

## 13.7: Statutory vs. Common Law

### Learning Objectives

- Define statutory law
- Define common law

### Statutory Law

Statutory law are laws passed by Congress and represent one of the primary sources of law in the United States. This legislative power was established in the Constitution, which granted Congress the power to pass laws or statutes on any subject not prohibited in that document. The White House website summarizes the composition, powers and process of the legislative branch of government. To excerpt: “Established by Article I of the Constitution, the Legislative Branch consists of the House of Representatives and the Senate, which together form the United States Congress. The Constitution grants Congress the sole authority to enact legislation.”<sup>[1]</sup>

A new statute generally starts as a proposal or “bill.” According to the GovTrack website, Congress considers around 5,000 bills and resolutions annually; only a fraction—approximately 7% or 350—become law.<sup>[2]</sup> For perspective on current bills, see [GovTrack.us](https://www.govtrack.us/), an independent website tracking the status of legislation in the United States Congress. In order to advance, a bill must win a simple majority vote in both the House and Senate. A bill that is approved by Congress is submitted to the President for consideration. At this point, the bill is either signed and becomes a new statute—law—or is vetoed. If the President vetoes the bill, a two-thirds majority vote in both the House and Senate is required to override the veto and pass the bill. If the votes garners that support, the bill becomes law without the President’s signature.

### ✓ Statutory Law In North Carolina



Suppose you are headed over to a friend’s house to watch football on Sunday, and on your way you stop in at the local supermarket to buy some beer and pretzels for the gang. You carry your six-pack and snacks up to the counter to pay, and the clerk tells you that she’s sorry, but she can’t sell you the beer. At first you think it’s because she suspects you’re underage, but before you can show her your ID, she explains that she can’t sell alcohol before noon because (1) it’s Sunday and (2) you are in the State of North Carolina.

Shocked, you think she’s joking until she refers you to the following NC Statute: N.C. General Statute 18B-1004(c) states,

“It shall be unlawful to sell or consume alcoholic beverages on any licensed premises from the time at which sale or consumption must cease on Sunday morning until 12:00 noon on that day.”

No amount of begging or pleading will get you the beer, because the owner of the supermarket knows that if she violates N.C. General Statute 18B-1004(c), the store’s ABC license could be revoked and its alcohol sales ended *permanently*. This is an example of statutory law.

## Common Law

Common law is based on the concept of precedence, which requires judges to decide a case based on prior rulings or, at a minimum, consider the reasoning of prior judges when deciding a case with similar facts. The constraints precedence impose on a judge depend on court hierarchy, case relevance and jurisdiction. As outlined by the Indiana Court System, “When a decision is made by a higher court, the lower courts must follow it. Once a case is decided, it establishes a precedent, or a judicial decision that should be followed when a similar case comes to court. To serve as precedent for a pending case, a prior decision must have almost the same question of law and almost the same facts. If the precedent is from another area, such as another state’s Supreme Court, it can be considered, but it does not have to be followed.” In this way, new decisions can become a legal precedent. A binding precedent is referred to by the Latin phrase *stare decisis* or “let the decision stand.”

The upside of this doctrine of precedence is predictability. Melbourne Law School professor Matthew Harding summarizes the logic of this practice: “The moral value of the doctrine of precedent is in the way it serves the political ideal of the rule of law; according to that ideal, institutions of the state, like courts, should strive to ensure that the law is developed and applied in a consistent and predictable manner, so that citizens may order their affairs with confidence as to their rights and duties.”<sup>[3]</sup>

### ? Practice Questions

<https://assessments.lumenlearning.co...essments/14332>

<https://assessments.lumenlearning.co...essments/14333>

1. "The Legislative Branch." The White House. Accessed June 12, 2019. <https://www.whitehouse.gov/about-the-white-house/the-legislative-branch/>. ↵
2. "Bills and Resolutions." GovTrack.us. Accessed June 12, 2019. <https://www.govtrack.us/congress/bills/>. ↵
3. Harding, Matthew. "The High Court and the Doctrine of Precedent." Opinions on High. July 18, 2018. Accessed June 12, 2019. <https://blogs.unimelb.edu.au/opinionsonhigh/2013/07/18/harding-precedent/>. ↵

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