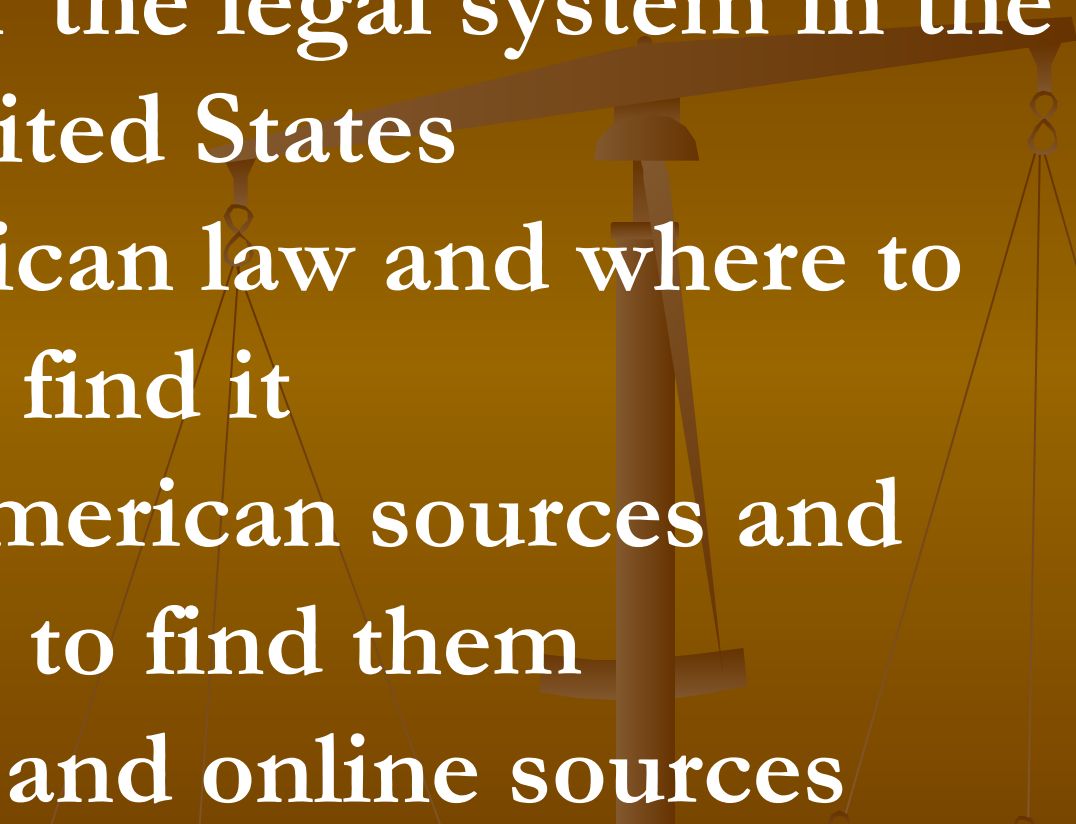


A faint, stylized illustration of a balance scale is visible in the background. The scale is tilted, with the right pan hanging lower than the left. A horizontal line, possibly a beam or a separator, crosses the upper part of the scale.

# Introduction to American Legal Research

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Факультет права ВШЭ  
Москва, 10 декабря 2014 г.

- The structure of the legal system in the United States
  - Primary American law and where to find it
  - Secondary American sources and where to find them
  - Major print and online sources
- 

# Common law jurisdiction

## Federal system of government

- 1 national system, created by the Constitution
- 50 different state systems

## Government has 3 branches:

- Legislative
- Executive
- Judiciary



# U.S. Constitution

## Legislative Branch:

House of Representatives & Senate; pass laws called statutes.

## Executive Branch:

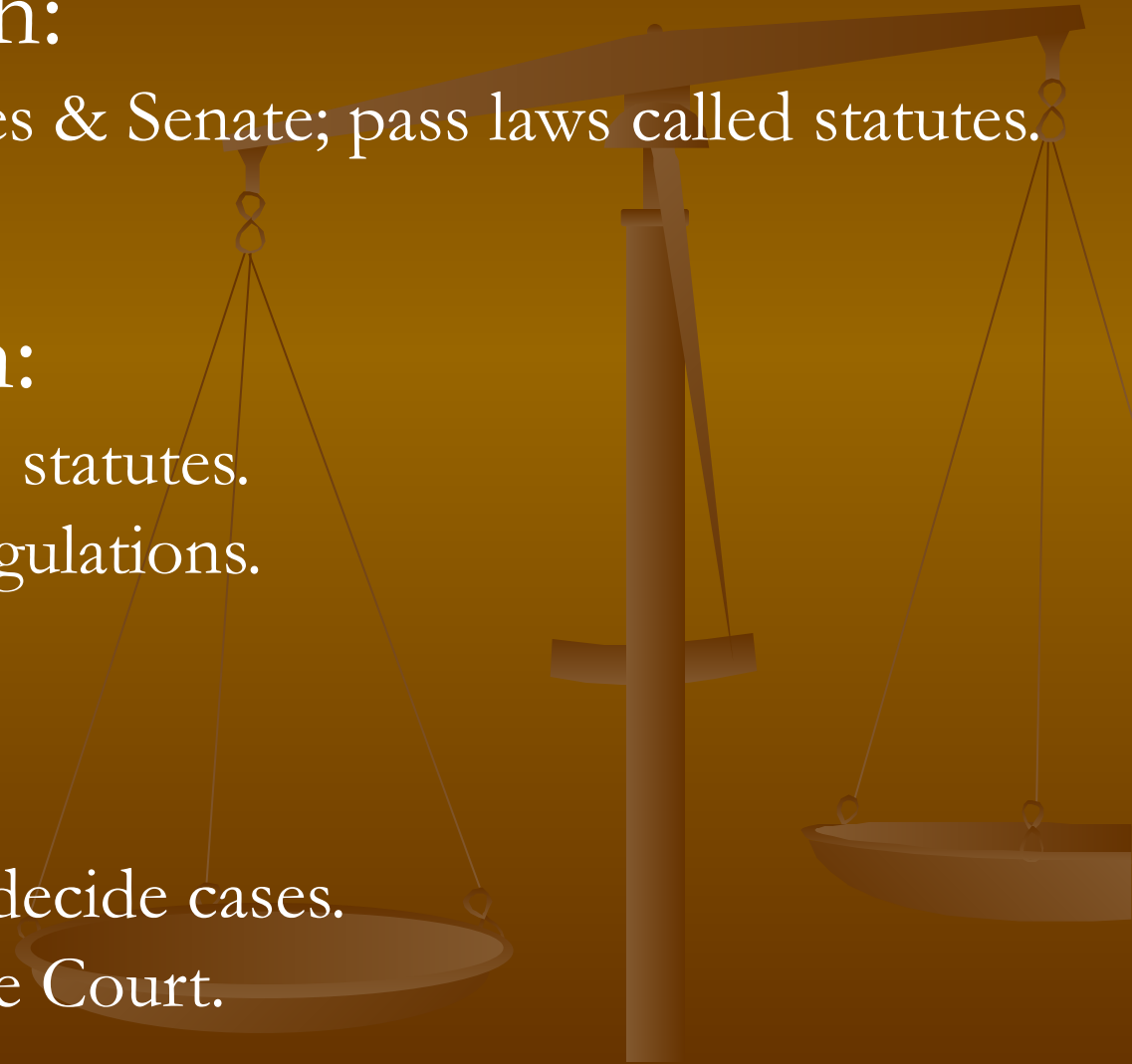
President signs or vetoes statutes.

