The Law

[Editor's Note – *This section is not intended to give the reader the tools to fully understand the scope and nature of the laws under which the states and the federal government operate. That goal takes years to achieve and I doubt any single resource could make a significant contribution to that end. This section is intended as a "wake-up call" concerning the idiosyncrasies and complexities of the law so that when you come in contact with "law", you are not immediately overwhelmed, and that you have some understanding of the issues you may be facing.*]

How would you define, "law"? Most people have never really stopped to consider this question. For most Americans "law" is something the police officer uses to make an arrest or issue a traffic ticket. To others it is a bunch of confusing books that lawyers use to bamboozle you out of what is rightfully yours. If you hold these opinions, you are right – but you've barely scratched the surface!

"The Law" is any system (or part of that system) that creates or recognizes rights, duties, or obligations, and provides a forum through which to seek a remedy in the event that any of those rights, duties, or obligations are breached.

Although one would ordinarily think that in the course of history there have been many different forms of law, one would likely be surprised, if not downright shocked, to learn how many different forms of "law" exist in America at this very moment. Here are <u>but a few</u> of the styles of law that you may be called to operate within if you find yourself head-to-head with the legal system:

Common Law	Constitutional Law	Corporate Law
Equity Law	Treaty Law	Contract Law
Admiralty/Maritime	Federal Law	Tax Law
Administrative Law	State Law	Civil Law
Private Law	Municipal Law	Criminal Law
Public Law	Probate Law	Labor Law
International Law	Family Law	Bankruptcy Law

As you can see, things can get challenging rather quickly. Each form of law has its own special doctrines and standards. Many times one form of law "nests" within another. Unless one understands the idiosyncrasies of the type of law being used or applied in a certain case, one will often feel railroaded toward an unpleasant outcome. Although this website cannot possibly educate its visitors in every area of the law, it is our goal to make you aware of the broad concepts that govern the legal trade. After that, it is you who must do the work if you wish to better understand the Byzantine maze that is our legal system.

Fundamental Forms of American Law

In America, our laws are comprised of several fundamental levels. The first is **Constitutional law**. No other law, of any form, is valid unless it comports itself with the applicable Constitution. A law that cannot find its basis in the applicable Constitution is an unconstitutional law, and thus null and void.

At the state level, the next operative form of law is the **common law**. The government has done everything within its power to wipe common-law from the face of America, but the common law was, is, and always will be, the proper form of law for the *de jure* state Citizen. Some modern expositors have stated that the common law is "harsh". We might observe that it is unforgiving and inflexible when a person transgresses the rights of others. We are not convinced that this makes the common-law harsh, so much as it does strict.

Next in significance is **Equity** law. Equity law covers a broad scope of legal issues and is used extensively in today's courts. Equity is distinct from common-law.

> **Equity** – "…a system of jurisprudence collateral to, and in some respects independent of, 'law'".
> *Black's Law Dictionary*, 6th Ed.

> **Equity Jurisdiction** – "That portion of remedial justice which is exclusively administrated by courts of equity as distinguished from courts of common law".
> *Black's Law Dictionary*, 6th Ed.

And here is a fascinating definition, from Bouvier's Law Dictionary [1856]:

> **Equity, Court of** - A court of equity is one which administers justice, where there are no legal rights…

The most succinct (although not exhaustive) definition of "Equity" would be this:

> "The term 'equity' denotes the spirit and habit of fairness, justness, and right dealing which would regulate the intercourse of men with men"
> *Gilles v. Dept. of Human Resources Development*, 11 Cal.3d 313

It is important to note that whenever the word "fair" is involved, it means that a third party will decide what is fair for you. Despite the lofty ideals of "equity", what is thought to be "fair" in the mind of one person, may often times be thought completely unfair in the mind of another. If the common-law is competent to provide a remedy, one need not acquiesce to the jurisdiction of a court of equity.

