

**Community College of Rhode Island
Criminal Justice & Legal Studies Department**

Law of Contracts Course

Introduction to the Law

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Overview: The law can be generally defined as a set of rules that society will enforce. There are many sets of rules in society, such as rules at school or at home, but for the law we are talking about rules that can be enforced by an individual or society through its judicial system or courts. The body of law in the United States basically breaks down into two categories: civil law and criminal law. **Civil law** deals with the rights and responsibilities that individuals can enforce through the court system, such as a civil lawsuit concerning an auto accident, a breach of contract lawsuit, or an eviction proceeding by a landlord. **Criminal law** is enforced by the government for the benefit of society in general, such as a criminal prosecution for murder or sexual assault or bribery. A single set of circumstances can fall under both categories of the law, however. For example, if you are assaulted by another person and were injured, there would be a criminal prosecution for the assault plus a civil lawsuit by you as the injured party for damages to compensate you for medical bills, lost wages, and pain & suffering.

The legal system in the United States is complicated by the manner in which our government is structured under a concept known as **federalism**. We have one central government in Washington, D.C. (known as the federal government) which makes laws for the entire country, and then each of the 50 states has their own government and their own laws. We thus have two separate, but inter-related, governments working at the same time. As a citizen or resident of a particular state, we are subject to the laws of the United States and also to the laws of the state where we live. Both the federal government and the state governments have an Executive Branch (President or Governor),

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a legislative branch (Congress or the state legislature) and a judicial branch (federal and state court systems). The glue that holds this system together is the United States Constitution.

Sources of the Law: A further complication of our legal system is that there is not one place that we can go to in order to find out what the law is. We have a variety of sources for the law that is applied by the federal and state governments. The Common Law of England, which was developed prior to the Revolutionary War in 1776, is part of the law of the states (although it can and has been changed over the years). There is not only a United States Constitution, but also a constitution for each state. Congress passes laws known as statutes, and each state legislature adds their own statutes to the body of law. The court system decides cases in both the criminal and civil law areas, interpreting constitutions, statutes, and the common law, which further adds to the body of law that we as citizens are subject to. A development of the 20th century has been what is known as Administrative Agencies at both the federal and state levels, which put out numerous rules and regulations that have the force of law and which we as citizens must comply with. The remaining sections of this Introduction to the Law will go into these various sources of law.

Common Law of England: Since this country began with thirteen English colonies, what is called the Common Law of England forms part of our legal system. The phrase "common law" is used frequently in law textbooks. This phrase refers to **case decisions** made by judges over the course of our history starting with our English ancestors. English judges and later judges in this country were called upon to decide specific disputes between citizens. If there was no existing rule of law to apply, they would formulate or come up with a rule that they deemed best to fit the situation. As time went on, later judges followed the rulings of earlier judges and we have developed what we call our common law system. In the law of contracts, the law of property, the law of agency, and partnership law, many of the rules of law that we follow today come in whole or in part from our English legal history. The states obviously have the power to change the common law rules, and we are not stuck with a legal rule just because some judge in the year 1450 decided on the rule of law. However, from the beginning of our independence from England in 1776, states such as Rhode Island have followed the common law rules unless the rules have been changed by the state legislature or by the highest court in the state. Many of the old common law rules have been changed over the last 200+ years; but quite a few have been left unchanged and still form a part of the body of law that affects us today. For example, we have no state statute that would make attempting

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suicide a criminal offense, yet such an act was a crime at common law in England prior to 1776. It is still a crime in Rhode Island today according to a decision of the Rhode Island Supreme Court in 1978.

Modern English legal history started in the year 1066 when William the Conqueror, as he was later known, came over from Normandy in France and took over the throne of England. The law that developed in England from 1066 up to our independence in 1776 was incorporated into the law of this country through the 13 original colonies. Technically, the English Common Law is part of the laws of the individual states and not part of federal law; but the federal courts at times reach back and apply common law principles, and the U.S. Supreme Court frequently refers to our English history for interpreting the federal constitution.

