THE ANGLO-AMERICAN LEGAL SYSTEM

CHAPTER 1

After reading this chapter, you will

• understand that law comes from four basic sources—constitutions, statutes, administrative regulations, and judicial decisions;
• know that no one branch of government in the US legal system is meant to be more powerful than the others;
• be able to find judicial opinions in the reporter system;
• understand the importance of stare decisis and due process; and
• be familiar with basic aspects of legal procedure.

Some History

Before we discuss Anglo-American law, let’s discuss some of the history of law. Nearly 3,800 years ago, King Hammurabi of Babylon inscribed a set of laws on an eight-foot-tall black stone monument. Lost for centuries but rediscovered in 1901, the Code of Hammurabi is the oldest known example of written laws for the governance of a society (see Exhibit 1.1).

The Code is known for its “eye for an eye, tooth for a tooth” philosophy (lex talionis—“the law of retaliation”). Adultery and theft were punishable by death. A slave who disobeyed his master lost an ear, which was an ancient symbol of obedience. If a surgeon caused injury, his hand was cut off; this provision may have been the first version of malpractice law known to mankind. In addition to these barbaric standards, the Code contained rules for everyday social and commercial affairs—sale and lease of property, maintenance of lands, commercial transactions (contracts, credit, debt, and banking), marriage and divorce, estates and inheritance, and criminal procedure. Given Hammurabi’s reputation as a lawgiver, his depiction can be found in several US government buildings, including the US Capitol and the Supreme Court.

Fast forward to the fourth century BCE and we find Aristotle, the father of natural law—the idea that there exists a body of moral principles common to all persons and recognizable by reason alone. Natural law is distinguished from positive law—the formal legal enactments of a particular society.¹
Centuries later, Saint Thomas Aquinas distinguished natural law from eternal, divine, and man-made law in his *Summa Theologica* (circa 1274). A few other legal philosophies (and representative adherents) over the centuries have included

- law as a social contract (Thomas Hobbes, *Leviathan*, 1651),
- analytic jurisprudence (David Hume, *A Treatise of Human Nature*, 1739),
- utilitarianism (Jeremy Bentham and John Stuart Mill, nineteenth century),
- legal positivism (John Austin, nineteenth century),
- legal realism (Oliver Wendell Holmes Jr., Roscoe Pound, et al., twentieth century), and
- libertarianism (John Nozick and Ron Paul, late twentieth century).

The point here is not to make legal philosophers out of you but to demonstrate that various systems of thought have influenced the US legal system over the centuries.

**Anglo-American Law**

In Charles Dickens’s *Oliver Twist*, Mr. Bumble has been proven an accessory to his wife’s attempt to deprive poor Oliver of a rightful inheritance. Bumble asserts that if the law holds him responsible, “the law is an ass—an idiot.” This argument is ineffective, however. Bumble and his wife lose their jobs and become inmates of the very workhouse where Oliver’s mother died while giving birth to him. Ah! The law is not so asinine after all. It has impressed and fascinated authors and scholars for millennia, and the US legal system has done the same for two and a half centuries.

One can study law simply by reading statutes and judicial decisions, but for a full understanding one must also read history, sociology, public policy, politics, economics, ethics, religion, and other relevant fields. Because the roots of Anglo-American law can be traced to as far back as the Norman Conquest of England in 1066, some view the richness of the US legal tradition with a respect that approaches reverence (see Legal Brief).

Stated in the simplest and arguably most important way, the purpose of our legal system is to provide an alternative to personal revenge as a
method of resolving disputes. Considering the size and complexity of our nation, the litigious temperament of our people, and the wide range of possible disputes, our legal system is remarkably successful in achieving its purpose. It has its shortcomings, to be sure, but at least it stands as a bulwark against self-help and blood feuds.

The law permeates today’s healthcare industry. The US medical system is perhaps the most heavily regulated enterprise in the world. It is subject not only to the principles that affect all businesses (everything from antitrust to zoning) but also to myriad regulations peculiar to healthcare. For these reasons, students of healthcare administration need to become familiar with the law and legal system. Almost every decision made and every action taken by healthcare administrators have legal implications, and all such decisions and actions are explicitly or implicitly based on some legal standard. Furthermore, students must understand basic legal principles well enough to recognize when professional legal advice is needed. The main purpose of this book is to help you and your organization stay out of trouble.

This chapter outlines general concepts essential to any study of law. It emphasizes three areas:

1. The sources of law
2. The workings of the court system
3. Basic legal procedure

The Definition of Law

In its simplest and broadest sense, law is a system of principles and rules devised by organized society or groups within society to set norms for human conduct. Societies and groups must have standards of behavior and means to enforce those standards; otherwise, they devolve into vigilantism. The purpose of law, therefore, is to prevent conflict among individuals and between government and its subjects. When conflicts occur, legal institutions and doctrines supply the means of resolving the disputes.
Because law is concerned with human behavior, it is not an exact science. Indeed, “it depends” is an instructor’s most frequent answer to students’ questions. This response is frustrating for both the students and the instructor, but it is honest. The law provides only general guidance; it is not an exact blueprint for living. Its application varies according to the circumstances of the case. However, this inherent ambiguity is a great strength; its adaptability fosters creativity. Legal rigidity would inhibit initiative, stunt the growth of social institutions, and ultimately yield decay.

Viewed in proper light, then, law—in its broadest sense—is a landscape painting that captures the beliefs of society in a given location at a certain point in time. But it is not static; it is a work in progress, a constantly changing piece of art—a hologram, perhaps—that moves with society. Most often it moves at a glacier’s pace, slowly and quietly, the land shifting beneath it. At other times, the legal geography changes seismically, as was the case in 2010 with the passage of health reform: a legislative temblor known as the Affordable Care Act (ACA). Aftershocks from the ACA will be felt for years, and until the dust settles softly in the courtrooms of the land or is stirred up again in Congress, we will not know how much the act has altered the legal topography.