Agencies promulgate Regulations.

## Judicial Branch:

Trial & appellate courts decide cases.

Highest court is Supreme Court.



## State Constitution

### Legislative Branch:

Usually 2 houses: House of Representatives & Senate;  
pass statutes.

### Executive Branch:

Elected Governor signs or vetoes statutes.  
Agencies promulgate Regulations.

### Judicial Branch:

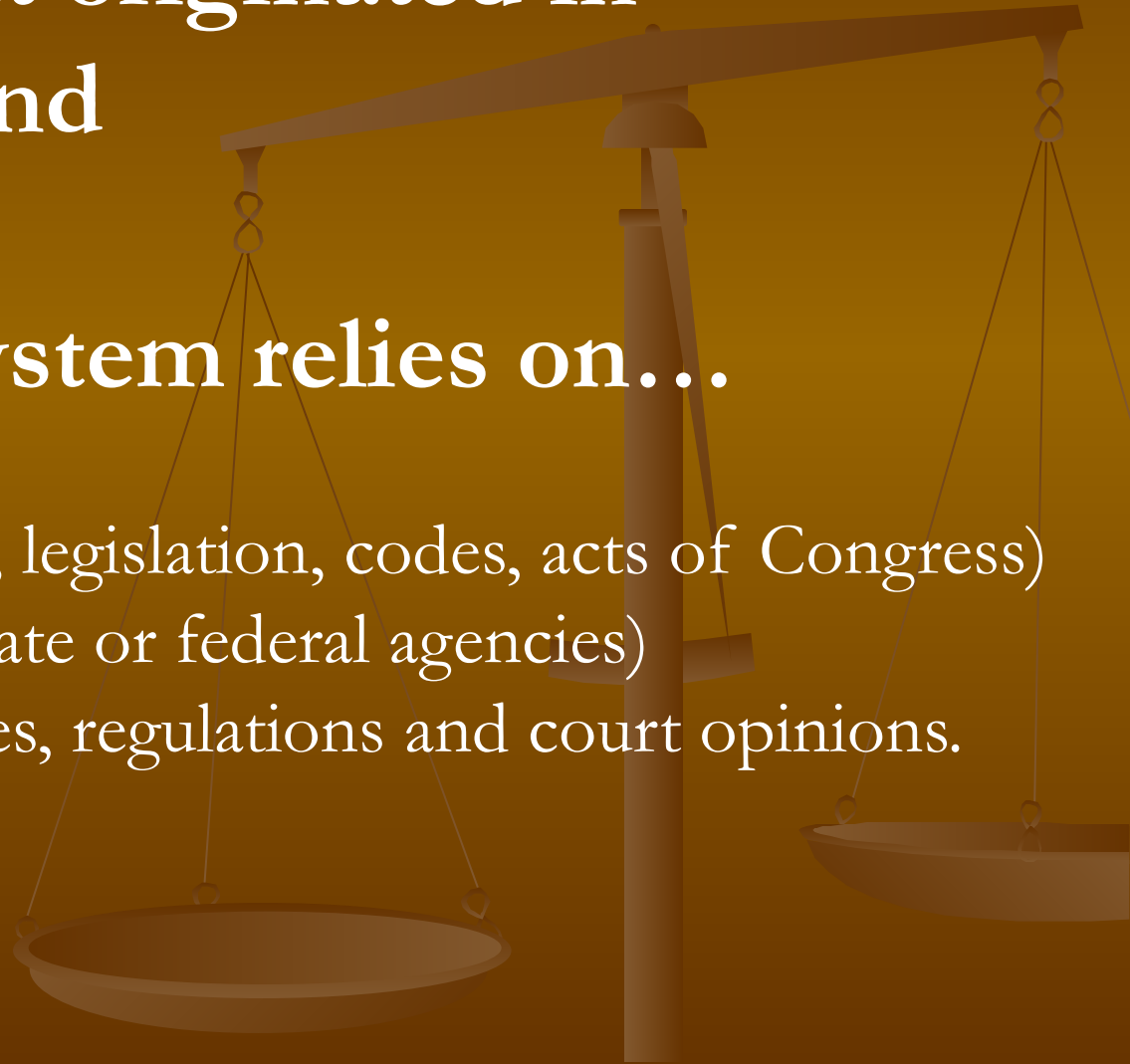
Trial & appellate courts decide cases.



Body of law that originated in medieval England

Common law system relies on...