Next would come **statutory law**. This is the form of law that most Americans know as "the law", although it is in reality a form of law with ***very limited power***. Statutory law is comprised solely of the acts of the legislature that have become law and are currently in force. Most of these legislative acts (statutes) have been codified to one "title" or another within a set of "codes". There are a couple of significant points to remember. First, most codes are not law, but are merely indicative of the law; the law is the actual statute that was passed by the legislature. It is conceivable that a statute could have been repealed, yet the code section still exist. If you are in a legal fight, always check the statute behind the code section. Second, keep in mind that not every statute passed into law is codified; some statutes simply stand-alone and remain non-codified, hence the name "statute-at-large".

And here's the real kicker concerning statutory law:

> ***A statute is an enactment by a legislative body bringing into existence its creatures (e.g. corporations) and setting forth the privileges, immunities and responsibilities of each creation. A statute applies only to the "rightful subject of legislation" (i.e. the creatures created by statutory fiat). The "rightful subjects of legislation" does not mean The People, unless the statute specifically states its intent to apply to private Citizens***.

Of course one should remember that one can create an obligation to a law that would not otherwise bind him by involving himself in various regulated activities or by entering into an agreement with the government (such as acquiring a business license, resale permit, etc.)

Other Important Distinctions

Classifications

Every law that defines an offense falls into one of two categories. The first category is *mala in se*, and the second is *mala prohibita.*

A *mala in se* offense is a crime that is, by the laws of nature and God, a true crime. Examples of this would be, murder, rape, robbery, fraud, etc.

A *mala prohibita* offense is one that would not be an offense were it not for the legislature passing a law that makes a particular act a punishable offense. Examples of this would be, possessing or smoking marijuana, buying and selling more than 7 cars a year without a dealer's license (in California), not obeying road signs and speed limits, etc.

Application

Various laws also only apply to certain "groups" of persons and not persons outside that group or groups. An example if this would be laws concerning "licensed contractors". The state has no blanket authority to require every person who, for profit, plumbs, or installs a lighting fixture, or builds a patio deck, to apply for and acquire a license.

Here is a list of the persons who must have a contractor's license:

1) Any person conducting certain defined types of construction on State property.
2) Any person who has entered into a contract with the State to perform certain defined types of construction.
3) Any person who has acquired a contractor's license and has not properly cancelled it.
4) Any foreign corporation doing business in your State.

Nature

All legal actions fall only within one of two broad categories; **civil** or **criminal**.

> California Code of Civil Procedure, Section 24:
>
> Actions are of two kinds: 1. Civil; and, 2. Criminal.

The Penal Code of each state is the code from which crimes are prosecuted. In California, the Code of Civil Procedures states:

> Section 31 - The Penal Code defines and provides for the prosecution of a criminal action.

Please note that there is no criminal action that is prosecuted from any other code.

Civil actions arise out from either an **obligation**, or an **injury**. Here is how the California Code of Civil Procedures defined those two terms:

> Section 26 - An obligation is a legal duty, by which one person is bound to do or not to do a certain thing, and arises from:
> One--Contract; or,
> Two--Operation of law.

An "injury" is defined thusly:

Section 27 - An injury is of two kinds:
1. To the person; and,
2. To property.

An injury is fairly self-evident, as is an obligation connected with a contract. However, the obligation that arises from an "operation of law" may seem less clear.

> **Operation of law** – This term expresses the manner in which rights, and sometimes liabilities, devolve upon a person by the application to the particular transaction of the established rule of law, without the act or co-operation of the party himself.
> *Black's Law Dictionary, 6th Ed.*

In other words, an operation of law is simply some event or circumstance that lays a right or liability upon a person through no action of his own, and that right or liability may justify a civil court action.

[Editor's Note: *We frequently use California law because we are most familiar with it. However the concepts discussed are general in nature, and apply in your state as well as California.*]

How Federal Law Differs from State Law

Federal law only defines *mala in se* crimes that occur within the "federal places". [See the federal territorial jurisdiction section of this site for more details on geographic jurisdiction of the US.] In other words, federal law cannot define "murder", as such term may be used within, say...Arizona. That's because the federal government has no general police powers within the states of the Union. The federal government may only define a *mala in se* crime for use within places that are under the exclusive legislative jurisdiction of Congress. Compared to a state penal code, there are relatively few *mala in se* crimes defined with the United State's equivalent of a penal code [Title 18 of the United States Code]. Most "crimes" that are contained in 18 USC are actually regulatory in nature [*mala prohibita*].