Types and Sources of Law

Law can be classified in various ways. One of the most common ways is to distinguish between public law and private law. Public law concerns the government and its relations with individuals and businesses. Private law refers to the rules and principles that define and regulate rights and duties among persons. These categories overlap, but they are useful in illustrating Anglo-American legal doctrine.

Private law comprises the law of contracts, property, and tort, all of which usually concern relationships between private parties. It also includes, for example, such social contracts as canon law in the Catholic Church and the regulations of a homeowners’ association. Public law, on the other hand, regulates and enforces rights in which the government has an interest (e.g., labor relations, taxation, antitrust, environmental regulation, and criminal prosecution). The principal sources of public law are

- written constitutions (both state and federal),
- statutory enactments by a legislative body (federal, state, or local),
- administrative rules and regulations, and
- judicial decisions.
Constitutions

The US Constitution is aptly called the “supreme law of the land” because it sets standards against which all other laws are judged. Other sources of law must be consistent with the Constitution.

The Constitution is a grant of power from the states to the federal government (see Legal Brief). All powers not granted to the federal government in the Constitution are reserved by the individual states. This grant of power to the federal government is both express and implied. For example, the Constitution expressly authorizes the US Congress to levy and collect taxes, borrow and coin money, declare war, raise and support armies, and regulate interstate commerce. Congress may also enact laws that are “necessary and proper” to carry out these express powers. For example, the power to coin money includes the implied power to design US currency, and the power to regulate interstate commerce embraces the power to pass antidiscrimination legislation, such as the Civil Rights Act of 1964.

The main body of the Constitution establishes, defines, and limits the power of the three branches of the federal government:

1. The legislature (Congress) has the power to enact statutes.
2. The executive branch has the power to enforce the laws.
3. The judiciary has the power to interpret the laws.

Each branch plays a different role, and the branches’ interaction is governed by a system of checks and balances (see Exhibit 1.2). The president can nominate federal judges, but the Senate must confirm those nominations; Congress can remove high-ranking federal personnel (including judges and the president) through the impeachment and trial process; and the judiciary can declare laws unconstitutional. The president can veto a congressional bill, but Congress can override a veto by a two-thirds vote of each chamber.

Twenty-seven amendments follow the main body of the Constitution. The first ten, ratified in 1791, are known as the Bill of Rights, which includes the rights to

- exercise freedom of speech,
- practice religion,
- bear arms,
- be secure from unreasonable searches and seizures,

Legal Brief

The United States is not a union; it is a federation (from the Latin word *foedus*, meaning “covenant”) of 50 self-governing states that have ceded some of their sovereignty to the central (federal) government to promote the welfare of all.
• demand a jury trial,
• be protected against self-incrimination, and
• be accorded substantive and procedural due process of law.

Of the remaining amendments, two cancelled each other: the eighteenth, which established prohibition, and the twenty-first, which repealed the eighteenth. As of this writing, only 15 substantive changes have been made to the basic structure of US government since 1791.

The first ten amendments apply only to the federal government. However, the Fourteenth Amendment (ratified in 1870) declares that no state may “deprive any person of life, liberty, or property, without due process of law.” The US Supreme Court has held that most of the rights set forth in the Bill of Rights apply to the states because of the Fourteenth Amendment’s Due Process Clause. (An example of a due process case is provided in The Court Decides feature on the Simkins v. Moses H. Cone Mem. Hosp. case at the end of this chapter.) Consequently, neither the states nor the federal government may infringe on the rights mentioned earlier.

In addition to the US Constitution, each state has its own constitution, which is the supreme law of that state but subordinate to the federal constitution. State and federal constitutions are similar, although state constitutions are more detailed and cover such matters as the financing of public works and the organization of local governments.

due process (of law)
a fundamental principle of fairness in legal matters, both civil and criminal; the requirement that all legal procedures set by statute and court practice be followed so that no unjust treatment results

EXHIBIT 1.2
Checks and Balances

1. Impeach/convict
2. Appoint
3. Veto
4. Override or not confirm
5. Interpret or rule unconstitutional
6. Amend law
7. Change regulation
Statutes
Statutes are positive law enacted by a legislative body. Because our federal system is imbricate with national, state, and local jurisdictions, the legislative body may be Congress, a state legislature, or a deliberative assembly of local government (e.g., a county or city council). Statutes enacted by any of these bodies may apply to healthcare organizations. For example, hospitals must comply with federal statutes such as the Civil Rights Act of 1964 and the Hill-Burton Act, which prohibit discrimination at patient admission. Most states and a number of large cities have also enacted antidiscrimination statutes.

Judges face the task of interpreting statutes. Interpretation is especially difficult when the wording of a statute is ambiguous, as it usually is. To clarify statutes, the courts have developed several “rules of construction,” which in some states are themselves the subject of a separate statute. Regardless of their source, the rules are designed to help judges ascertain the intent of the legislature. Common rules of construction include the following:

1. Interpretation of a statute’s meaning must be consistent with the intent of the legislature.
2. Interpretation of a statute’s meaning must give effect to all of its provisions.
3. If a statute’s meaning is unclear, its purpose, the result to be attained, legislative history, and the consequences of one interpretation over another must all be considered.

Whether of constitutions or statutes, judicial interpretation is the pulse of the law. A prominent example appears later in this chapter in the discussion of *Erie R. R. Co. v. Tompkins*, a case in which the meaning of a venerable federal statute was at issue. And in Chapter 11, the section on taxation of real estate discusses numerous cases concerning the meaning of “exclusive use” of a piece of property for charitable purposes. These cases are just a few of the many examples of judicial interpretation that permeate this text. Be alert for others and try to discern the different philosophies of judicial interpretation that the cases’ outcomes represent.

