

Week 2

SOURCES OF LAW

Overview

In this presentation, we will review three foundational areas in the study of law and legal principles. First, we will look at the three branches of federal government and how they interact. Next, we will look at the American Court System and how it applies and interprets law and makes case law. Finally, we will look at the different sources of law that govern the work universities do.

Branches of Government

- ⦿ What are the three branches of government and what are their functions?
- ⦿ Watch:
<https://www.youtube.com/watch?v=YMY6IOVjQgs>
- ⦿ The three branches are the legislative, (Congress) and the executive (President and all administrative offices) and the judicial, (courts).
- ⦿ Although, higher education is governed by both state and federal law, the main sources of the laws that dictate disability protections are federal laws. Thus, for purposes of this class, we will be focusing on the federal government, federal law, and federal courts.

Legislative

- Under Article I Section 8, Congress has the authority to pass laws in specific realms. Under the Commerce Clause of the Constitution, the right to regulate state commerce, and under the Bill of Rights, Congress has passed laws (also called statutes) to protect some vulnerable citizens against discrimination.
- The most important of those laws for purposes of this course are: Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act (and ADAAA, the ADA Amendments Act, 2008.)

Executive

- Under the Constitution, the President is given the authority and the task of enforcing all of the laws that are passed by Congress. To help the President do that, the President has an extensive network of administrative agencies.
- These agencies pass regulations that explain, apply, and assist with the enforcement of the laws passed by Congress. These regulations have the weight of law and are called administrative law. They are enforced by the agencies themselves.
- The two main executive agencies that enforce the ADA and Section 504 are the Department of Justice and (under the DOJ) the Office for Civil Rights (OCR). OCR is the agency that investigates alleged violations of civil rights laws, including the ADA.

Judicial

- ⦿ The federal judicial branch is the federal courts.
- ⦿ We will talk further about the structure of the federal courts in the next section.
- ⦿ The federal courts decide disputes between parties and interpret and apply the laws that are passed by Congress.

Constitution, Article III

“The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;--to all cases affecting ambassadors, other public ministers and consuls;--to all cases of admiralty and maritime jurisdiction;--to controversies to which the United States shall be a party;--to controversies between two or more states;--between a state and citizens of another state;--between citizens of different states;--between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.”

Case law

- ⦿ When the federal courts interpret and apply law, they are in effect making new law.
- ⦿ For example, the court has in many cases decided what is or is not a “reasonable accommodation” under the ADA. When the court, makes a rule in a case under the ADA, that rule becomes part of ADA law; it is called case law.
- ⦿ This is why when we are trying to learn the legal principles of the ADA, we cannot simply study the statute passed by Congress, we must also look at how the law has been interpreted in specific court cases. This semester, we will be looking at some of the most significant ADA court cases and the case law they have generated.

Case Law (continued)

Laws are by nature and necessity general principles. It would be impossible to pass a law that would predict and govern every factual scenario to which they apply. This will become more evident as we start looking at case law.

Case law also helps keep statutes from becoming outdated. For example, when the ADA was passed in 1988, no one could have predicted how the internet and online education would evolve. The courts tell us what the law means even as significant changes occur in education.

Case law (continued)

