

## 3.3: Part II- Sources of Law

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### INTRODUCTION

There are numerous sources of law that we as citizens need to understand and be aware of. All these various sources of law have an impact on our daily lives. Under our legal system, the following are the sources of law.

- United States Constitution
- New York Constitution
- Statutes (Federal, State, and Local)
- Administrative Rules (Federal and State)
- Common Law (Which includes case law.)

### WHAT IS THE UNITED STATES CONSTITUTION?

The U.S. Constitution is a written body of laws that was ratified in 1788. It includes just 27 amendments since its inception over 200 years ago. It is the foundation for our federal government and all federal laws. It is written broadly and often needs interpretation by our federal courts to determine what it actually says and means. The US Constitution has had, and will continue to have, a huge impact on civil and criminal law, and society in general.

### WHAT IS THE NEW YORK STATE CONSTITUTION?

The first New York Constitution was adopted by the Convention of Representatives of the State of New York in 1777. This was eleven years before the United States Constitution was ratified. The second New York State Constitution was adopted in 1821, a third in 1846, the fourth in 1894, and the fifth and current New York Constitution in 1938.

It is important to understand that the while there are many similarities between the United States Constitution and the New York State Constitution, there are important distinctions. First, the federal Constitution establishes the federal government structure. It also establishes the rights we have as United States citizens. The federal Constitution establishes the low bar, or minimum rights, we have as citizens that no state law or constitution can go below.

The New York Constitution establishes the New York State government. It also establishes the rights we have as New York State citizens that may be greater than those established under the federal Constitution, but not less. In other words, states can give you equal or more rights than the federal government, just not less. New York frequently offers its citizens more rights

For example:

New York's Constitution guarantees:

- The right of workers to organize and bargain collectively.
- The right of workers to receive workers' compensation.
- The right to a free public education.
- Criminal suspects have more rights regarding defense counsel.
- Criminal suspects have expanded Miranda rights.
- Criminal suspects have more protections regarding search and seizure.

### WHAT ARE STATUTES?

Statutes are written laws created by an elected legislature and signed into law by the respective executive. If the US Congress enacts legislation, we call it a federal statute. This means the House of Representatives and the U.S. Senate have agreed on legislation that was signed into law by the President of the United States.

If the New York State legislature enacts legislation we called it a New York statute. This means that the Assembly (which is similar to the House of Representatives) and the New York Senate (which is similar to the U.S. Senate) have agreed on legislation that was signed by the New York Governor (which is similar to the President).

The authority for Congress' power to pass laws is written in Article II of the federal Constitution. New York State's Constitution has a similar provision applying to the New York Senate and Assembly in Article III of the New York Constitution. Examples of federal laws include:

- Title VII of the Civil Rights Act of 1964

- The Affordable Care Act
- Tax Cut and Jobs Act of 2017
- The USA Patriot Act

## WHAT ARE LOCAL ORDINANCES AND CODES?

Local laws passed by city, town, and village boards are called ordinances or codes. These laws impact our everyday life because they affect the place we usually spend the most time, where we live. These local laws are usually put together for particular purposes such as zoning and housing. Examples of local ordinances and codes include:

- Street Parking
- Noise Restrictions
- Building Permits
- Leash Laws and Pet Licensing

## WHAT IS ADMINISTRATIVE LAW?

Some statutes may require more specific rules on how they will be administered. These rules are written by the administrative agencies that enforce these statutes. For example, the NYS Department of Environmental Conservation, also known as the DEC, writes the rules, administers, and enforces the New York State Environmental Conservation Law.

At a federal level, the Environmental Protection Agency, also known as the EPA, writes the rules, administers, and enforces federal environmental laws like the Clean Air Act. The Internal Revenue Service writes the rules, administers, and enforces the Tax Cut and Jobs Act of 2017.

The various administrative agencies are under the control of the executive branch, which means the President at the federal level and the Governor at the state level.

## WHAT IS COMMON LAW?

Common law is also known as judicial precedent, or case law. Common is derived from the period after the Norman Conquest of 1066 in England, where the law was developed by judges and their decisions, as opposed to legislatures and their statutes. That tradition was carried over to our courts and laws by our founding fathers. It is therefore that body of law that is derived from decisions of courts which creates judicial precedent. In situations and cases where parties disagree on what the law is, courts will look to past court decisions on a same or similar matter and use that decision as precedent in making its decision.

In some situations, precedent is binding, while in others it may only be persuasive depending on the court making the precedent decision. For example, if an NY Appellate Court in the 1<sup>st</sup> Department makes a decision and a case in the 4<sup>th</sup> Department arises that is similar, the 1<sup>st</sup> Department's decision is persuasive precedent, but not binding on the 4<sup>th</sup> Department judges. On the other hand, if the New York Court of Appeals makes a decision on a same or similar issue, its decision is binding precedent on all courts in NYS.

The difference is that the 1<sup>st</sup> and 4<sup>th</sup> Department courts are equal in stature, while the Court of Appeals is the highest court in the state. Using this line of logic, all trial courts in the 4<sup>th</sup> Department will follow their department's precedent, while those trial courts in the 1<sup>st</sup> Department are bound to follow their 1<sup>st</sup> Department's rulings.

Judicial precedent makes the law predictable and more likely to be fair. If you can depend on the court that you are before to interpret the law the same as that court or previous courts have in the past, that use of judicial precedent makes it much more likely that your pursuit of justice will be fair. It also allows those who give legal advice to do so with more confidence and credibility, which in turn gives you the ability to tailor your personal or business actions to fit within the law.

Common law is an extremely important source of law. Without judicial precedent, the law and life as we know it in the United States would most likely be much different.

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