

SUPREME COURT LIVE

I. SOURCES OF LAW

It might be easier to understand a single law or legal principle if all laws had a single source. There are many sources, however, and the laws springing from each have a different scope and effect. Therefore, it is important to know something of these sources in order to understand how particular laws affect us.

The law which governs Alaska and its citizens can be classified into four main types. These are: **constitutional law**, which is the fundamental law; **statutory law**, which is written law adopted by legislative bodies; **administrative law**, which consists of written rules adopted by various governmental agencies under limited authority granted by legislative bodies; and the **common law**, which is a large set of principles based on case law, the product of judicial decisions in the administration of justice.

A. The Constitutions

The United States Constitution is the basic law of the nation, and the Alaska Constitution is the basic law of the state of Alaska. The two are similar in many respects, but where a conflict arises, the federal Constitution takes precedence.

1. The United States Constitution

Our country is a union of independent states. The purpose of the U.S. Constitution is to form an effective national government for the union while preserving a measure of state sovereignty, promoting the general welfare and protecting the individual rights of the citizens. To these ends, the U.S. Constitution enumerates the powers to be exercised by the federal government, reserving all other powers to the states, and explains the relationships of the states among themselves and with the federal government. It establishes three branches of the federal government: **legislative**, which is the Congress and has the duty to make the laws; **executive**, which is the President and his subordinates, whose duty is to see that the laws made by Congress are carried out; and **judicial**, consisting of the national court system headed by the United States Supreme Court, whose duty is to interpret the laws and to administer justice. One of the most important aspects of the Constitution is a special concern for individual rights. It lists several things the federal government and the states cannot do and enumerates a far-reaching series of individual rights and immunities.

As the supreme law of the nation, the United States Constitution sets the standards against which all other laws and the administration of those laws must be judged.

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2. The Alaska Constitution

Alaska's Constitution is like the federal Constitution in many respects. It establishes the government of Alaska and provides for legislative, executive and judicial branches. It enumerates the powers of the state government as well as many things it may not do. But the Alaska Constitution contains many provisions not found in the U.S. Constitution, such as an individual right to keep and bear arms, a right to privacy, and rights of crime victims.

The Alaska Constitution is the supreme law of Alaska, and therefore, the standard against which all other laws of the state and local government must be judged. It is nevertheless subordinate to the United States Constitution. In the event of a conflict between the Alaska and U.S. Constitutions, the federal constitution prevails.

B. Statutory Law

Statutes are written laws adopted by legislative authority and may themselves come from several sources. Statutes affecting the entire state are enacted by the Alaska Legislature. Federal statutes, enacted by Congress, also affect all of Alaska. Local laws, called ordinances, are enacted by cities, municipalities, or boroughs.

1. Federal Statutes

Federal statutes are enacted by Congress and affect the entire country. Most are compiled into the "United States Code" which, like the Alaska Statutes, is arranged according to subject matter. Some subjects, such as the armed forces, bankruptcy, patent laws, and interstate commerce are dealt with exclusively in federal statutes, because the U.S. Constitution provides that only Congress may deal with these matters. In other areas, federal statutes might govern some parts of an activity and state law might govern other parts. Sometimes both the states and the federal government have similar laws covering the same subject. Usually, the state law governs a particular activity within the state, and the federal law governs the same activity in interstate and foreign commerce. Examples of this type of law are controls on firearms, explosives and drugs.

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2. State Statutes

Alaska statutes are enacted by the Alaska Legislature and affect the whole state. They take precedence over city ordinances, the regulations of state government agencies, and the common law, and therefore control in cases of conflict.

Most Alaska statutes are compiled into a set of laws called the “Alaska Statutes,” which are arranged according to subject matter into titles, chapters and sections, with each section being given a distinctive number. The statutes deal with a wide range of subjects. Some of the most important of these include: organization and operation of state and local government; financial institutions; commercial transactions; natural resources; business organizations; courts and procedures; criminal law and procedure; family law; education; elections; health and safety; insurance; labor and industry; liquor control; motor vehicles and traffic; occupations and professions; public utilities; public welfare; real estate; roads, taxation; veterans and military affairs; and water and sanitation.

3. Municipal Ordinances

Under the Alaska Constitution, local government powers are vested in boroughs and cities, which may adopt laws for their own self-government. These local laws are called ordinances, and are adopted by city councils or borough assemblies, which are the legislative branches of municipal government. Municipal ordinances are effective only within the municipality enacting them, and are valid only if they do not conflict with state law. This does not mean that ordinances cannot duplicate or overlap state statutes, but it does mean that ordinances cannot permit anything the state law prohibits or prohibit anything the state law specifically permits.

Like state law, municipal ordinances may deal with a wide range of subjects, such as the organization and operation of police and fire departments, housing, sanitation, licensing and inspection of various businesses, and many other matters. Municipal codes commonly contain a traffic code which is similar to or even a duplicate of state traffic laws. They may also contain a criminal code having many sections similar to sections in the state criminal code. This is permissible as long as the corresponding state offense is not a serious crime, such as a felony, and providing the municipality does not try to attach felony penalties to any of its ordinances. The only penalties which can be inflicted for violation of a municipal ordinance are a fine or a term of not more than one year in jail.