Usually, it takes many years for a rule of law to be changed and lawyers and the legal system are traditionalists and adopt change slowly. For example, the doctrine of "interspousal immunity" held that one spouse could not sue another spouse for personal injuries. This rule of law lasted for hundreds of years before it was changed in Rhode Island; first by a court decision and later by an act of the legislature. In 1984, the Rhode Island Supreme Court decided a case involving a husband sued by a wife regarding injuries resulting from an auto accident. The court determined that the policy behind the doctrine of interspousal immunity (that it would create marital discord if one spouse was allowed to sue the other) did not apply. The husband was not being really being sued by the wife, but the wife was suing the insurance company to collect on the husband's insurance policy. Therefore, the Rhode Island Supreme Court, for those kinds of cases, abolished the doctrine of interspousal immunity. In 1986, the Rhode Island General Assembly, our legislature, passed a law that completely abolished this rule of law. This example is given to show you that rules of law can survive from far back in our legal history until some action is taken, whether that action is through the courts or the legislature or both, to change the rules due to changed circumstances in society.

Colonial Charters: The next stage in our legal history comes from the colonial charters that were granted by the English Crown to the thirteen original colonies. These charters established the governments in the colonies. Rhode Island's colonial charter was granted by King Charles II in 1663. These charters are important in that some of the rights and liberties that were granted in the charters later became part of our national legal system. For example, the **Charter of Charles II in 1663** to Rhode Island was one of the first legal documents that guaranteed freedom of religion. That freedom is one of the basic rights of our society today and survives from that early date. In fact, the 1663

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charter to Rhode Island was such a well written document that, even after independence from England, Rhode Island operated under that document for its form of government until we passed a new constitution in 1842 as a result of the civil war in this state, known as the **Dorr War** after Thomas Wilson Dorr, the leader of the “rebels”.

Declaration of Independence: To separate ourselves from England, the Continental Congress enacted what has become known as the Declaration of Independence and is officially celebrated as being adopted on July 4, 1776. This document is actually not a law itself, but contains a certain philosophy or set of principles regarding the foundation of our legal system. It is many times referred to by judges even today in trying to interpret our present laws, and in an election year one will hear the words of the Declaration of Independence being spouted from the mouths of many politicians. In effect, the Declaration of Independence was an open letter addressed to the British Crown and the world at large telling them why the citizens of this country, at that time citizens of the colonies, had decided to break their ties with England and establish themselves as an independent state. Much of the Declaration of Independence is a list of complaints that the colonies had with the way they were being treated by England. But it also contains some basic principles of our entire governmental or legal system, which are just as relevant today as they were when written by Thomas Jefferson, the main author the Declaration of Independence, in 1776.

Two of the important propositions contained in that document are: (1) that all men are created equal; and (2) that all men have certain inalienable rights and that among those rights are life, liberty, and the pursuit of happiness. Many of our laws today derive their strength and wisdom from these two simple phrases that are contained in the Declaration of Independence. **Equality**, as stated in the phrase that "all men are created equal" is obviously an important part of our society today. At the time it was drafted, the persons involved in politics obviously meant only men, and really only meant white men. When that phrase was written, slavery still existed in this country and women did not have the same rights as men. In fact, women were not even given the right to vote until 1920, almost 150 years after those words were set forth. Today (hopefully), we would interpret the phrase as meaning that all persons are created equal and look at it in a much broader sense than they did in 1776. Obviously, that phrase does not mean that everyone is born with equal talents, intelligence, and physical attributes. It basically means that we are equal before the law and should be treated equally in the legal system. It is something that we strive for today but, obviously, we have not reached the ultimate goal. Above the columns at the front of the U.S. Supreme Court building in

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Washington, D.C. are the words “**Equal Justice Under the Law**”, which reflects the principle established in the Declaration of Independence.

With regard to the part of the Declaration on "**inalienable rights**", those words mean that as persons we have certain rights we are born with and that are inherent in human beings. Governments cannot give or take away these inalienable rights; they belong to us just because we are human beings. The role of government then is not to give us those rights, but to protect those rights for its citizens. There are three particular rights listed in the Declaration of Independence -- **life, liberty, and the pursuit of happiness**. These rights mentioned in the Declaration of Independence are obviously being discussed today in many ways. The right to life leads us to discussions of abortion rights and capital punishment, as well as the right to die. The right of liberty obviously comes up in discussions about freedom of speech (e.g. flag burning), the right to bear arms, and other common discussions in today's society. The phrase "pursuit of happiness" is more difficult to contend with, but generally it means that persons should be given the opportunity to reach their capacities and to "be all that they can be". Thomas Jefferson used the words "pursuit of happiness" rather than just the word "happiness" since it very often depends on the individual's motivation and willingness to work as to whether they will actually take advantage of their opportunities. The main considerations in the pursuit of happiness today would, more than likely, be that of education (especially in today's society in which education is so important), decent housing, and access to health care.