When dealing with federal law, the trick is to determine (through research) what is the exact nature and authority of the law being examined. It will fall into one of three categories:

a) A true criminal statute [*mala in se*] that applies to persons and property located within the geographic United States (i.e. Washington DC, other federal lands, US possessions and territories).

b) A regulatory law [*mala prohibita*] that applies to persons and property located within the geographic United States (i.e. Washington DC, other federal lands, US possessions and territories), and/or to those who have entered into a licensed activity under the authority of the United States.
c) A regulatory law [*mala prohibita*] that applies to persons and property located within the states of the Union under the enumerated powers of the federal government, which are expressly defined in the US Constitution.

Federal Admiralty Jurisdiction

The federal government frequently moves in Admiralty Jurisdiction. The term used by the government more recently is "Special Maritime Jurisdiction". They are the same animal.

Admiralty jurisdiction deals primarily (or maybe we should say "originally") with ships and occurrences upon the water. This special jurisdiction was a result of the issues of international shipping, questions of ownership over ships and their cargo, "prize" issues [defeating a ship in battle at sea], piracy, controversies over shipped goods when the owners are not in America, salvage of vessels and goods, and various Customs issues.

When our nation was first founded, Admiralty jurisdiction was restricted by the "rule of tides". Under this rule, Admiralty jurisdiction could only be invoked if the circumstance took place on water (or at dock) subject to the natural forces of the tides. However, over time that yardstick was throw aside and Admiralty's reach was expanded (by court decisions) to embrace all actions previously cognizable under Admiralty, but which took place on any navigable waterway under the jurisdiction of the United States. In other words, if it's a navigable waterway that is in the United States (federal territory) or if the waterway is used for interstate commerce, certain controversies that arise in such circumstances can be heard in Admiralty jurisdiction.

It should be noted that the states of the Union also have Admiralty jurisdiction when dealing with issues of intrastate commerce, or when a state is acting as an agent (under agreement with the US Secretary of Transportation) for the federal government in the enforcement of interstate commerce regulations associated with navigable waterways.

It is widely theorized by tax law researchers that IRS seizures are all made under Admiralty jurisdiction derived form an alleged violation of a Custom's regulation. The government is currently disputing this argument by stating that federal court actions involving seizure are commenced under the Federal Code of Civil Procedure. However, many (but not all) procedural aspects of Admiralty actions are controlled by the Federal Code of Civil Procedure.

Civil Codes with Criminal Penalties?

Having discussed the difference between civil actions and criminal actions, one might wonder why some offenses contained in civil [non-penal] codes can result in consequences usually thought to be exclusively for criminal acts (such as going to jail).

Here in California there are two doctrines that seem to be in conflict at first glance. One item of controlling case law states that if you are engaged in an activity that is cognizable under the authority of one the various civil codes, these codes can include penalties that are, in their nature, criminal penalties. While the court was not specific as to when such "criminal penalties" attach to a civil offense, we can only conclude that they are limited to cases that are regulated through a license. It is only in such a circumstance that the defendant made a prior agreement to abide by the conditions of the code and is therefore presumed to know that criminal penalties are a part of the "agreement". In short, the court appears to be saying, "If you don't like water, stay out of the pool."

In the second case, the a California appeals court struck down the jail-time portion of a sentence handed down to a former Los Angeles County Supervisor who'd been convicted of the misuse of campaign funds. In its decision, the court stated that the offense was civil in nature and therefore the maximum sentence that could be imposed was a fine, not jail time. This would appear to be a regulatory violation that was not supported by any form of "license" (i.e. prior agreement) and therefore the defendant had never "agreed" to allow criminal penalties to be applied to him for a civil offense.

