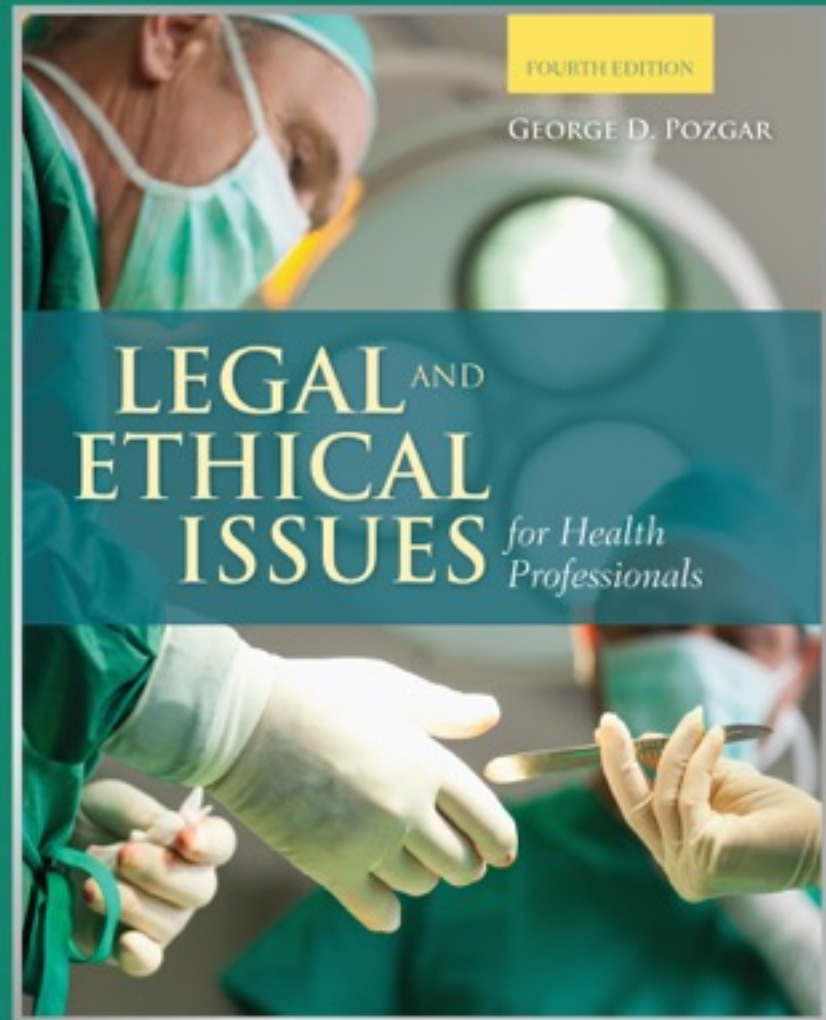


Chapter 5

Development of Law



Learning Objectives – I

- Understand the development and sources of law.
- Describe how the government is organized through the three branches of government.
- Explain the principle *separation of powers*.

Learning Objectives – II

- Describe what is meant by *conflict of laws*.
- Describe the functions of the Department of Health and Human Resources and its various operating divisions.

Laws

- A system of principles and processes by which people in a society deal with their disputes and problems, seeking to solve or settle them without resorting to force
- General rules of conduct enforced by government

Development of Law

- Tradition
- Culture
- Customs
- Beliefs

Why Laws Change

- Political climate
- Social change
- Religious beliefs
- Values change

Categories of Law

- *Public law*
 - Relationships between individuals and government
- *Private law*
 - Relationships between individuals

Sources of Law

- Common law
- Statutory law
- Administrative law

Common Law – I

- Derived from judicial decisions.
 - Origins: English common law.
 - Responds to issues beyond written law.
- Common law often differs state to state.

Common Law – II

- Common-law principles prevail.
 - Unless a state statute governs
- Judicial decision in one state does not set precedent for another.

Common-Law Principles

- *Precedent*: judicial decision used as standard in subsequent similar cases.
- *Res judicata*: “the thing is decided,” refers to that which has been previously acted upon by the courts.
- *Stare decisis*: “let the decision stand,” when a decision is rendered in a lawsuit, another lawsuit involving similar situation is resolved same as first.

Statutory Law

- Written law: emanates from legislative bodies.
- Courts often interpret how various statutes apply to each set of facts.
- *U.S. Constitution* highest in hierarchy of enacted law.

Bill of Rights

- Amendments to the U.S. Constitution were added to protect rights of citizens. Include:
 - Freedom of religion
 - Right to keep and bear arms
 - Freedom of speech

Administrative Law

- Public law is issued by administrative agencies to direct enacted laws.
- Administrative Procedures Act:
 - Procedures under which federal agencies operate
- Rules and regulations administered within intent of law.
- Regulations subject to judicial review.

Government Organization

Legislative Branch

- Enacts laws.
- Amends or repeals existing legislation.
- Creates new legislation.

Government Organization

Judicial Branch

- Resolves legal disputes.
- U.S. Supreme Court:
 - Nation's highest court
 - Eight associate justices and one chief justice

As I have said in the past, when government bureaus and agencies go awry, which are adjuncts of the legislative or executive branches, the people flee to the third branch, their courts, for solace and justice.

– Justice J. Henderson, Supreme Ct. of South Dakota

Government Organization

Executive Branch

- Administers and enforces the law.
- Executive power vested in the President.
- Cabinet advises the President.

Separation of Powers

- System of checks and balances.
- No one branch of government dominant over other two.

Dept. of Health and Human Services

- Cabinet level department.
- Responsible for carrying out national health and human services policy.
- Main source of regulations affecting the health care industry.

DHHS Divisions and Agencies – I

- Centers for Medicare & Medicaid Services
- Public Health Service
- National Institutes of Health
- Centers for Disease Control and Prevention
- Food and Drug Administration

DHHS Divisions and Agencies – II

- Substance Abuse and Mental Health Services Administration
- Health Resources and Services Administration
- Agency for Healthcare Research and Quality
- Agency for Toxic Substances and Disease Registry
- Indian Health Service

REVIEW QUESTIONS

- Define the term *law* and describe the sources from which law is derived.
- Describe and contrast the legal terms *res judicata* and *stare decisis*.
- Describe the function of each branch of government.

REVIEW QUESTIONS, cont'd

- What is the meaning of separation of powers?
- What is the function of an administrative agency?
- Describe the various operating divisions and agencies within the DHHS.