The philosophy that Thomas Jefferson espoused for our legal system in the Declaration of Independence was referred to 87 years later in a speech by Abraham Lincoln during the Civil War, which was fought between 1861 and 1865 between the North (Union states) and the South (Confederate states). The **Gettysburg Address** was a speech given by President Lincoln at a ceremony at the Battlefield of Gettysburg in Pennsylvania, where one of the fiercest battles of the Civil War had been fought. This speech started off with the phrase "Four score and seven years ago". A score means 20, and since the speech was made in 1863; it refers back 87 years to 1776 when the Declaration of Independence was written.

The beginning of the Gettysburg Address contains reference to the Declaration as follows: "Four score and seven years ago, our fathers brought forth on this continent **a new nation, conceived in liberty and dedicated to the proposition that all men are created equal**. We are now engaged in a great civil war testing whether that nation or any nation so conceived and so dedicated can long endure. . . ." In this way, the spirit of the Declaration of Independence was brought forth by Abraham Lincoln at a most crucial time in our history during our one, and thankfully only, civil war.

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United States Constitution: After the Declaration of Independence, the thirteen original colonies were now states and tried to operate under what was referred to as the **Articles of Confederation**. This system of government they set up did not work very well, especially due to the requirement that all of the states must agree to any action by the federal government. Each of the states basically then had a veto power over the central government for the country. Therefore, a **Constitutional Convention in 1787** was held in Philadelphia to draft a new organizing document for the country, becoming what we now know as the United States Constitution. The new constitution took effect and the first Congress met under the constitution in 1789. Rhode Island became known as the thirteenth state because they were the last of the thirteen original colonies to adopt the United States Constitution. Rhode Island did so hesitantly and by a very narrow vote margin at the end, joining the new government on May 29, 1790, a year after it went into effect.

The United States Constitution sets forth the foundation of our government structure by establishing the three branches of government: the executive branch (President), the legislative branch (Congress) and the judicial branch (the U.S. Supreme Court). The Constitution also established a "federal" system whereby power is distributed between the states and the one central, or federal, government. When most people think of or talk about the U.S. Constitution, they would refer to the various rights and freedoms we have, such as freedom of speech, freedom of religion, the right to a jury trial, or the right to assistance of counsel. But these rights and freedoms were not in the original constitution that went into effect in 1789. They are actually contained in the first ten amendments (changes or additions) to the U.S. Constitution. These 10 amendments are now known as the **Bill of Rights**, which was proposed in 1789 by the first Congress and then was ratified or approved by the states in 1791.

The U.S. Constitution is declared to be the **supreme law of the land**. By that phrase, we mean that all other laws enacted in this country or actions by government officials must conform to it, whether on the federal or the state level. Most people are familiar with the fact that some things are found to be unconstitutional by a court, which means that the law or government action is in violation of the U.S. Constitution and therefore cannot be enforced. Although the citizens of this country retained the right to amend the Constitution and thus change what it says, there must be a process in which the Constitution is interpreted in light of various circumstances to determine whether something that is done by a legislature or by an executive (the President or a Governor) is constitutional. Our system has established the doctrine of **judicial review** in which the courts and ultimately the U.S. Supreme Court determines what the U.S. Constitution means and whether other

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laws conform to it. It was the U.S. Supreme Court, in the decision of Roe v. Wade, that knocked down a Texas state law and established the right to abortion in this country many years ago. It was the U.S. Supreme Court that decided that burning a U.S. flag in protest was protected as freedom of speech. It was the U.S. Supreme Court that stopped capital punishment in this country for a number of years and, again, it was the U.S. Supreme Court, by their interpretation of various state laws, that allowed it to be opened up again so we now see executions taking place. It was the U.S. Supreme Court that decided that persons have a “right to die” by refusing medical treatment and life support, but it was also the U.S. Supreme Court that held that persons do not have a constitutionally protected right to commit suicide.

Once the U.S. Supreme Court decides that some law or government action is or is not constitutional, that is the “law of the land”. There are only two ways in which the law then can be changed. One way is that the U.S. Supreme Court could in later years (with different judges usually) change its mind on the issue. A number of people have wanted the U.S. Supreme Court to reverse its decision in Roe v. Wade on abortion, and one of the issues that comes up in a Presidential election is which political party will have the opportunity to appoint new judges to the U.S. Supreme Court who may be for or against abortion rights. In 1896, the U.S. Supreme Court sanctioned as constitutional the concept of “separate but equal” that allowed segregation of the races; but in 1954 the U.S. Supreme Court overturned its ruling of 58 years earlier and struck down the segregated school systems in the southern states in the case of Brown v. Board of Education.