The Amazing Disappearing Law

Laws do not actually disappear, but their language is altered over time to obscure the true purpose and intent of the law. One would think that once a law is passed it would not need to be altered unless some flaw or shortcoming becomes apparent, or some circumstance changes that requires the statute to keep up with the times. I think the average citizen would be surprised to learn that statutes are amended to alter their language for no ***apparent*** reason. We stress the word "apparent" because the legislative draftsmen who propose these changes know exactly what their purpose is.

In the following fictitious example, we are going to provide you with the year that the statute was passed as well as the text. I will then give you the year of each amendment of the statute that changes the prior language. After viewing the progression of the changes, look again at the original version and take note of all the clarity that has been lost. You will see how the changes have rendered it

impossible for a person to know the original intent of the law. This practice is more common than you would believe.

> **1959** – It shall be illegal for any foreign corporation to produce widgets except between the hours of 8:00 a.m. and 5 p.m., Monday through Friday. Widgets may not be sold without having first obtained a license in accordance with Business and Professions Code section 12345.
>
> **1970** - It shall be illegal for any corporation to produce widgets except between the hours of 8:00 a.m. and 5 p.m., Monday through Friday. Widgets may not be sold without having first obtained a license in accordance with Business and Professions Code section 12345.
>
> **1973** - No corporation shall produce or sell widgets except between the hours of 8:00 a.m. and 5 p.m., Monday through Friday. Widgets may not be sold without having first obtained a license in accordance with Business and Professions Code section 12345.
>
> **1979** - No person shall produce or sell widgets except during the times allowed by law. Widgets may not be produced or sold without having first obtained a license in accordance with Business and Professions Code section 12345.
>
> **1990** - No person shall produce or sell widgets except in accordance with regulations pertaining to this section. Widgets may not be produced or sold without having first obtained a license in accordance with Business and Professions Code section 12345.
>
> **1994** - No person shall produce or sell widgets without first having obtained a license.

What is important for the reader to know is that the intended meaning and application of the law, as indicated by its original language, cannot be altered by amendment! The 1994 versions still means the same exact thing as the 1959 version. If there are any questions as to the proper meaning and application of a law, the prudent person will seek out the earliest possible version of the statute in order to confirm the issues.

The "Other" Law

There is a form of "law" that is not really law at all. It's commonly referred to as "case law" (also known as "decisional law" or "precedent"). Case law is the previous ruling on a point of law by a court of competent jurisdiction. Case law, when used properly, was/is intended to provide consistency concerning points of law over time.

In theory, this allows a person to go into court on particular subject in the year 2005 and feel confident that the court will make the same ruling on a particular point of law that a neighboring court made in 2000. On the surface, who can complain?!

Unfortunately, that leaves the meaning and/or application of specific points of law up to a just about every Tom, Dick, and Harry who wears a black robe. We believe that today most practicing attorneys will admit that case law has become a quagmire of conflicting opinions that all to often lead to more confusion, than clarity.

There are two institutionalized problems with case law that need correction before this disaster called "case law" can be rectified; they are integrally connected.

The first problem is a general unwillingness on the part of lawyers to challenge existing case law. There are two arguments that can be used to challenge case law:

1) Aver that the circumstances that led to the ruling on a point of law in the previous case are not substantially the same as are at issue in the current case and therefore the ruling on the point of law in the previous case is not controlling in the current case.
2) Aver that the circumstances that led to the ruling on a point of law in the previous case are the same as in the current case, but that the previous court simply ruled in error concerning the issue of law in question.
3) Show that what has been passing for case law is actually nothing more than *obiter dictum*.

Stated plainly, most lawyers are just too lazy tackle option number one. This sort of argument takes time and effort to put forth and is rarely seen except in high-dollar corporate legal battles. In most courtrooms case law is never challenged – even when it's not terribly applicable.

Option 2 is basically dead on arrival. Lawyers will almost never aver to one court that the decision of a previous court is just flat out wrong. Even on the rare occassions that an attorney is motivated enough to make the argument, the court is virtually never willing to overturn a fellow judge's ruing on a point of law. We get the impression that like the aristocracy of old, today's judges consider it impolite or ungentlemanly to publicly declare another learned and honorable judge to be wrong.

