

1.7: Summary and Exercises

Summary

There are differing conceptions of what law is and of what law should be. Laws and legal systems differ worldwide. The legal system in the United States is founded on the US Constitution, which is itself inspired by natural-law theory and the idea that people have rights that cannot be taken by government but only protected by government. The various functions of the law are done well or poorly depending on which nation-state you look at. Some do very well in terms of keeping order, while others do a better job of allowing civil and political freedoms. Social and political movements within each nation greatly affect the nature and quality of the legal system within that nation.

This chapter has familiarized you with a few of the basic schools of legal thought, such as natural law, positive law, legal realism, and critical legal studies. It has also given you a brief background in common law, including contracts, torts, and criminal law. The differences between civil and criminal cases, substance and procedure, and the various sources of law have also been reviewed. Each source has a different level of authority, starting with constitutions, which are primary and will negate any lower-court laws that are not consistent with its principles and provisions. The basic differences between the common law and civil law (continental, or European) systems of law are also discussed.

Exercises

1. What is the common law? Where do the courts get the authority to interpret it and to change it?
2. After World War II ended in 1945, there was an international tribunal at Nuremberg that prosecuted various officials in Germany's Third Reich who had committed "crimes against humanity." Many of them claim that they were simply "following orders" of Adolf Hitler and his chief lieutenants. What law, if any, have they violated?
3. What does *stare decisis* mean, and why is it so basic to common-law legal tradition?
4. In the following situations, which source of law takes priority, and why?
 1. The state statute conflicts with the common law of that state.
 2. A federal statute conflicts with the US Constitution.
 3. A common-law decision in one state conflicts with the US Constitution.
 4. A federal statute conflicts with a state constitution.

SELF CHECK QUESTIONS

1. The source of law that is foundational in the US legal system is
 1. the common law
 2. statutory law
 3. constitutional law
 4. administrative law
2. "Law is the command of a sovereign" represents what school of legal thought?
 1. civil law
 2. constitutional law
 3. natural law
 4. ecofeminist law
 5. positive law
3. Which of the following kinds of law are most often found in state law rather than federal law?
 1. torts and contracts
 2. bankruptcy
 3. maritime law
 4. international law
4. Where was natural law discovered?
 1. in nature
 2. in constitutions and statutes
 3. in the exercise of human reason
 4. in the *Wall Street Journal*

5. Wolfe is a state court judge in California. In the case of *Riddick v. Clouse*, which involves a contract dispute, Wolfe must follow precedent. She establishes a logical relationship between the Riddick case and a case decided by the California Supreme Court, *Zhu v. Patel Enterprises, Inc.* She compares the facts of Riddick to the facts in Zhu and to the extent the facts are similar, applies the same rule to reach her decision. This is
1. deductive reasoning
 2. faulty reasoning
 3. linear reasoning
 4. reasoning by analogy
6. Moore is a state court judge in Colorado. In the case of *Cassidy v. Seawell*, also a contract dispute, there is no Colorado Supreme Court or court of appeals decision that sets forth a rule that could be applied. However, the California case of *Zhu v. Patel Enterprises, Inc.* is “very close” on the facts and sets forth a rule of law that could be applied to the Cassidy case. What process must Moore follow in considering whether to use the Zhu case as precedent?
1. Moore is free to decide the case any way he wants, but he may not look at decisions and reasons in similar cases from other states.
 2. Moore must wait for the Colorado legislature and the governor to pass a law that addresses the issues raised in the Cassidy case.
 3. Moore must follow the California case if that is the best precedent.
 4. Moore may follow the California case if he believes that it offers the best reasoning for a similar case.

Answers

1. c
2. e
3. a
4. c
5. d
6. d

This page titled [1.7: Summary and Exercises](#) is shared under a [CC BY-NC-SA](#) license and was authored, remixed, and/or curated by [Anonymous](#).

- [1.7: Summary and Exercises](#) by Anonymous is licensed [CC BY-NC-SA 3.0](#). Original source: <https://courses.lumenlearning.com/waymakerintromarketingxmasterfall2016>.