Administrative Law
Administrative law is the type of public law that deals with the rules of government agencies. According to one scholar, “Administrative law . . . determines the organization, powers and duties of administrative authorities.” Administrative law has greater scope and significance than is sometimes realized. In fact, administrative law is the source of much of the substantive law that directly affects the rights and duties of individuals and businesses and
their relation to governmental authority. (See, for example, the discussion of federal healthcare privacy regulations in Chapter 15.)

The executive branch of government carries out (administers) the law as enacted by the legislature and interpreted by the courts. However, the executive branch also makes law (through administrative regulations) and exercises a considerable amount of quasi-judicial (court-like) power. The term administrative government means all departments of the executive branch and all governmental agencies created for specific public purposes.

Administrative agencies exist at all levels of government: local, state, and federal. Well-known federal agencies affecting healthcare are the National Labor Relations Board, Federal Trade Commission, Centers for Medicare & Medicaid Services (formerly known as the Health Care Financing Administration), and Food and Drug Administration. At the state level, there are boards of professional licensure, Medicaid agencies, workers’ compensation commissions, zoning boards, and numerous other agencies whose rules affect healthcare organizations.

Legislative bodies delegate lawmaking and judicial powers to administrative government as necessary to implement statutory requirements; the resulting rules and regulations have the force of law, subject to the provisions of the Constitution and statutes. The US Food and Drug Administration, for example, has the power to make rules controlling the manufacturing, marketing, and advertising of foods, drugs, cosmetics, and medical devices. Similarly, state Medicaid agencies make rules governing eligibility for Medicaid benefits and receipt of funds by participating providers.

The amount of delegated legislation increased tremendously during the twentieth century, especially after World War II. The reasons for this increase are clear: economic and social conditions inevitably change as societies become more complicated. Legislatures cannot directly provide the detailed rules necessary to govern every particular subject. Delegation of rulemaking authority puts this responsibility in the hands of experts, but the enabling legislation will stipulate the standards to be followed by an administrative agency when it writes the regulations. Such rules must be consistent with their underlying legislation and the Constitution.

Judicial Decisions
The last major source of law is the judicial decision. All legislation, whether federal or state, must be consistent with the US Constitution. The power to legislate is, therefore, limited by constitutional doctrines, and the federal courts have the power to declare an act of Congress or of a state legislature unconstitutional. Judicial decisions are subordinate to the Constitution and to statutes as long as the statute is constitutional. Despite this subordinate role, however, judicial decisions are the primary domain of private law, and
private law—especially the law of contracts and torts—traditionally has had the most influence on healthcare and thus is of particular interest to healthcare administrators.

Common law—judicial decisions based on tradition, custom, and precedent—was developed after the Norman Conquest in 1066 and produced at least two important concepts that endure today: the writ and stare decisis. A *writ* is a court-issued order directing the recipient to appear before the court or to perform, or cease performing, a certain act.

The doctrine of *stare decisis*—the concept of precedent ("to abide by decided cases")—requires that courts look to past disputes involving similar facts and principles and to determine the outcome of the current case on the basis of the earlier precedents as much as possible. This practice engenders a general stability in the Anglo-American legal system (see Legal Brief).

Consider, for example, the opening sentence of the 1992 abortion decision, *Planned Parenthood of S.E. Pennsylvania v. Casey*. The case involved the question of whether to uphold or overturn the precedent set in *Roe v. Wade*, the landmark abortion decision of 1973. Justice O’Connor’s opinion in the Casey case sums up stare decisis in nine words: “Liberty finds no refuge in a jurisprudence of doubt.” (See The Court Decides at the end of this chapter.)

Stare decisis applies downward, but not horizontally. An Ohio trial court, for example, is bound by the decisions of Ohio’s Supreme Court and the US Supreme Court but not by the decisions of other Ohio trial courts or out-of-state courts. Courts in one state may, but are not required to, examine judicial decisions of other states for guidance, especially if the issue is new to the state. Similarly, a federal trial court is bound by the decisions of the Supreme Court and the appellate court of its circuit but not by the decisions of other appellate or district courts.

The doctrine of stare decisis should not be confused with a related concept, *res judicata*, which literally means “a thing or issue settled by judgment.” (In Latin, the word *res* means “thing.”) In practical terms, once a legal dispute has been resolved in court and all appeals have been exhausted, res judicata prohibits the same parties from later bringing suit regarding the same matters.

### The Court System

In a perfect world, we would not need courts and lawyers. This idea may have inspired Shakespeare’s famous line in Henry VI, “The first thing we do, let’s kill all the lawyers.” At the time—the sixteenth

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**stare decisis**

Latin for “to stand by a decision”; the principle that a court is bound by decisions of higher courts (precedents) on a particular legal question applicable to the instant case

**Legal Brief**

Use of precedent to determine the substance of law distinguishes common-law jurisdictions from a code-based civil law system, which traditionally relies on a comprehensive collection of rules. The civil law system is the basis for the law in Europe, Central and South America, Japan, Quebec, and (because of its French heritage) the state of Louisiana.
century—resentment against lawyers ran high in England. The Bard was perhaps engaged in a little lawyer-bashing, and his intention may have been to express his indictment of a corrupt system. Alternatively, the remark may have been a compliment; the character who utters the famous words was an insurgent who would not want lawyers around to skillfully defend law and order. Regardless of one’s interpretation of Shakespeare, we do not live in Utopia, so we need courts and lawyers, and we probably always will.

