Appeals (DOJ)
 - Social Security Appeals Council (HHS)
 - National Labor Relations Board (DOL)
- Agency may designate decisions as precedent.

3. Secondary Authorities

- Treatises
- Law reviews
- Legal encyclopedias
- Digests
- *American Law Reports*
- Looseleafs
- Restatements

Treatises

- “Treatise” = Comprehensive scholarly analysis of a selected field of law. Usually multiple volumes.
- Examples of well known treatises:
 - *Corbin on Contracts*
 - *McCormick on Evidence*
 - *Prosser on Torts*

Law Reviews (Law Journals)

- Periodicals
- Usually published by law schools
- “Peer review”
- Contain articles by professors & scholars analyzing and discussing legal issues.

- E.g.: Harvard Law Review, California Law Review

Legal Encyclopedias

- “Legal Encyclopedia” = Multi-volume, multi-topic work assembling discussions of the entire body of law.
- Examples of popular legal encyclopedias:
 - *American Jurisprudence 2d*
 - *Corpus Juris Secundum*
 - *Cal. Jur. 3d*


Digests

1. “Headnotes” are summaries found at the top of a case of the points of law covered in the case. By editor, not judge.
2. “Digest” = Work arranging together all the headnotes on similar topics. Used for finding decisions on specific subjects.

Sample Westlaw Headnote

 211 Infants

 211V Torts

 211k61 k. Negligence. Generally, when a minor is charged with common law negligence, his conduct is to be measured by a child's standard of care under which consideration is given to his age, mental capacity, and judgment.

Sample Lexis Headnote

- Immigration Law > Judicial Review > Standards of Review > Abuse of Discretion
- Immigration Law > Judicial Review > Scope of Review

HN2 A court reviews a decision by the Board of Immigration Appeals for an abuse of discretion. The board abuses its discretion when it fails to show that it has properly considered all of the relevant hardship factors or neglects to state its reasons for denying relief.... [More Like This Headnote](#)

American Law Reports

- *A.L.R.* annotation provides analysis on a point of law & abstracts of decisions on the point from all U.S. jurisdictions.
- Updated annually.
- E.g.:
 - “Smoking as a Basis for Reduction of Damages in a Personal Injury Action”
 - “What Constitutes ‘Violent Felony’ For Purpose Of Sentence Enhancement Under Armed Career Criminal Act (18 U.S.C.A. § 924(e)(1))?”

Looseleafs

- “Looseleaf” = Integrated legal research tool focusing on specific subject including statutes, cases, administrative rules and decisions, editorial commentary
- E.g.:
 - BNA’s *International Trade Reporter Decisions*
 - CCH’s *U.S. Tax Cases*
 - *Interpreter Releases* (immigration law)

Restatements

- Summary of an area of common law.
- Tries to pick “best” rule from among states’ common law.
- Includes comments, published by the American Law Institute.
- E.g.: Restatement Second of Torts;
Restatement Second of Contracts