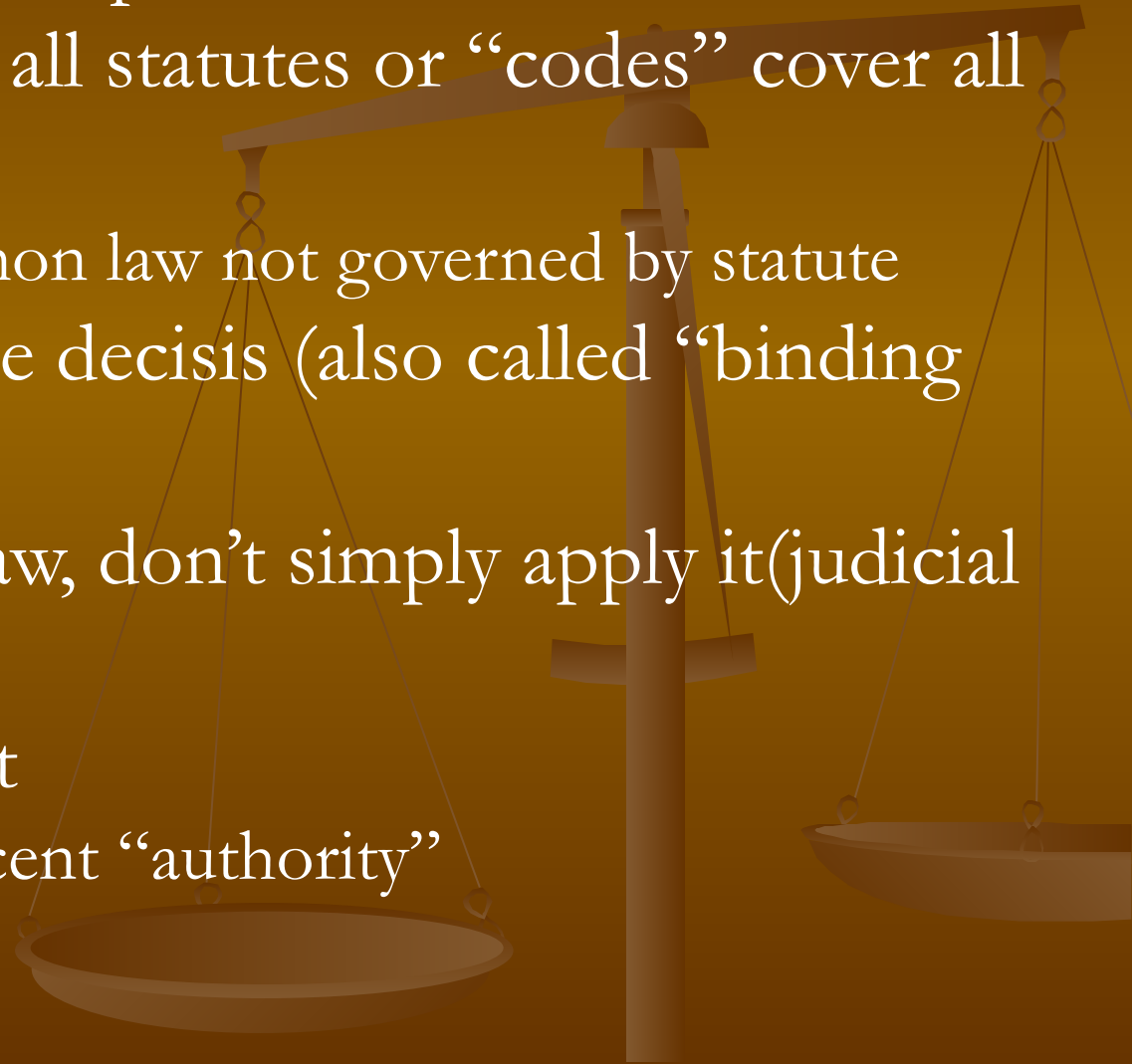
- Court opinions
- Statutes (also called laws, legislation, codes, acts of Congress)
- Regulations (issued by state or federal agencies)
- Interplay between statutes, regulations and court opinions.



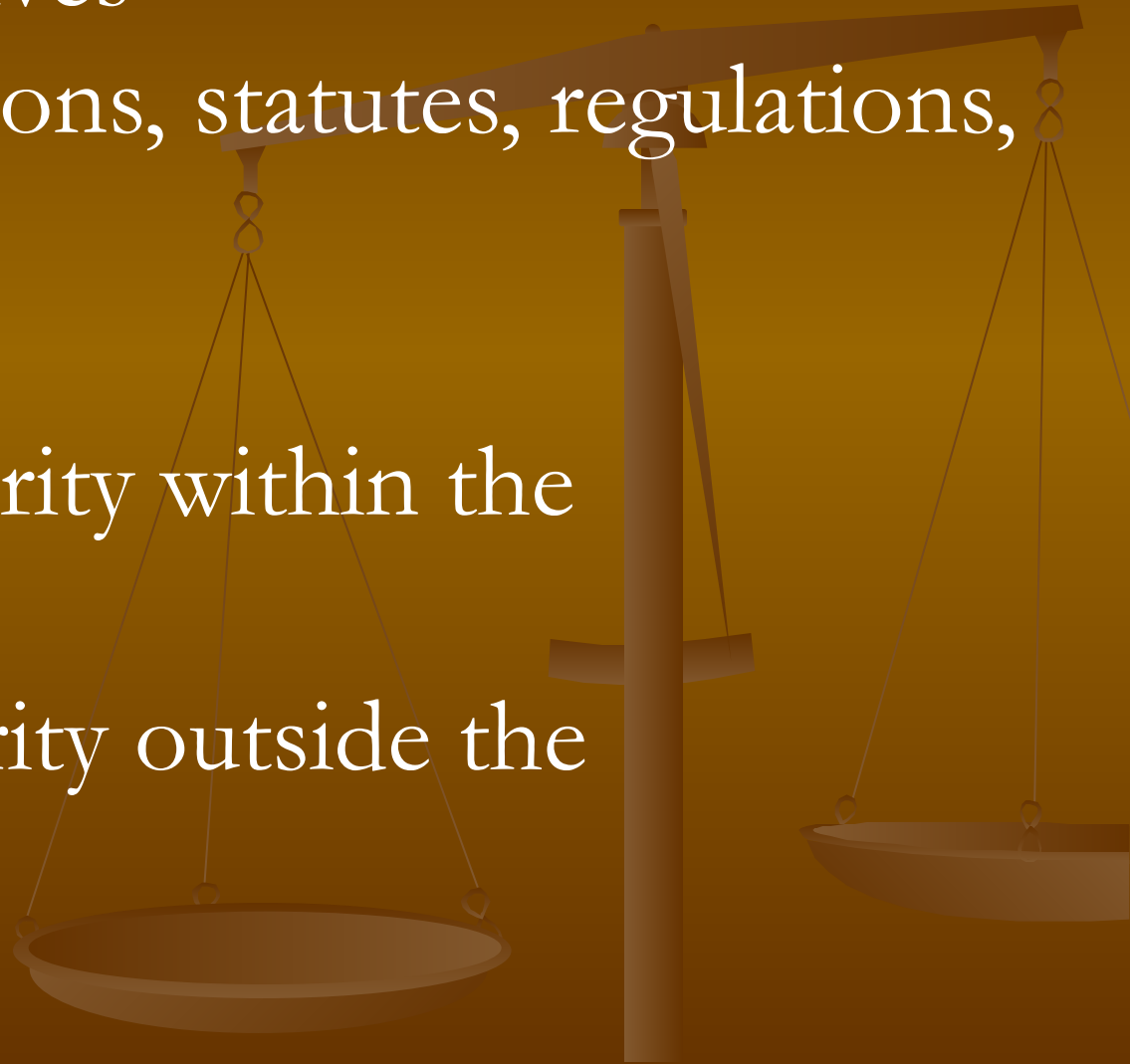
- “Codes” are subject compilations of laws
- No presumption that all statutes or “codes” cover all legal problems