There are more than 50 court systems in the United States. In addition to the state and federal courts, the District of Columbia, the Virgin Islands, Guam, the Northern Marianas, and Puerto Rico have their own systems. The large number of court systems makes the study of US law complicated, but the decentralized nature of federalism adds strength and vitality. As various courts adopt different approaches to a novel issue, the states become a testing ground on which a preferred solution eventually becomes apparent.

**State Courts**

The federal courts and the court systems of most states use a three-tier structure comprising the trial courts, the intermediate courts of appeal, and a supreme court (see Exhibit 1.3). In a state court system, the lowest tier—the trial courts—is often divided into courts of limited jurisdiction and courts of general jurisdiction. Typically the courts of limited jurisdiction hear only specific types of cases, such as criminal trials involving lesser crimes (e.g., misdemeanors and traffic violations) or civil cases involving disputes of a certain amount (e.g., in small-claims court, lawyers are not allowed and complex legal procedures are relaxed). State courts of general jurisdiction hear more serious criminal cases involving felonies and civil cases involving larger sums of money.
The next tier in most states is the intermediate appellate courts. They hear appeals from the trial courts. In exercising their jurisdiction, appellate courts are usually limited to the evidence from the trial court and to interpreting questions of law, not questions of fact.

The highest tier in the state court system is the state supreme court. This court hears appeals from the intermediate appellate courts (or from trial courts if the state does not have intermediate courts) and, like the trial courts, has limited jurisdiction and hears only certain types of cases. It is also often charged with administrative duties, such as adopting rules of procedure and disciplining attorneys.

The states are not uniform in naming the various courts. Trial courts of general jurisdiction, for example, may be named circuit, superior, common pleas, or county court. New York is unique in that its trial court is known as the “Supreme Court.” In most states, the highest court is named the supreme court, but in Massachusetts the high court is called the “Supreme Judicial Court,” and in New York, Maryland, and the District of Columbia, the highest court is called the “Court of Appeals.” The intermediate appellate court in New York is called the “Supreme Court Appellate Division.”

**Federal Courts**

**US District Courts**
The federal court system is similar to the state court system. At its bottom tier, federal district (trial) courts hear nearly all categories of cases, including criminal matters arising under federal statutes and civil cases between parties from different states or based on federal law. There are now 94 district courts—at least one in each state and in the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and the Northern Mariana Islands. Each district also has a US bankruptcy court, which is a unit of the district court.

The federal courts (beginning with the district courts) have *exclusive* jurisdiction over certain kinds of cases, such as

- violations of federal antitrust or securities laws,
- admiralty,
- bankruptcy, and

Federal and state courts have *concurrent* jurisdiction in cases arising under the US Constitution or under any federal statute that does not confer exclusive jurisdiction to the federal court system. A federal district court may hear suits based on state law in which a citizen of one state sues a citizen of another state if the amount in dispute is more than $75,000. These suits are

admiralty the system of law that applies to accidents and injuries at sea, maritime commerce, alleged violations of rules of the sea over shipping lanes and rights of way, and crimes on shipboard
called “diversity of citizenship” cases. A prime example of this type of case is *Erie R. R. Co. v. Tompkins*. In this famous case, Mr. Tompkins, a citizen of Pennsylvania, was injured by a passing train while walking along the Erie Railroad’s right of way in that state. He sued the railroad for negligence in a New York federal court, asserting diversity jurisdiction. The railroad was a New York corporation, but the accident occurred in Pennsylvania, and the railroad pointed out that Mr. Tompkins was trespassing on its property. Under Pennsylvania’s court decisions, trespassers could not recover for their injuries. Mr. Tompkins countered that because there was no state statute on the subject, only judicial decisions, the railroad could be held liable in federal court as a matter of “general law.”

At issue in this case was the interpretation of a section of the Federal Judiciary Act, which reads:

> The laws of the several States, except where the Constitution, treaties, or statutes of the United States otherwise require or provide, shall be regarded as rules of decision in trials at common law, in the courts of the United States, in cases where they apply.

An 1842 case, *Swift v. Tyson*, had concluded that this language applied only to a state’s statutes, not its common law. On the basis of *Swift*, the lower courts held for Mr. Tompkins. The Supreme Court disagreed, however, citing various plaintiffs’ use of diversity jurisdiction and the Swift doctrine to circumvent an unfavorable state law. Thus, the court reversed the judgment in favor of Mr. Tompkins and overturned the precedent set by *Swift*, stating:

> Experience in applying the doctrine of *Swift v. Tyson*, had revealed its defects, political and social; and the benefits expected to flow from the rule did not accrue. Persistence of state courts in their own opinions on questions of common law prevented uniformity; and the impossibility of discovering a satisfactory line of demarcation between the province of general law and that of local law developed a new well of uncertainties. . . . [T]he mischievous results of the doctrine had become apparent. Diversity of citizenship jurisdiction was conferred [by the Constitution] in order to prevent apprehended discrimination in state courts against those not citizens of the state. *Swift v. Tyson* introduced grave discrimination by noncitizens against citizens. It made rights enjoyed under the unwritten “general law” vary according to whether enforcement was sought in the state or in the federal court; and the privilege of selecting the court in which the right should be determined was conferred upon the noncitizen. Thus the doctrine rendered impossible equal protection of the law. In attempting to promote uniformity of law throughout the United States, the doctrine had prevented uniformity in the administration of the law of the state.
The Court concluded:

Except in matters governed by the Federal Constitution or by acts of Congress, the law to be applied in any case is the law of the state. And whether the law of the state shall be declared by its Legislature in a statute or by its highest court in a decision is not a matter of federal concern. There is no federal general common law. Congress has no power to declare substantive rules of common law applicable in a state whether they be local in their nature or “general,” be they commercial law or a part of the law of torts. And no clause in the Constitution purports to confer such a power upon the federal courts.