Option 3 would require an attorney to actually read the court's decision and sometimes all the briefs, motions, and others filings from the very beginning of the case. Reading previously decided cases is very time-consuming and at times exceedingly boring. Neither of these are the kind of things with which attorneys like to involve themselves. For most attorneys that kind of arduous effort ended on the day they graduated law school.

The second significant problem with case law is that while many judges are willing to follow it blindly, other judges seem unwilling to follow the precedent of their state Supreme Courts or the decisions of the US Supreme Court, even when the issue before the court is well settled by the higher courts. While the motives of such judges may be speculated upon by layperson and lawyer alike, the solution is cheered by the public and dreaded by the BAR associations. Judges who disregard case law that is clearly and correctly applicable to the matter before them should be removed from the bench by a panel of Citizens, their pensions should be forfeit upon removal, and judgments should be issued against them for any injury done to their victims.

The Language of Law

One of the greatest stumbling blocks for the American public in understanding the laws their representatives enact is that laws use words in a different manner than we do in common speech.

There are two kinds of language that are primarily used in law – one is "words" (just as we use in common speech) and the other is "terms" (which can be substantially different than we use in common speech).

"Words" are just that – words. They are presumed to be used in their ordinary manner and they are subject to the "plain meaning rule" when interpreting a statute. Their meaning must be sought through the common English dictionaries of the era in which the statute was written. In the absence of any clear contrary intent by the legislature, the meaning found in these dictionaries is the sole meaning that must be given to the word.

"Terms" are another matter. Terms appear no different, to the layperson, than words. The difference is that terms are not subject to the "plain meaning rule" because the legislature has provided its ***own*** definition for the term being used. Where the legislature has provided its own definition, the ordinary English dictionary must be thrown out the window; the definition given to the term by the legislature controls the meaning completely.

The meanings of terms can be identified by seeking out the "definitions" section applicable the text that you are reading. Unfortunately, this may not always be as straight forward a proposition as one might imagine.

Most codes provide a section that gives definitions that are generally applicable throughout the entire code, however any of the definitions given for the entire code are subject to be redefined in any given subtitle, chapter, section, subsection, or clause. Any time a term is redefined for a specific subtitle, chapter, section, subsection, or clause, that redefinition of the term takes precedent (within that subtitle, chapter, section, subsection, or clause) over the general definition provided for the entire code. Of course, to make matters more confusing, any time a term is redefined for use in a subtitle, chapter, section, subsection, or clause, it can be redefined again and again as you move from subtitle to chapter; chapter to chapter; chapter to section; section to section; section to clause, etc. In other words, you always have to be on your toes and make sure you know the definitions that apply to the exact text your reading!

Here is an example. 26 USC 7701 contains definitions that applicable for the entire Internal Revenue Code. Section 7701(a)(20) defined "**employee**":

> For the purpose of applying the provisions of section 79 with respect to group-term life insurance purchased for employees, for the purpose of applying the provisions of sections 104, 105, and 106 with respect to accident and health insurance or accident and health plans, and for the purpose of applying the provisions of subtitle A with respect to contributions to or under a stock bonus, pension, profit-sharing, or annuity plan, and with respect to distributions under such a plan, or by a trust forming part of such a plan, and for purposes of applying section 125 with respect to cafeteria plans, the term "employee" shall include a full-time life insurance salesman who is considered an employee for the purpose of chapter 21, or in the case of services performed before January 1, 1951, who would be considered an employee if his services were performed during 1951.

The term is redefined for use in chapter 24 of the Code: (26 USC 3401(c))

> For purposes of this chapter, the term "**employee**" includes an officer, employee, or elected official of the United States, a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term "employee" also includes an officer of a corporation.

As you can see the terms are defined very differently. The title-wide definition addresses insurance salesmen, while the definition for chapter 24 addresses only government workers under the direct or indirect authority of the federal government. [The corporation that is mentioned is a corporation wholly owned by the federal government.]