Major areas of common law not governed by statute

- Uses principle of stare decisis (also called “binding precedent”)
- Judges interpret the law, don’t simply apply it (judicial activism)
- Reliance on precedent
  - Looks to most recent “authority”



- The laws themselves
- May be constitutions, statutes, regulations, court opinions (federal or state)
- Mandatory authority within the jurisdiction
- Persuasive authority outside the jurisdiction





## U.S. Constitution

Provides for “separation of powers” by forming three branches of federal government

Available online at

<http://www.findlaw.com/casecode/constitution/>

## States also have constitutions

Online at

<http://www.law.cornell.edu/states/listing.html>

## Federal statutes:

Laws passed by both houses of the U.S. Congress and signed by the President

- The President may also “veto” a law
- Congress may override the President’s veto
- The U.S. Supreme Court may later declare a law unconstitutional
- This is “separation of powers”!

# Federal statutes:

Published chronologically as “Public Laws”

Public laws online from 1987/1988 to current at  
<http://thomas.loc.gov/bss/d109/d109laws.html>

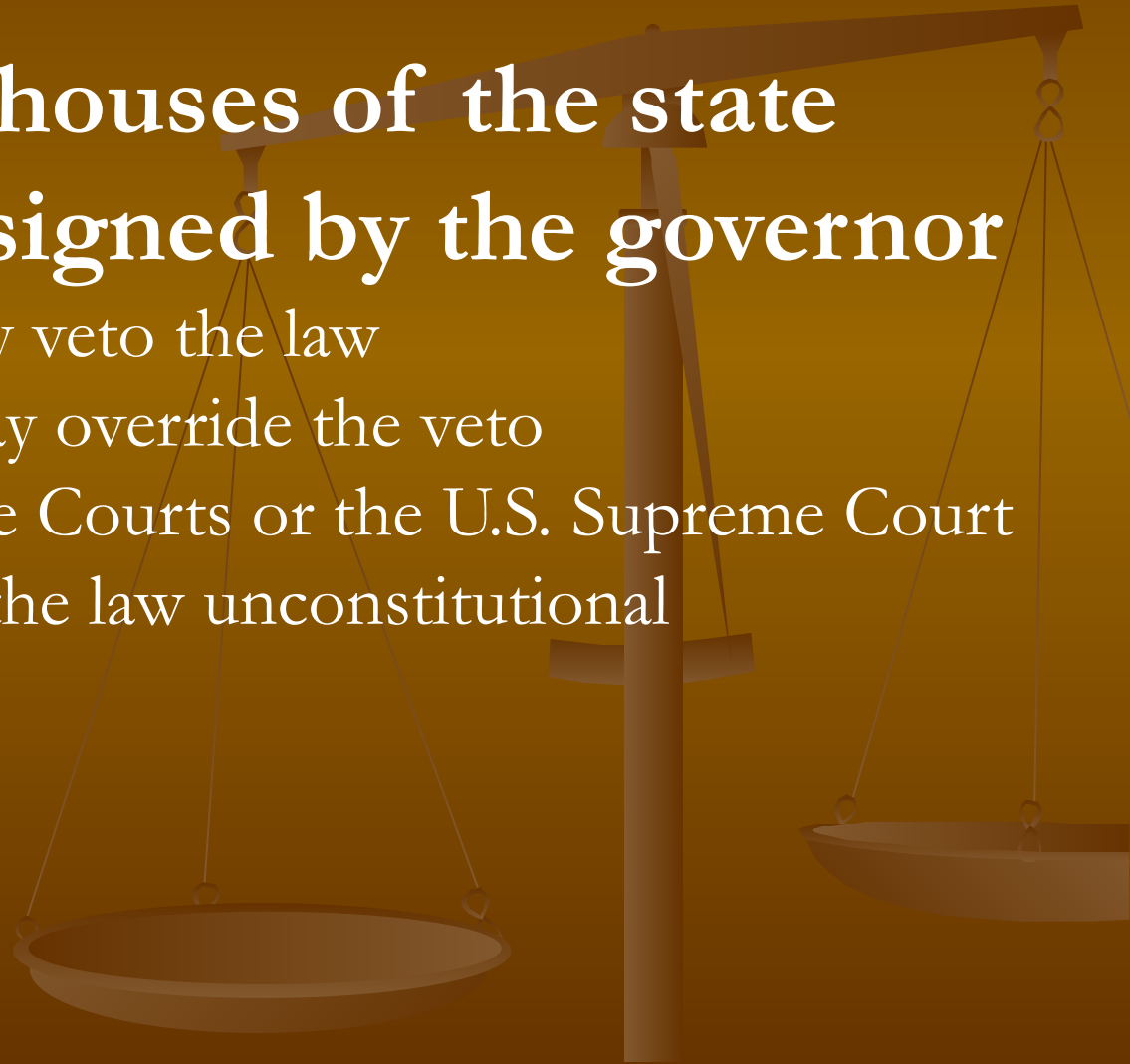
Federal statutes are also published in the United States Code,  
arranged by subject