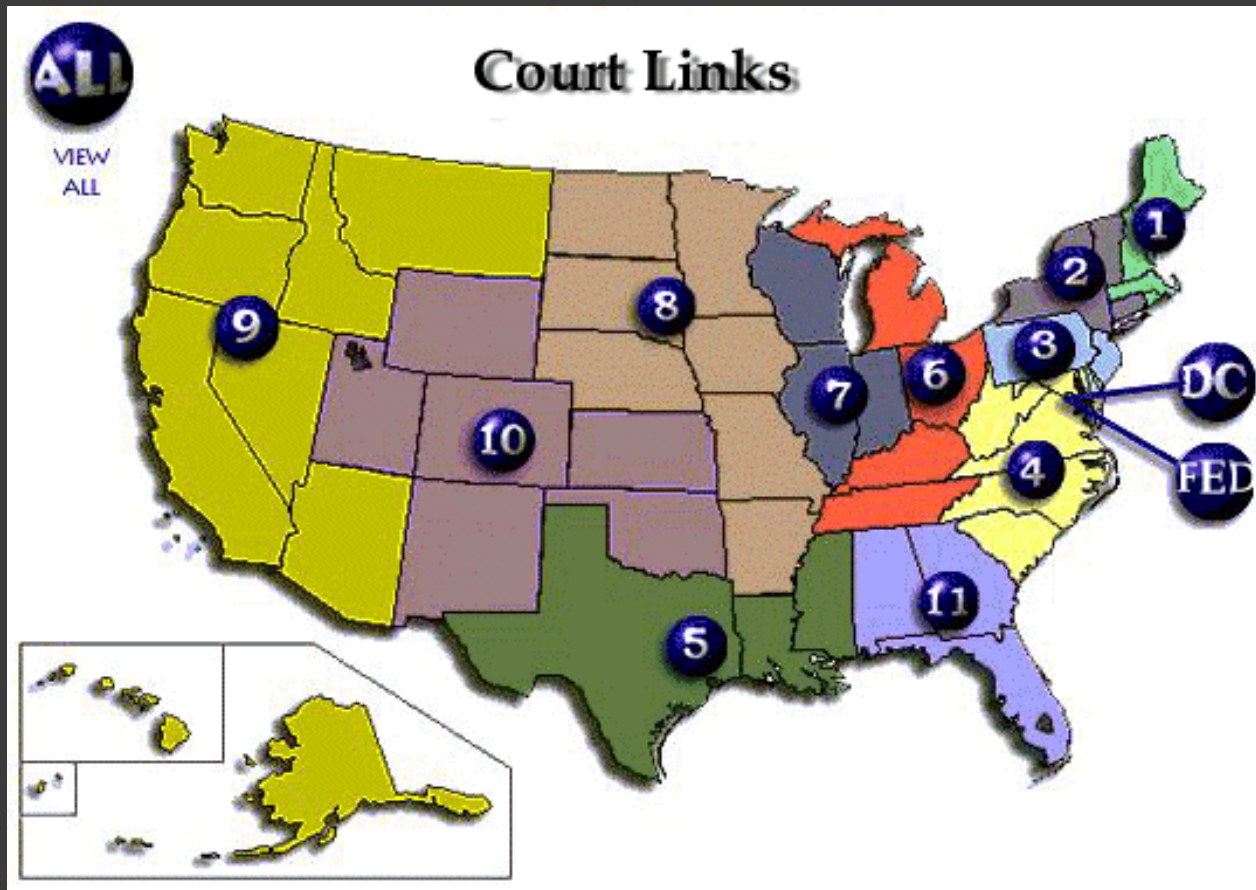
- The ADA does not talk about what accommodations universities need to make to make online resources (registration systems, online classes, websites) accessible to students with disabilities.
- People with disabilities have filed court complaints claiming that lack of online access (for example, no closed captions on videos on college websites) violates the ADA.
- The courts have made decisions that tell us what universities must do to make online resources accessible and to comply with the ADA. We will explore some of these court cases this semester.

Federal Courts

- ◉ The federal court system has three levels of courts:
- ◉ The trial court is where almost all cases start. In the federal court system the trial courts are district courts. There are 94 district courts, each state has at least one. District court decisions are binding only in their district.
- ◉ The next court level is the intermediate appellate court, which is known as the US Circuit Court of Appeals. These courts hear appeals from the district courts. There are 13 Circuit Courts of Appeals. Circuit Court decisions are binding only in their circuit. Eleven regional courts plus the District of Columbia plus a Federal Circuit.

US Circuit Courts of Appeals

Source: www.usfederalcourts.net



US Supreme Court

- The US Supreme Court is an appellate court (with original jurisdiction in a few cases). It is the highest court of the land and its decisions are binding over all other courts.
- When a decision is made by the Supreme Court, it becomes the law of the land and is binding on all courts unless the decision is reversed by the Supreme Court itself. This is known as precedent.