The second way to change an interpretation of the Constitution by the U.S. Supreme Court is the Amendment process, whereby three-fourths of the states approve a constitutional amendment. As a country we are reluctant to tamper with the constitution, and so the amendment process is not taken lightly. For example, although polls showed that 90% or more of the American people disagreed with the decision of the U.S. Supreme Court that burning a U.S. flag was freedom of speech, attempts over the last several years to amend the constitution to protect the flag have not met with much success. There are only 27 amendments to the Constitution at present with the first ten amendments coming as part of the Bill of Rights in 1791. In the last 200+ years since the Bill of Rights was adopted, we have enacted only 17 amendments to the Constitution. The last significant amendment to the U. S. Constitution was the 26th Amendment in 1971 which guaranteed the rights of citizens in our states who are 18 years of age or older to vote. Women received the right to vote in 1920 through the adoption of the 19th Amendment, which was approved on August 26, 1920, which date is now celebrated as Women’s Equality Day. The 13th Amendment, adopted after the

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Civil War, abolished slavery in this country, and the 14th Amendment adopted at the same time gave citizens of each state the right to due process of law and equal protection of the law. Prohibition (the total ban on alcoholic beverages in this country) was voted in by the 18th Amendment, but taken out by the 21st Amendment after the experiment failed miserably.

Federal Laws: The Legislature of the United States is the Congress which consists of the House of Representatives and the Senate. This body has the right to adopt federal statutes which conform to the U.S. Constitution and which carry out the laws of the United States. In order to become a law, a bill (a proposed law) must be approved by a majority vote of both the House of Representatives and the Senate. The bill is then sent to the President who can sign the bill into law or veto it. If the President vetoes a bill passed by Congress, the veto can be over-ridden by a two-thirds vote of both the House of Representatives and the Senate. There are certain things which, by the Constitution, the federal government has authority over and these are the ones that the federal Congress enacts laws concerning. Under the Bill of Rights, any powers not given to the federal government are reserved to the states so that the states supposedly have any power that was not given to the federal government under the U.S. Constitution. However, in recent years, the federal government has exerted much power over the states and required the states to enact certain laws that presumably were within the powers of the states themselves to control. Examples of these are the 21 year old drinking age and the right-turn-on-red laws that were mandated by the federal government to the states. Although technically the states have control over these types of situations and could have refused, the federal government required these laws to be passed or the states would lose federal funds (money) and in fact then, the federal government used what is called the "power of the purse" to force the states to comply. During the last half of the 20th Century, the federal government has grown tremendously in size and has involved itself in many areas which might best be left to state law. The federal courts have generally allowed this trend to continue, but in the 1990's court decisions have started to tighten up the power of the federal government. A few cases have ruled that the federal government exceeded its power and was dealing with issues that should be left to state law.

Although Congress enacts a number of new statutes each year, another important part of our federal legal system is the rules and regulations of what is referred to as Administrative Agencies. Congress will set up various agencies or departments to deal with certain aspects of government and then these agencies are given the right to adopt rules and regulations to carry out their functions. A

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prime example on the federal level is that Congress enacted the Internal Revenue Code but then the Department of the Treasury which contains the Internal Revenue Service adopts numerous rules and regulations as to how we, as citizens, must comply with the Internal Revenue Laws. As an aside, when Congress originally tried to create an income tax, the law was held unconstitutional and an amendment (the 16th) was later adopted to the Constitution to allow the taxation of income. These rules and regulations as adopted by the administrative agencies of the federal government must conform to the federal statute under which the agency was created and the rules and regulations must also obviously conform to the supreme law of the land, which is the United States Constitution.

State Constitutions: Each of the fifty states in this country has its own constitution which sets up the government for that state and the rights for its citizens. An attribute of a federal system is that we are both citizens of the United States and citizens of a particular state in which we live. As noted before, Rhode Island operated under its 1663 Charter as its constitution up to the new constitution, which was adopted in 1842 and went into effect in 1843. Rhode Island adopted a new state constitution in 1986 which is a revised, re-written, and substantially amended version of our original constitution. Presently, we are operating under that constitution of 1986 (although it has been amended a few times) which contains some new advances in government as well as retaining some old things from the original constitution under which we operated.