Online at <http://www.gpoaccess.gov/uscode/index.html>

## State statutes:

Passed by both houses of the state legislature and signed by the governor

- The governor may veto the law
- The legislature may override the veto
- The state Supreme Courts or the U.S. Supreme Court may later declare the law unconstitutional



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Passed by both houses of the state legislature and signed by the governor

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State statutes are published chronologically as “Session Laws”

- Also published in subject compilations called “codes”
- Online at <http://www.law.cornell.edu/states/listing.html>

### Administrative agencies have been given authority by Congress to...

- Issue regulations to administer the day-to-day implementation of complex legislation
- Adjudicate disputes in the first instance

### Some agencies are...

- Department of Energy
- Department of Agriculture
- Department of Defense
- And others...



To become law, regulations are proposed and made public in *the Federal Register*

Then go through a period of public comment

And are published as a final rule in *the Federal Register*

Regulations may later be found illegal by federal courts, or may be voided by statute

Federal regulations are published chronologically in *the Federal Register*

- Online at <http://www.gpoaccess.gov/fr/index.html>

Federal regulations are also published by subject in *the Code of Federal Regulations*

- Online at <http://www.gpoaccess.gov/cfr/index.html>

State agencies also issue regulations

State regulations are published in administrative “codes” and registers

- Online individually

<http://www.law.cornell.edu/states/listing.html>



So far we've seen...

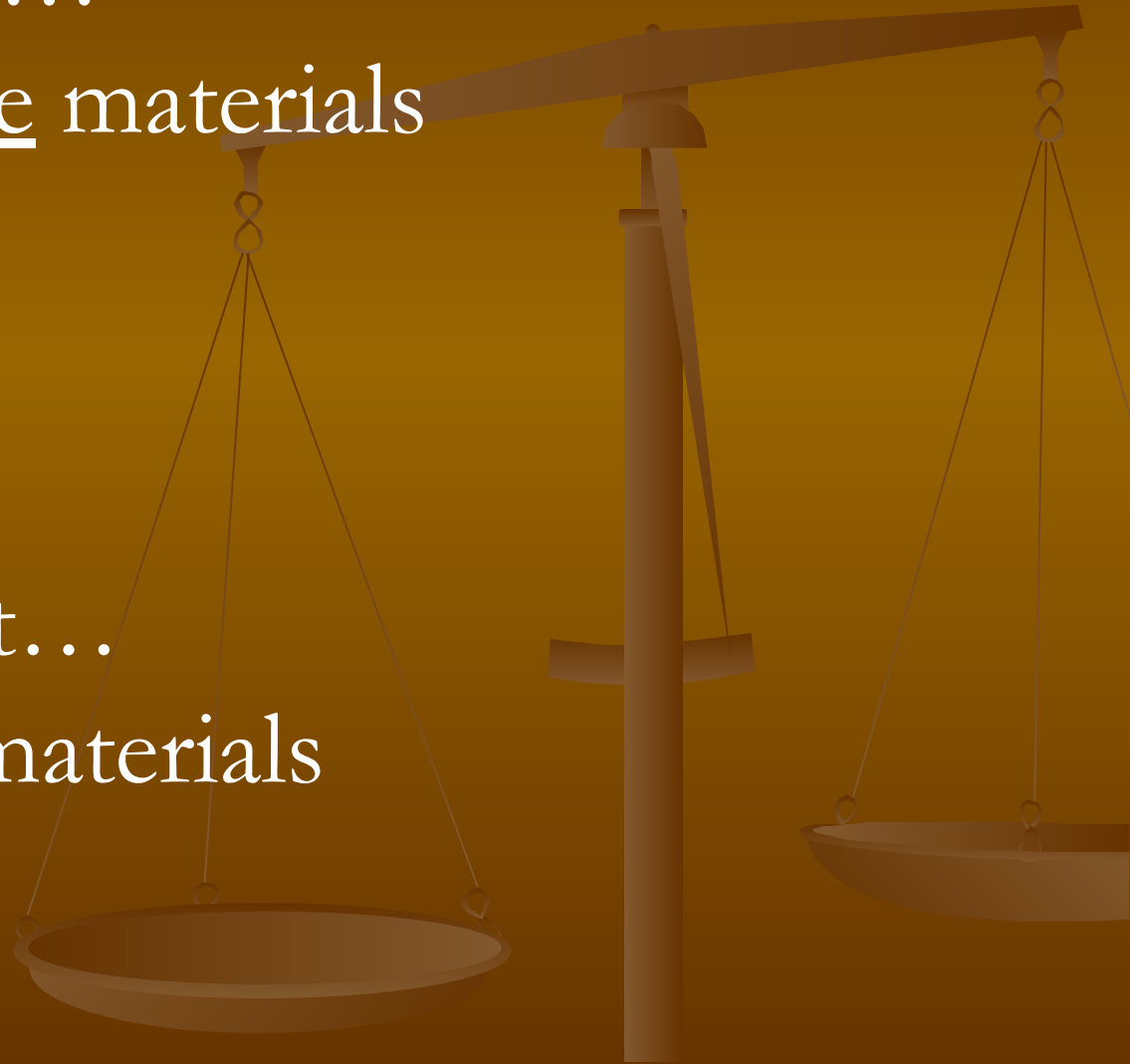
## Primary legislative materials

- Constitutions
- Statutes
- Regulations

Now we'll look at...