Claims involving federal statutes and the US Constitution may also be tried in state court, depending on the situation.

**US Courts of Appeals**

The 94 judicial districts (trial courts) are organized into 12 regional circuits, each of which has a United States court of appeals (see Exhibit 1.4). These courts hear appeals from the district courts located in their respective circuits and from decisions of federal administrative agencies. In addition, the Court of Appeals for the Federal Circuit has nationwide jurisdiction to hear appeals in specialized cases, such as those involving patent laws and cases decided by the Court of International Trade and the Court of Federal Claims.7

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**EXHIBIT 1.4**

Map of US Courts of Appeals
**US Supreme Court**

At the highest level of the federal court system is the US Supreme Court. The Supreme Court hears appeals of cases involving federal statutes, treaties, or the US Constitution from the US courts of appeals and from the highest state courts. Generally, a party has no absolute right to have her case heard by the Supreme Court. Instead, in most cases the Court’s decision to hear a case is discretionary. (One exception is a case in which lower courts have declared a federal statute to be unconstitutional.) Parties must petition the Court for a *writ of certiorari*—an order to the lower court requiring that the case be sent up for the high court’s review—and persuade at least four of the nine justices that the issue merits their attention.

The Court normally decides only about 100 to 150 cases per year from the approximately 10,000 petitions for review it receives. Because the Supreme Court exercises considerable discretion in controlling its docket, lower courts, in effect, decide most of the important legal issues. Typically, the Court grants certiorari only in cases that present current questions of extraordinary legal or social significance or when the federal courts of appeals have differed in deciding cases involving the same legal issue.

The Constitution vests the judicial power of the United States “in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish” (Article III, Section 1). Unlike state judges, federal judges are given lifetime appointments and can be removed only by impeachment and conviction. Congress may create additional courts and may redefine the jurisdiction of all tribunals below the Supreme Court level. Over the years, it has complemented the district courts and the courts of appeals with several federal courts that have specialized functions—for example, the US Federal Claims Court (which hears certain contract claims brought against the government), the US Court of International Trade, the US Tax Court, and the US Court of Appeals for the Armed Forces.

**Alternative Dispute Resolution**

There are two popular alternatives to the court system for resolving disputes. The first is resort to the quasi-judicial power of an administrative agency or tribunal. (Workers’ compensation commissions are a familiar example.) Administrative bodies settle far more disputes today than do the judicial courts, and administrative agencies usually have the statutory responsibility and power to enforce their own decisions (which courts do not have). Thus, the agency that wrote the regulations often brings the initial proceeding, hears the case, and decides the dispute as well. The Federal Trade Commission, for example, is empowered to compel an alleged offender to cease and desist from practicing unfair methods of competition under the Commission’s regulations.
Statutes, of course, prescribe the powers of administrative bodies. The role of ordinary courts is generally limited to preventing administrative authorities from exceeding their powers and to granting remedies to individuals who have been injured by wrongful administrative action. Sometimes statutes grant the right of appeal of an adverse administrative decision to a judicial court.

The second alternative method for dispute resolution is arbitration, which is often faster, less complicated, more confidential, and less costly than a lawsuit. Arbitration involves submission of a dispute for decision by a third person or a panel of experts outside the judicial process. When the parties to a dispute voluntarily agree to have their differences resolved by an arbitrator or by a panel and to be bound by the decision, arbitration becomes a viable alternative to the court system. Statutory law in most states favors voluntary, binding arbitration and frequently provides that an agreement to arbitrate is enforceable by the courts. Arbitration is different from mediation, in which a third party—the mediator—simply attempts to persuade adverse parties to agree to settle their differences. The mediator has no power to require a settlement.

Legal Procedure

Substantive law is the type of law that creates and defines rights and duties. Most of this book is devoted to substantive law as it relates to healthcare providers. Procedural law, as the term implies, provides the specific processes for enforcing and protecting rights granted by substantive law. The branch of procedural law discussed in this section is law relating to trial of a case.

Commencement of Legal Action: The Complaint
To begin a lawsuit (an action), a claimant (the plaintiff) files a complaint against another party (the defendant). The complaint states the nature of the plaintiff’s injury/claim and the amount of damages or other remedy sought from the defendant. (The complaint and other papers subsequently filed in court are called the pleadings.) A copy of the complaint, along with a summons, is then served on the defendant. The summons advises the defendant that he must answer the complaint or take other action within a limited time (for example, 30 days) and that the plaintiff will be granted judgment by default if the defendant fails to act.

The Defendant’s Response: The Answer
In response to the summons, the defendant files an answer to the complaint, admitting to, denying, or pleading ignorance to each allegation. The defendant may also file a complaint against the plaintiff (a countersuit or counterclaim)
or against a third-party defendant whom the original defendant believes is wholly or partially responsible for the plaintiff’s alleged injuries.

At this stage in the proceeding, the defendant may ask the court to dismiss the plaintiff’s complaint if the court lacks jurisdiction, a judgment has already been made on the same matter, or the plaintiff’s complaint failed to state a legal claim. Although the terminology differs from state to state, the motion to dismiss is usually called a motion for summary judgment or a demurrer. If the court grants the motion to dismiss, the judgment is final and the plaintiff can appeal the decision immediately.

**Discovery**

In rare cases, the court’s decision quickly follows the complaint and answer stages (see Law in Action). Usually, however, especially in urban areas, several months elapse between commencement of the action and trial. During this time, each party engages in litigation, or discovery, in an attempt to determine the facts and strength of the other party’s case.

Discovery is a valuable device that can be used, for example, to identify prospective defendants or witnesses or to uncover other important evidence. For example, in one hospital case, a patient had fallen on the way to the washroom and fractured a hip. During discovery, the hospital was required to disclose the identity of the nurse who had directed the patient to the washroom instead of giving bedside attention.