The federal court system

US Supreme Court

US Circuit Court of Appeals

US District Courts



Precedent

- ◉ When a higher court has made a decision regarding a certain issue, the courts below it must follow that precedent, which is also known as case law or common law (judge made law).
- ◉ For example, if you are in the Fourth Circuit, you would look to the decisions of the Fourth Circuit Court of Appeals to determine the law in your area.
- ◉ However, if the Supreme Court has made a decision on the same issue, then the Supreme Court decision is binding on everyone. The Supreme Court has jurisdiction every where in the United States.

Jurisdiction

- Jurisdiction is the authority to make a legally binding decision. A court must have jurisdiction to hear a case and make a decision. Generally, jurisdiction is geographical. If the dispute occurs in a certain district, that district court has jurisdiction.
- Generally, questions of federal law are heard in federal courts. Therefore, most ADA disputes will be heard in federal courts because they have jurisdiction over federal laws.

Civil and Criminal Law

- Federal courts hear civil and criminal cases.
- Civil law: a lawsuit is brought by one party (plaintiff) against another party (defendant) claiming the defendant failed to carry out a legal duty owed to the plaintiff and that the defendant's failure caused financial or personal injury (tort) to the plaintiff. Usually the plaintiff sues for monetary damages or a court order to make the defendant do (or stop doing) something. The court decides if the defendant is responsible. The burden of proof is preponderance of the evidence (it is more likely than not that the defendant is responsible). The usual outcome is monetary damages if the defendant is responsible.
- ADA disputes are civil lawsuits.

Civil and Criminal Law

(continued)

- ⦿ Criminal law: A defendant (an individual or organization) is prosecuted by the government on behalf of society at large for violating a criminal statute. Most criminal cases start in state court as most criminal statutes are state statutes.
- ⦿ In criminal cases, the court decides if the defendant is guilty or not guilty. If the defendant is found guilty, the punishment may be imprisonment or even loss of life. Because the stakes are high, the burden of proof is also high; the defendant must be guilty beyond a reasonable doubt to be found guilty.

What is the difference between the district courts and the appellate courts?

- Federal district courts, also known as trial courts, have original jurisdiction of most cases. This means cases get heard there first.
- District courts conduct trials that may be jury trials or bench trials (heard by the judge only).
- The trial courts hear all the evidence from both the plaintiff and the defendant. The trial courts are fact finders.
- Based on the facts, the trial courts then make a decision. In civil cases the decision is responsible or not responsible. In criminal cases the decision is guilty or not guilty.

What is the difference between the district courts and the appellate courts?

- Appellate courts have a different function than trial courts. The appellate courts hear only appeals in most cases. A defendant may appeal the decision of a trial court if the defendant believes the court made a legal error. In civil cases only, either the defendant or the plaintiff may appeal.
- The trial court can make several types of errors. For example, the court might apply the wrong legal rule. Or the court might apply the right legal rule but make an error in its application. The court might even make a mistake in its fact-finding role. Although a reviewing court generally subjects questions of law to rigorous standards of review, the question whether the lower court has made a mistake of fact is subject to a fairly deferential standard of appellate review.
- Source: American Bar Association,
http://apps.americanbar.org/abastore/products/books/abstracts/5310396%20chapter%201_abs.pdf

What is the difference between the district courts and the appellate courts?

- ◉ When reviewing lower court decisions, appellate courts are often asked to fill gaps in the law. In doing so, the appellate court may end up articulating a new legal rule, which becomes part of the law itself. These new rules are known as precedent.
- ◉ Appellate courts only review the record from the trial court. They do not hear testimony and generally do not revisit the facts. Ultimately, appellate courts do one of three things: they uphold the trial court decision, they reverse the trial court decision, or they remand the case back to the trial court to hear the case again without the error that was made in the first case.
- ◉ In appellate courts, cases are heard by a panel of judges. The two attorneys present the legal arguments to the judges and the judges issue a written decision. These written appellate court decisions are the case law we are studying in this course.

Sources of Law

What are the sources of the laws courts interpret?