State constitutions must also conform to the United States Constitution, but this means that the state constitution cannot give its citizens fewer rights than are given under the federal constitution. A state for example could not take away freedom of speech or abolish the right to a trial by jury. A state can, however, give its citizens more rights than are given to the citizens of the United States in general. For example, in Rhode Island, we have provisions giving us the right to gather seaweed in our constitution (which may seem silly today, but was important to farmers for fertilizer in 1842). Today, that right (and the right to fish) essentially translates into a guarantee of right of access to the ocean and bay which are important to our citizens. This is an old right that was brought up from our older constitution and survives today in Rhode Island and gives us rights that we do not have generally as U.S. Citizens. Some new rights enacted in 1986 for the Rhode Island constitution include the rights of the handicapped from being discriminated against, and rights for victims of crimes. The federal constitution contains several rights for persons accused of crimes, but no rights for persons who are the victims of those crimes. Rhode Island and other states have made **Victim's Rights** part of the state constitutional rights of their citizens.

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State and Local Laws: In each state, there is a legislature which enact laws that are within the powers of a particular state and these laws are known as state statutes. In Rhode Island, we have a General Assembly (composed of a Senate and a House of Representatives) which is our legislature and enacts laws in this state. Similar to the federal system, a bill becomes law only after being approved by both the Senate and the House of Representatives, and then presented to the Governor for signature. These state statutes must conform to the state constitution as well as the United States Constitution.

Under our state system, we would also set up administrative agencies similar to those in the federal government and state statutes would allow those administrative agencies to adopt rules and regulations. A common example would be the Registry of Motor Vehicles in the Department of Transportation which has powers to adopt rules and regulations with regard to licenses and registrations for motor vehicles. A prominent example today of an agency which is expanding its power is that of the Department of Environmental Management which is given broad authority to make sure that we have a clean environment in this state. It has adopted numerous rules and regulations dealing with environmental matters such as leaking underground storage tanks (LUST), protection of wetlands, and the disposal of hazardous waste.

In the state system we have an additional level of government in the cities and towns, which are referred to as municipalities. Municipalities also enact laws which are known as **municipal ordinances**. These ordinances must conform to state law, the state constitution, as well as the federal constitution. In Rhode Island, except for the form of government, cities and towns have little power to enact laws themselves, but must get permission for enacting specific types of laws from the General Assembly. For example, when video game parlors started to become popular, many cities and towns had to go to the General Assembly for the authority to enact municipal ordinances that would regulate these types of activities since there is no inherent or constitutional power for these cities or towns to enact ordinances. The question of municipal ordinances can lead all the way up to the U.S. Supreme Court at certain times in whether these municipal ordinances violate the U.S. Constitution or other rights of citizens.

Just like in the federal system, the courts in Rhode Island under the doctrine of judicial review would determine whether a state statute, an administrative agency regulation, or a municipal ordinance violates the state constitution. It is possible that a state or local law or government action does not violate the U.S. Constitution, but it could violate the Rhode Island Constitution or state law.

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This is precisely what has happened in 1989 and 1990 with regard to police roadblocks to check for drunk drivers. On July 7, 1989 the Rhode Island Supreme Court decided that these drunk driving roadside checkpoints were unconstitutional under the Rhode Island Constitution, as a violation of our constitution's prohibition against unreasonable searches and seizures. In June of 1990, the U.S. Supreme Court said that roadblocks for this purpose by the Michigan State Police did not violate the federal constitution's almost identical prohibition against unreasonable searches and seizures under the 4th and 14th Amendments. This U.S. Supreme Court decision, however, has no effect on police activity in Rhode Island. Although these roadblocks do not violate the federal constitution, they do violate the state constitution as interpreted by the Rhode Island Supreme Court and thus can not be used. Of course it is possible that, at some point, the Rhode Island Supreme Court might re-consider their decision. In effect what happened here is that the Rhode Island Supreme Court, by interpreting the Rhode Island Constitution, gave us as citizens more rights (not to be stopped at these roadblocks) than we have as citizens of the United States. If we reversed this situation, however, and the U.S. Supreme Court had ruled these roadblocks unconstitutional, while the R.I. Supreme Court said they were constitutional, the decision of the U.S. Supreme Court would control. Rhode Island can give us more rights that we have as federal citizens, but it cannot give us fewer rights than we have under the U.S. Constitution.