During the discovery phase, parties may use any or all of the following five methods to discover the strength of the other party’s case:

1. Depositions
2. Interrogatories
3. Demands to inspect and copy documents
4. Demands for physical or mental examination of a party
5. Requests for admission of facts

Only relevant facts and matters that are not privileged or confidential may be solicited through these methods.

**Deposition**

The most common and effective discovery device is the deposition, whereby a party subpoenas a witness to testify under oath before a court reporter, who transcribes the testimony. The opposing attorney is also present during the deposition to make objections
and, if appropriate, to cross-examine the witness. The transcript of the deposition may be read into evidence at the trial itself if the witness is unable to testify in person and can be used to impeach the witness’s testimony if his “story” has changed.

Interrogatories
A second method of discovery, written interrogatories, is similar to depositions except the questions are written. The procedure for using written interrogatories sometimes varies, depending on whether they are directed toward an adverse party or other witnesses. Interrogatories are somewhat less effective than oral depositions because there is little opportunity to ask follow-up questions.

Inspection of Documents
A party using the third method of discovery (a method especially relevant to healthcare cases) may request to inspect and copy documents, inspect tangible items in the possession of the opposing party, enter and inspect land under the control of the other party, or inspect and copy items produced by a witness served with a subpoena duces tecum (a subpoena requiring the witness to produce certain books and documents, such as medical records). There are special rules governing subpoenas to produce hospital records because of their sensitivity.

Physical or Mental Examination
A physical or mental examination, the fourth discovery device, may be used when the physical or mental condition of a party to the lawsuit is in dispute and good cause for the examination is shown.

Request for Admission
A party using this final discovery method requests that the opposing party admit certain facts. By making and fulfilling these requests, the parties may save the time and expense involved in proving facts in court and may substantially limit the factual issues to be decided by the court.

The Trial
A trial begins with the selection of a jury if either party has requested a jury trial. After jury selection, each attorney makes an opening statement that explains matters to be proven during the trial. The plaintiff then calls witnesses and presents other evidence, and the defense attorney is given an opportunity to cross-examine each of the witnesses. After the plaintiff has rested the case, in many cases the defendant’s attorney asks the court to direct a verdict for the defense. Courts will grant the directed verdict if the
jury, viewing the facts most favorably to the plaintiff, could not reasonably return a verdict in the claimant’s favor that would be in accord with the law. If the motion is denied, the defendant proceeds with evidence and witnesses supporting her case, subject to cross-examination by the plaintiff.

When all the evidence has been presented, either party may move for a directed verdict. If the judge denies the motion, he will give instructions to the jury concerning applicable law and the jury will retire to deliberate until reaching a verdict. Many times, after the jury has reached its decision, the losing party asks the court for a “judgment notwithstanding the verdict,” aka judgment N.O.V.—an abbreviation for the Latin term non obstante veredicto—and a new trial. The motion will be granted if the judge decides that the verdict is clearly not supported by the evidence.

The judge and the jury, of course, play key roles in the trial. The judge has the dominant role, deciding whether evidence is admissible and instructing the jury on the law before deliberation begins. As just noted, the judge also has the power to take the case away from the jury by means of a directed verdict or a judgment notwithstanding the verdict. The role of the jury is thus limited to deciding the facts and determining whether the plaintiff has proven the allegations by a preponderance of the evidence. Because the jury’s role is to decide the facts, it is of utmost importance that the members of the jury be impartial. If there is evidence that a jury member might have been biased, many courts will overturn the verdict. In cases tried without a jury, the judge assumes the jury’s fact-finding role. (Because either a judge or jury can assume this role, it is often referred to as the role of “trier of fact.”)

**Appeal and Collection**

The next stage in litigation is often an appeal. For various reasons (e.g., satisfaction with the verdict or a party’s unwillingness to incur additional expenses), not all cases go to an appellate court.

The party who appeals the case (the losing party in the trial court) is usually called the “appellant,” and the other party is the “appellee.” When reading appellate court decisions, one must not assume that the first name in the case heading is the plaintiff’s because many appellate courts reverse the order of the names when the case is appealed (see Exhibit 1.5). The appellate court’s function is limited to a review of the law applied in the case; it accepts the facts as determined by the trier of fact. In its review, the appellate court may affirm the trial court decision, modify or reverse the decision, or reverse it and remand the case for a new trial.

The final stage of the litigation process is collection of the judgment. The most common methods of collection are execution and garnishment. A writ of execution entitles the plaintiff to have a local official seize the defendant’s property and to have that property sold to satisfy the judgment. A garnishment is an order to a third person who is indebted to the defendant
Chapter 1: The Anglo-American Legal System

The legal system uses a unique citation method.* The citation in the Simkins v. Moses H. Cone Mem. Hosp. case is a good example. Its heading efficiently conveys a sizable amount of information, as follows:


“Appellant” or “Petitioner” (the one who brought the case to the court) “Appellee” or “Respondent” (the one who is answering the petitioner’s arguments)

Citation: 323 F.2d 959 (4th Cir. 1963)

Volume number Name of “reporter” Page number where case is found Court and date**

The reporter is the publication in which the decision is documented. Supreme Court decisions are published in the U.S. Reports (abbreviated U.S.). Federal appellate decisions, such as the Simkins case decision, are published in the Federal Reporter (abbreviated either F., F.2d, or F.3d).6

Many federal district court and most state trial court decisions are not published formally; however, the captions of the cases retain the same style—the name given first is that of the person who initiated the action. Thus, for example, in Smith v. Jones, Smith would be the plaintiff and Jones, the defendant. If Jones loses at the trial court, the appellate decision might read Jones v. Smith. A caption that reads something like State v. Jones is most likely a criminal prosecution. If a federal trial court decision is published, it will appear in the Federal Supplement (F. Supp. or F. Supp. 2d).