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C. Administrative Law

Many activities subject to statutes and ordinances are so technical, or change so often or so fast, that they cannot effectively be regulated by statute or ordinance alone. In such cases, the government agency which administers any such activity may be authorized to adopt written rules to supplement the statutes. These written rules are administrative law.

1. Adoption and Effect of Rules

The authority to adopt administrative rules is a kind of legislative power, and under the Constitutions, an administrative agency can only exercise such power when it is expressly authorized to do so by a statute or ordinance, and even then only within narrow limits which must be spelled out in the statute or ordinance. Many rules are adopted by means of a procedure outlined in the Alaska Statutes called the “Administrative Procedure Act,” which provides for public notice of any proposed rule followed by a hearing at which interested persons may state their views. Rules adopted in this way, or in similar ways specified by statute or ordinance, have the force of law and can be enforced by court action just like statutes. Violation of some rules may even be a crime, but only when a statute or ordinance says so and provides a penalty. The power to adopt administrative rules does not include the power to create crimes and criminal penalties.

2. Scope of Administrative Rules

Many activities in Alaska are governed extensively by rules adopted by federal, state or local government agencies. Some examples include: hunting, fishing, and wildlife management; development of natural resources; parks and public recreation; pollution control; health and sanitation; liquor control; housing; building and building safety; land use and development; industrial safety; and many others. One activity with which everyone is familiar is taxation, which is subject to a long list of rules adopted by the Internal Revenue Service, a federal agency.

D. The Common Law

The common law is a large body of principles, rules, and forms of proceeding which have no written law as their foundation, but have become interwoven with the written law through custom, use and the requirements of justice. Since it is created by the courts, common law is a product of judicial rather than legislative power. It fills in the gaps and helps unify constitutional, statutory, and administrative law and is, therefore, indispensable to an effective system of justice. Since it is based on generations of

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experience, it gives continuity and consistency to the law. At the same time, it is responsive to changing needs.

1. Case Law as Common Law

The common law originated with the English legal system and was brought to this country by the colonists. It owes its present vitality to the custom, begun in the 17th century, of recording not only judicial proceedings and decisions, but the principles and reasoning behind them. When a written opinion is made by a court in a case, that case becomes a “precedent.” That is, the principles on which it was decided may be used to decide future cases with the same or similar factual situations.

No two cases are ever precisely alike, and if the application of a case were limited to cases having identical facts, its value as a precedent would be lost. The common law, however, provides a method, called the “synthesis of decisions,” whereby the principle of a case can be applied to different fact patterns. This method involves the careful formulation of principles for general application, coupled with the extension of those principles through logic to meet new fact patterns. By the use of this method, it is possible to extend a principle through a gradually changing series of cases and apply it ultimately to a case which may differ only slightly from its immediate predecessor, but which is a fact pattern quite remote from the original case.

The impact of a case as precedent depends mainly on the court in which it is decided. A higher court is not bound to follow the precedents established by the lower courts in its jurisdiction, although it may follow them if it wishes. Lower courts, however, are bound to follow the precedents of the higher courts having jurisdiction over them. Courts of equal rank may, but are not required to, use each other’s precedents, just as the courts of one state may sometimes adopt precedents established in another state or in the federal courts if they find them well-reasoned and persuasive.

2. Scope of the Common Law in Alaska

Many major divisions of Alaska law are governed almost entirely, or at least in significant respects, by the common law. One important subject governed almost entirely by the common law is “torts,” which deals with civil remedies for injuries or damage caused by negligence or other wrongful acts or omissions. The many lawsuits arising out of auto accidents are typical examples of the application of the common law of torts. Another important subject governed extensively by common law principles is property law. Contract law is covered partly by the common law and partly by statutes, particularly in the area of commercial transactions. Some things, such as the criminal law, are controlled entirely by statute in Alaska, but even in these cases the common law plays an important role. When it is necessary to decide if, or how, a statute,

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ordinance or regulation applies to a particular situation, the principles used to interpret it are based on common law principles. Further, when a statute, ordinance or regulation is interpreted in a certain way, the interpretation itself becomes part of the common law and thus entwined with the written law.

3. The Importance of the Common Law

The common law is important not merely because it represents a substantial part of all law, but also because as an institution it serves to unify, stabilize and give flexibility to the law generally. By preserving our knowledge of the solutions to problems of life and morality in the past, the successes (and failures) of the past can be evaluated for workable solutions to present and future problems. This gives a measure of continuity and consistency to the law which no single generation of legislation can give it. On the other hand, its machinery for deriving and applying principles helps the common law meet new occasions.

The traditions of the common law do not permit established principles to be flung aside lightly. Yet those same traditions compel an endless, almost daily process of testing and re-testing in light of new experience, so that outmoded principles must in due time be re-shaped or replaced to meet the changing needs of society.

Thus, the common law keeps the law from becoming cold and lifeless, tuned only to voices from the past. Rather, it makes the law into a vibrant, living body.