Federal:

- US Constitution
- US Federal Statutes
- US Regulations (Administrative Law)

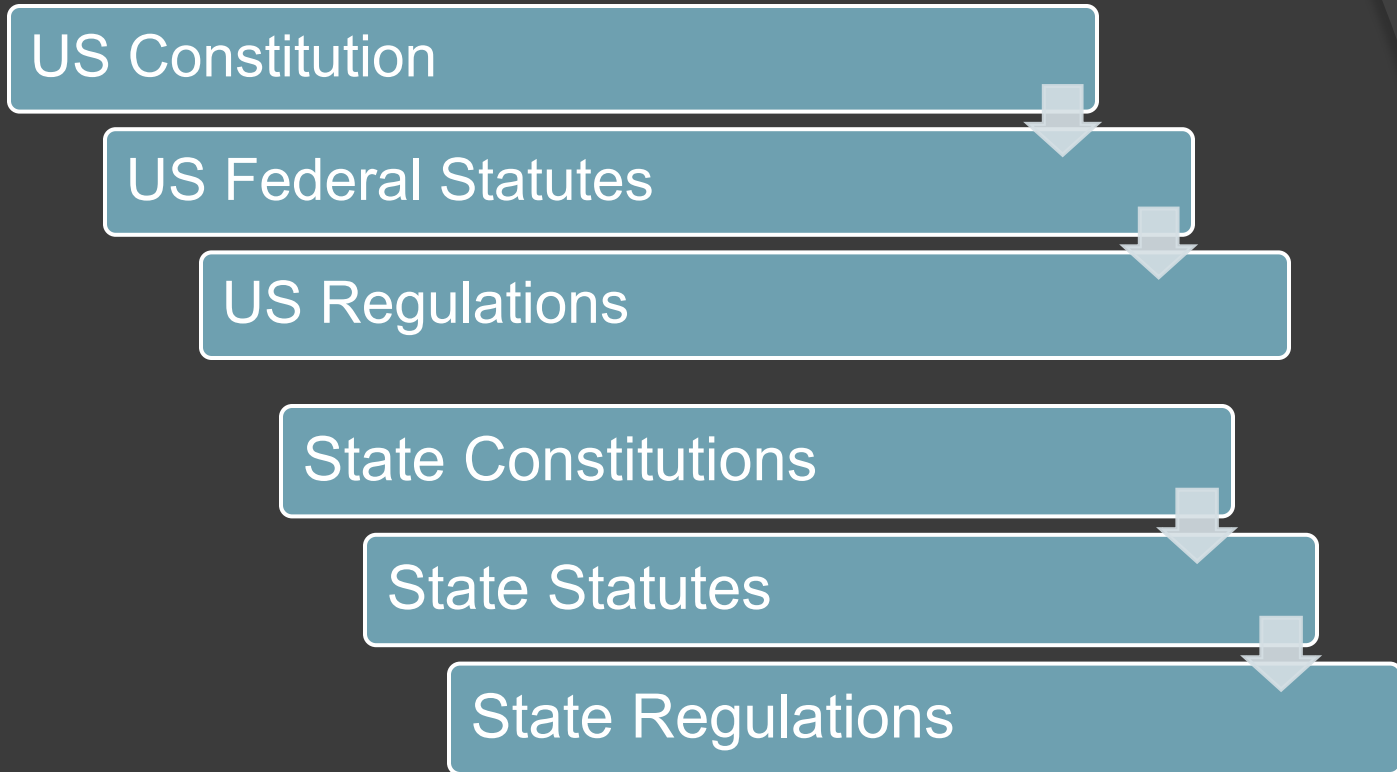
State:

- State Constitution
- State statutes
- State Regulations
- Local ordinances

Order of Powers

- If laws conflict with each other, how do we know which law is binding?

Order of Powers



Supremacy Clause

- ◉ Under the Supremacy Clause of the US Constitution, federal law trumps state law if there is a conflict between the two.
- ◉ The US Constitution trumps all other sources of law. What this means is that if the Court finds that another source of law (including federal law) conflicts with the Constitution, the other law is struck down and is no longer valid and cannot be enforced.
- ◉ A recent example: The US Supreme Court decided in 2015 that denying people who are gay the right to marry violates the equal protection clause of the US Constitution, therefore all laws denying same sex couples the ability to marry were struck down throughout the US.

Sources of Disability Law

- The main source of laws that govern how universities deal with persons with disabilities is the federal statute the Americans with Disabilities Act (1988).
- Since this is a federal statute, most complaints of disability discrimination will be heard in federal courts.