## Primary judicial materials

- Court opinions



## District Courts

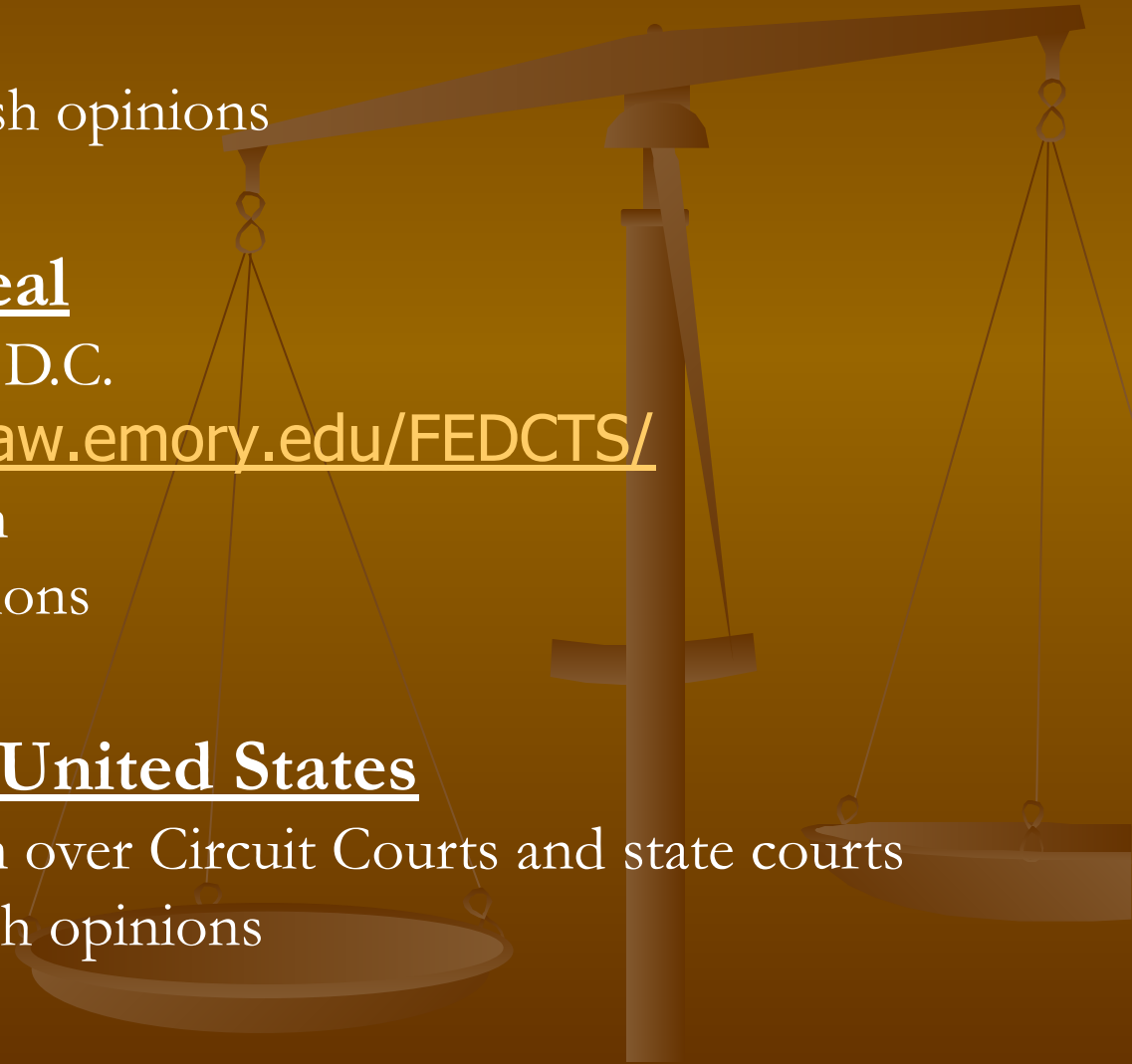
- Trial court level
- Usually do not publish opinions

## Circuit Courts of Appeal

- 12 circuits, including D.C.
- Map: <http://www.law.emory.edu/FEDCTS/>
- Appellate jurisdiction
- Usually publish opinions

## Supreme Court of the United States

- Appellate jurisdiction over Circuit Courts and state courts
- Almost always publish opinions