State appellate decisions can be found in publications of the West Publishing Company and in official reporters published by some states. The West reporters are grouped regionally and contain the decisions of the courts of nearby states—for example:

Northeast Reporter (N.E., N.E. 2d)
Southern Reporter (So., So. 2d)
Pacific Reporter (P., P. 2d)

A designation of 2d or 3d indicates that a publisher began a new numbering sequence at a certain point, beginning with volume 1 of the later series.

* These conventions may vary slightly in some states’ official reports, but they generally hold throughout the country.
** Court designation is not always necessary.
to pay the debt directly to the plaintiff to satisfy the judgment. Often the third party is the defendant’s employer, who, depending on local laws, may be ordered to pay a certain percentage of the defendant’s wages directly to the plaintiff.

**Chapter Summary**

This chapter discusses the history of law, its sources, the relationships among the three branches of government, the basic structure of the federal and state court systems, and some basics of legal procedure in civil cases. (The procedures followed in criminal cases are somewhat different and are beyond the scope of this text.)

**Chapter Discussion Questions**

1. Why is some knowledge of the history of law important to understanding the law more fully?
2. What are the four sources of law in the United States?
3. Describe the three branches of government and the role of each, including the system of checks and balances.
4. What is the hierarchy among the sources of law in the federal government?
5. What is the system for citing judicial opinions?
6. What are *due process* and *stare decisis*, and why are they important?
7. Describe the structure of the federal judicial system.
THE COURT DECIDES

323 F.2d 959 (4th Cir. 1963)

Sobeloff, Chief Judge

The threshold question in this appeal is whether the activities of the two defendants, Moses H. Cone Memorial Hospital and Wesley Long Community Hospital, of Greensboro, North Carolina, which participated in the Hill-Burton program, are sufficiently imbued with “state action” to bring them within the Fifth and Fourteenth Amendment prohibitions against racial discrimination.

The plaintiffs are Negro physicians, dentists and patients suing on behalf of themselves and other Negro citizens similarly situated. The basis of their complaint is that the defendants have discriminated, and continue to discriminate, against them because of their race in violation of the Fifth and Fourteenth Amendments to the United States Constitution. The plaintiffs seek an injunction restraining the defendants from continuing to deny Negro physicians and dentists the use of staff facilities on the ground of race; an injunction restraining the defendants from continuing to deny and abridge admission of patients on the basis of race . . .; and a judgment declaring unconstitutional [the statute and regulations], which authorize the construction of hospital facilities . . . on a “separate-but-equal” basis.

Factual Background

Six of the plaintiffs are physicians and three are dentists, and all of them are duly licensed and practice their professions in Greensboro. Before filing the complaint they sought staff privileges at the defendant hospitals, which were denied them because of racial exclusionary policies. Two of the plaintiffs are persons in need of medical treatment who desire to enter either of the defendant hospitals which, they contend, possess the most complete medical equipment and the best facilities available in the Greensboro area. They also desire to be treated by their personal physicians who are Negroes. . . .

The claims of racial discrimination were . . . clearly established. In fact the hospitals’ applications for federal grants for construction projects openly stated, as was permitted by statute and regulation, that “certain persons in the area will be denied admission to the proposed facilities as patients because of race, creed or color.” These applications were approved by [a state agency], and [by] the Surgeon General of the United States under his statutory authorization.

Both Cone and Long are nonprofit hospitals owned and governed by boards of trustees, and under state law they are duly constituted charitable corporations. The Long Hospital is governed by a self-perpetuating board of twelve trustees. The Cone Hospital, however, is governed by fifteen trustees, five of whom are selected by various state agencies, and one is appointed by a “public agency” . . . . Neither hospital’s charter contains any explicit or implicit authorization or requirement for the exclusion of Negro professionals or patients.

By far the most significant governmental contact of these two hospitals is their participation in the federally assisted Hill-Burton [program]. As a result . . . both hospitals have received large amounts of public funds, paid by the United States to the State of North Carolina and in turn by North Carolina . . . to the hospitals. They received these funds as part of (continued)
a “state plan” for hospital construction, which allocates available resources for hospitals within the state and contemplates and authorizes the defendants to exclude Negroes.

... A state, to participate in the Hill-Burton program, is required to submit for approval by the Surgeon General a state plan setting forth a “hospital construction program” which, among other things, “meets the requirements as to lack of discrimination on account of race, creed, or color, and for furnishing needed hospital services to persons unable to pay therefor, required by regulations . . . .”

Both state plans and project applications are subject to this general nondiscrimination requirement. However, the Act authorizes the Surgeon General . . . to provide an exception to the general racial nondiscrimination rule by making “equitable provision” for separate hospitals for separate population groups. Thus, by statute and regulation, the states may [discriminate in any area where separate but equal facilities exist].

Where a “separate-but-equal” plan is in operation, the individual applicant for aid need not give any assurance that it will not discriminate and, in fact, may expressly indicate on its application form, as did each of the defendant hospitals, that “certain persons in this area will be denied admission to the proposed facilities as patients because of race, creed, or color. . . .”

The Legal Issue

Upon this factual foundation the District Court formulated the question for determination as follows: “Whether the defendants have been shown to be so impressed with a public interest as to render them instrumentalities of government, and thus within the reach of the Fifth and Fourteenth Amendments to the Constitution of the United States.” After first examining separately [the various] points of governmental contact [which included $3.25 million in construction funds, state agency supervision, and federal operational standards,] the [trial] court concluded that none was sufficient to impress the hospitals with the necessary “public interest. . . .” Having found no “state action” the court declined to pass upon the constitutionality of [the Hill Burton Act and its regulations].