Words of Art

Although "Words of Art" are often placed (by the layperson) in the same category as "terms", they are not the same thing. Words of Art are words or phrases that are particular to specific technologies, sciences, arts, professions, etc., and generally do not have the same meaning, or any meaning at all, outside their own field. One example of this is the medical word, "orthopod". The word, "orthopod" is generally used within the medical community to indicate a person who has surgical training and experience in arthroscopy. Outside the medical field, "orthopod" has no meaning whatsoever. While "terms" are often used by politicians and lawyers to mask the true intentions or application of legislation from the general public (especially in tax law), Words of Art are a proper and necessary parts of effective communication in the legal arena.

Does the Law Work?

At this juncture we would like to warn the uninitiated reader that politicians, lawyers, government employees and officers, and judges, do not really care what the law says. Read that sentence again and then burn it into your memory; it will save you a lot of angry days and sleepless nights.

There is a vast difference between what the law says and "how the system works". Here is something else for you to burn into your memory – the system has been hijacked from **The People** and it now functions for four primary purposes:

1) Government control of persons and property.
2) The receipt of revenue, either by lawful action or extortionate conduct.
3) The protection of the system that provides for points 1 and 2.
4) The protection of persons who facilitate points 1, 2, and 3.

If you are one of the uninitiated, the statement made above may seem somewhat reactionary to you. However, all one need do to learn that these statements are true is to stand your ground when the government accosts you and they are legally in the wrong. If you are a person of integrity and good faith, you will expect your government to sit down with you, read the law, and cease their unlawful actions against you. What you will not be prepared for is the attack that will be made upon you by your government in retaliation for your audacity! On the other hand, if your government is not accosting you, but you notice that it is acting in a manner that is contrary to the written law, if you bring that fact to the government's attention, the government will fall completely silent and never respond (with anything substantive) to your comments, observations, or requests for correction.

> "***The evils of tyranny are rarely seen but by him who resists it***."
> -- John Jay, Castilian Days II, 1872

The government generally uses the law as an offensive tool to compel the population to comply with its edicts. In most cases the government could care less whether it is acting lawfully, or whether it is even applying the law to the intended persons or property. The government only cares that there is a superficial appearance of legality. Americans can use the law as either an offensive tool or a defensive tool depending on the circumstance and your preference.

Lawyers

Many people despise lawyers. We suspect that much of that is due to various realities of the legal trade and not because the men and women who become lawyers are inherently bad or evil. However, nearly all lawyers have one fatal flaw that damages the law, the truth, your rights, and the very fabric of our nation. The flaw is their unwillingness to argue the law. That may sound odd, but it is true.

For the most part, lawyers operate within the courts. Those who do not function within the courts, usually function within the corporate environment. Both the courts, and most corporations, operate within "the system". One might hope that "the system" means our system of laws. Unfortunately, "law" takes a very distant backseat to politics and monetary objectives. Sadly, in the America of the new millennium, "the system" is whatever government bureaucrats, politicians and money-powers say it is. Lawyers understand this, and with rare exception, are unwilling to buck "the system". If we have one direct criticism of lawyers, it is that the majority of them are moral cowards, not caring what is truly right, nor being willing to fight for it.

Let us give you a common example: We will speak to an attorney about something of a general nature. During the discussion, we will state a rule of statutory construction and ask the attorney to agree. He/She will agree that the rule has been stated correctly, including its proper application. We will then lead that attorney to a more controversial area, such as tax law, and apply the rule that was just discussed to the exact same circumstance of construction. Once we point out how the rule must be applied and make note of the consequences thereof, the attorney either falls silent or becomes defensive and angry.

We do not wish to leave you with the view that all attorneys are rotten or worthless. Like all professionals, they may serve a purpose at times. However, we encourage you to gain as much legal expertise as possible on your own through reading and study, and we urge you to not blindly place your faith, you future, your rights, or your possessions, in the hands of lawyers because we know that they will generally not serve you well or faithfully.

[Editor's Note – *This section is not intended to operate independently. A more comprehensive picture can be seen if you also read the follow section within this site:*

State Codes; US territorial Authority; Federal Subject-matter Jurisdiction; Federal Courts; State Courts, Administrative Law; United States Code; Code of Federal Regulations; Income Tax.]