## State circuit or district courts

- Trial court level
- Rarely publish opinions

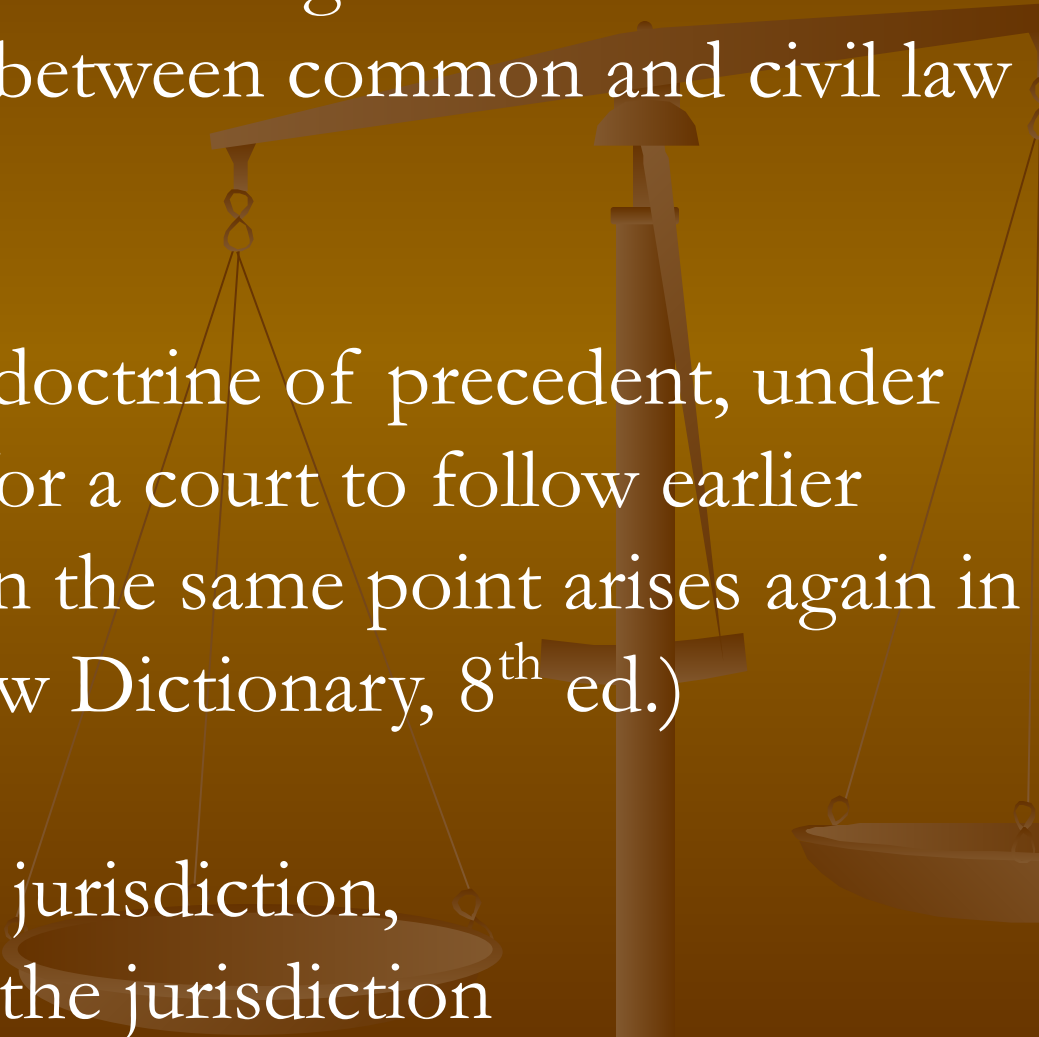
## State Court of Appeal

- Appellate jurisdiction
- Usually publish opinions

## State Supreme Court

- Appellate jurisdiction
- Almost always publish opinions
- Decisions can be appealed to U.S. Supreme Court



- Principle of “stare decisis” is significant in American law = Key difference between common and civil law systems
  - “Stare decisis = the doctrine of precedent, under which it is necessary for a court to follow earlier judicial decisions when the same point arises again in litigation.” (Black’s Law Dictionary, 8<sup>th</sup> ed.)
  - Mandatory within the jurisdiction, persuasive outside of the jurisdiction
- 

- Federal and state court opinions published chronologically in “reporters”
- No subject compilations!
- “Digests”: Subject index to court opinions
- Westlaw - <http://lawschool.westlaw.com/DesktopDefault.aspx> and Lexis - <https://www.lexis.com/research> are better for case finding than print digests
- “Annotated codes”: Summaries of court opinions construing statutes follow each statutory section

U.S. Supreme Court opinions published in *United States Reports*, *Supreme Court Reporter*, *Supreme Court Reports* (Lawyers Ed.)

- Online at <http://www.supremecourtus.gov/>

Circuit Court opinions published in *Federal Reporter* and District court opinions, specialty court opinions published in *Federal Supplement*

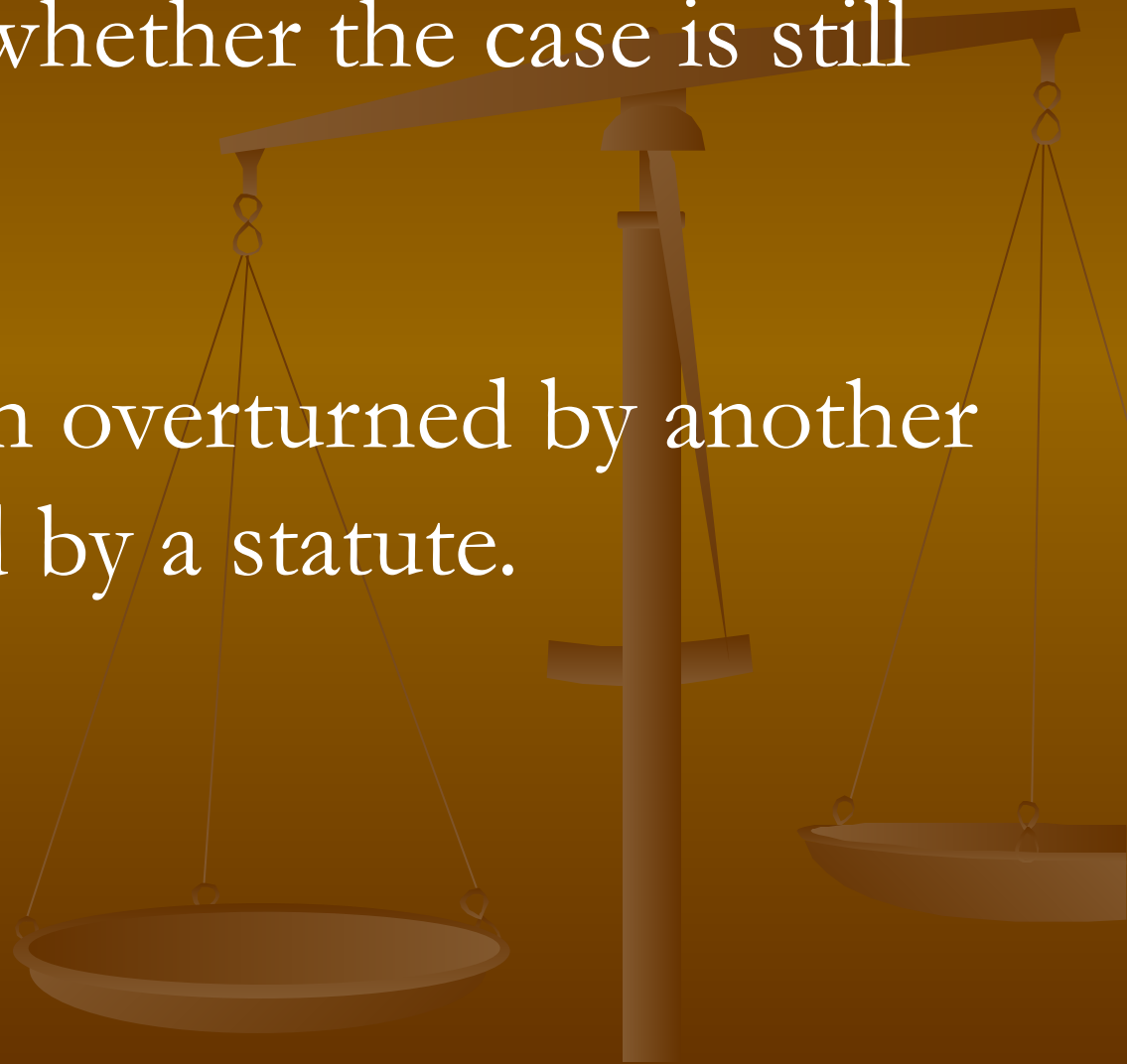
- Both online <http://www.law.emory.edu/caselaw/>