... [It is our conclusion that the case was wrongly decided. In the first place we would formulate the initial question differently . . . . In our view the initial question is . . . whether the state or the federal government, or both, have become so involved in the conduct of these otherwise private bodies that their activities are also the activities of these governments . . . .

[Justifying its conclusion, the court cites “massive use of public funds and extensive state-federal sharing in the common plan.” The opinion then continues as follows.] But we emphasize that this is not merely a controversy over a sum of money. Viewed from the plaintiffs’ standpoint it is an effort by a group of citizens to escape the consequences of discrimination in a concern touching health and life itself. As the case affects the defendants it raises the question of whether they may escape constitutional responsibilities for the equal treatment of citizens, arising from participation in a joint federal and state program allocating aid to hospital facilities throughout the state.

... [The defendant hospitals operate as integral parts of comprehensive joint or intermeshing state and federal plans or programs designed to effect a proper allocation of available medical and hospital

(continued)
resources for the best possible promotion and maintenance of public health. Such involvement in discriminatory action “it was the design of the Fourteenth Amendment to condemn.” [Quoting a 1961 Supreme Court case.]

... The challenged discrimination has been affirmatively sanctioned by both the state and the federal government pursuant to federal law and regulation. It is settled that governmental sanction need not reach the level of compulsion to clothe what is otherwise private discrimination with “state action.”

... These federal provisions undertaking to authorize segregation by state-connected institutions are unconstitutional. ... Unconstitutional as well under the Due Process Clause of the Fifth Amendment and the Equal Protection Clause of the Fourteenth are the relevant regulations implementing this passage in the statute.

... Giving recognition to its responsibilities for public health, the state elected not to build publicly owned hospitals, which concededly could not have avoided a legal requirement against discrimination. Instead it adopted and the defendants participated in a plan for meeting those responsibilities by permitting its share of Hill-Burton funds to go to existing private institutions. The appropriation of such funds to the Cone and Long Hospitals effectively limits Hill-Burton funds available in the future to create non-segregated facilities in the Greensboro area. In these circumstances, the plaintiffs can have no effective remedy unless the constitutional discrimination complained of is forbidden.

The order of the District Court is reversed.


Other cases, notably *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345 (1974), have seemingly come to the opposite conclusion. In *Jackson*, a public utility company—privately owned but highly regulated and “affected with the public interest”—summarily turned off the plaintiff’s electric service for nonpayment. She filed suit, claiming violation of her due process rights. The Supreme Court found in favor of the utility. (You can read the opinion online by entering the case name in any search engine.)

1. What arguments can be made to distinguish *Jackson* from *Simpkins*? In what ways are the two cases similar?

2. If *Jackson* had been decided differently—that is, if the court had held that extensive government regulation turns the corporation's activities into “state action”—what would the implications have been for healthcare organizations?

3. In *Simpkins*, Judge Sobeloff said the issue was: “whether the state or the federal government, or both, have become so involved in the conduct of these otherwise private bodies that their activities are also the activities of these governments.” Given that Medicare and Medicaid regulation of hospitals is much more extensive than regulation was under the Hill-Burton program, why aren’t all actions of a hospital today considered state actions under the Due Process Clause? Should they be?
The Law of Healthcare Administration

Planned Parenthood of S.E. Pennsylvania v. Casey
505 U.S. 833 (1992)

Liberty finds no refuge in a jurisprudence of doubt. Yet 19 years after our holding that the Constitution protects a woman's right to terminate her pregnancy in its early states, that definition of liberty is still questioned . . .

. . . [T]he Court's legitimacy depends on making legally principled decisions under circumstances in which their principled character is sufficiently plausible to be accepted by the Nation.

. . . The Court is not asked to [overrule prior decisions] very often . . . . But when the Court does [so], its decision requires an equally rare precedential force to counter the inevitable efforts to overturn it and to thwart its implementation. Some of those efforts may be mere unprincipled emotional reactions; others may proceed from principles worthy of profound respect. But whatever the premises of opposition may be, only the most convincing justification under accepted standards of precedent could suffice to demonstrate that a later decision overruling the first was anything but a surrender to political pressure, and an unjustified repudiation of the principle on which the Court staked its authority in the first instance. So to overrule under fire in the absence of the most compelling reason to reexamine a watershed decision would subvert the Court's legitimacy beyond any serious question . . .

. . . The promise of constancy, once given, binds its maker for as long as the power to stand by the decision survives and the understanding of the issue has not changed so fundamentally as to render the commitment obsolete. From the obligation of this promise this Court cannot and should not assume any exemption when duty requires it to decide a case in conformance with the Constitution. A willing breach of it would be nothing less than a breach of faith, and no Court that broke its faith with the people could sensibly expect credit for principle in the decision by which it did that.

. . .

The Court's duty in the present case is clear. In 1973, it confronted the already divisive issue of governmental power to limit personal choice to undergo abortion, for which it provided a new resolution based on the due process guaranteed by the Fourteenth Amendment. Whether or not a new social consensus is developing on that issue, its divisiveness is no less today than it was in 1973, and pressure to overrule the decision, like pressure to retain it, has grown only more intense. A decision to overrule Roe's essential holding under the existing circumstances would address error, if error there was, at the cost of both profound and unnecessary damage to the Court's legitimacy, and to the Nation's commitment to the rule of law. It is therefore imperative to adhere to the essence of Roe's original decision, and we do so today.

■
Notes

3. Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803), established the court’s power to declare federal legislation unconstitutional.
4. 304 U.S. 64 (1938).
6. 41 U.S. (16 Pet.) 1 (1842). Before the current system took hold, early Supreme Court reports were published by the clerk, and the name of the reporter was an abbreviation of the name of that official.