State Court opinions published in state reporters

- Online at <http://www.law.cornell.edu/states/listing.html>

Must determine whether the case is still  
“good law”!

Case has not been overturned by another  
case or abrogated by a statute.



- Common law jurisdiction
  - Mirror-image structure of federal and state legal systems
  - Primary materials: the law itself
    - Legislative materials
    - Judicial materials
  - Now let's talk about the process of American legal research...
- 

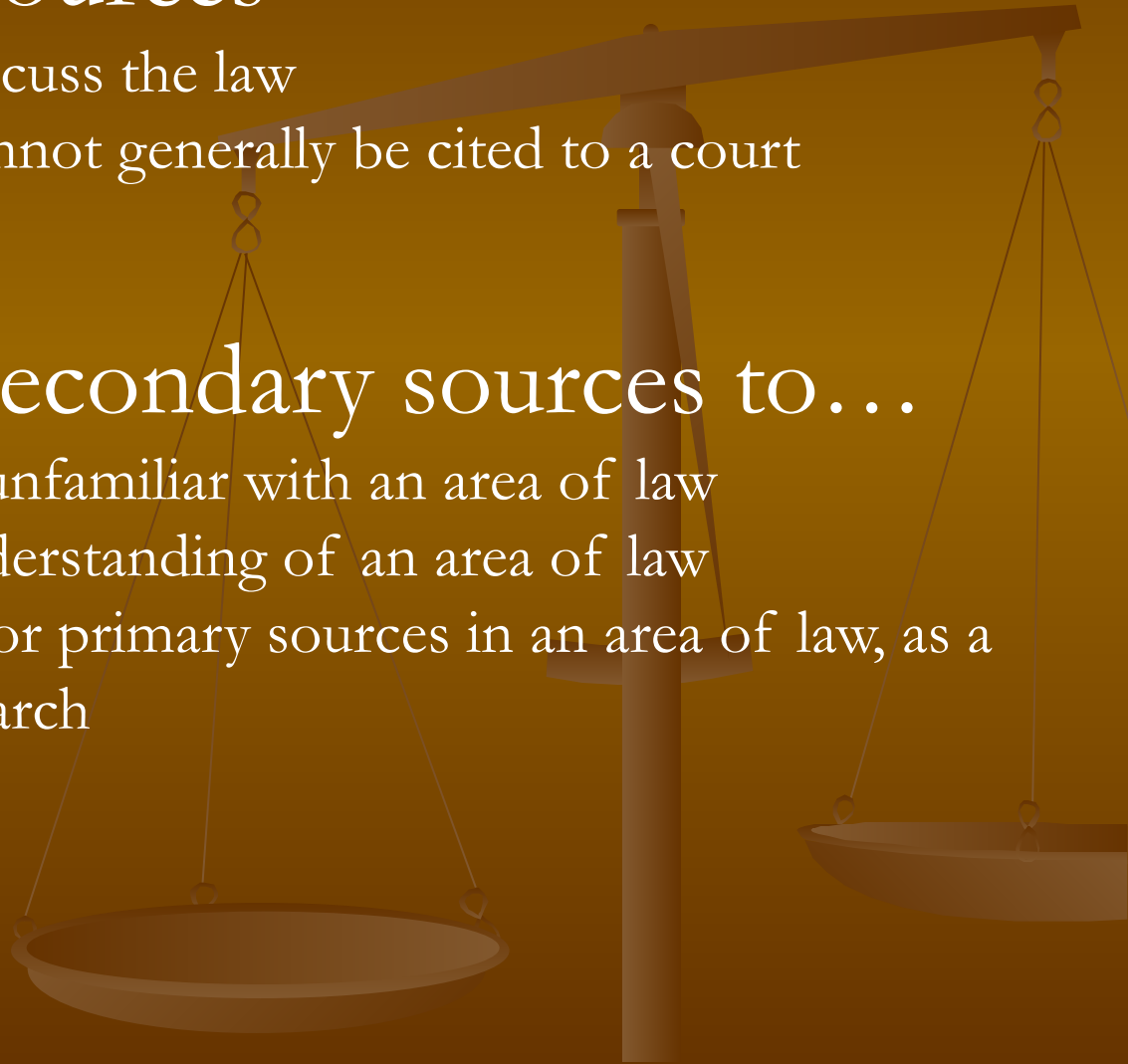


## Use “secondary sources”

- Explain, describe, discuss the law
- Not the law itself; cannot generally be cited to a court

## Researchers use secondary sources to...

- Start research when unfamiliar with an area of law
- Obtain a detailed understanding of an area of law
- Find citations to major primary sources in an area of law, as a starting point in research



- Books (also called “treatises”)
  - Legal encyclopedias
  - “Restatements of the Law”
  - Articles in law reviews and journals
    - To locate, use periodicals indexes or search full text in Lexis or Westlaw
- 

FindLaw:

<http://www.findlaw.com/>

GPOAccess:

<http://www.gpoaccess.gov/index.html>

Cornell Legal Information Institute:

<http://www.law.cornell.edu/>

# The “process of American legal research”:

- To start researching American law, use secondary sources
- Secondary sources lead you to primary sources
- Research in primary sources leads you to additional primary sources

