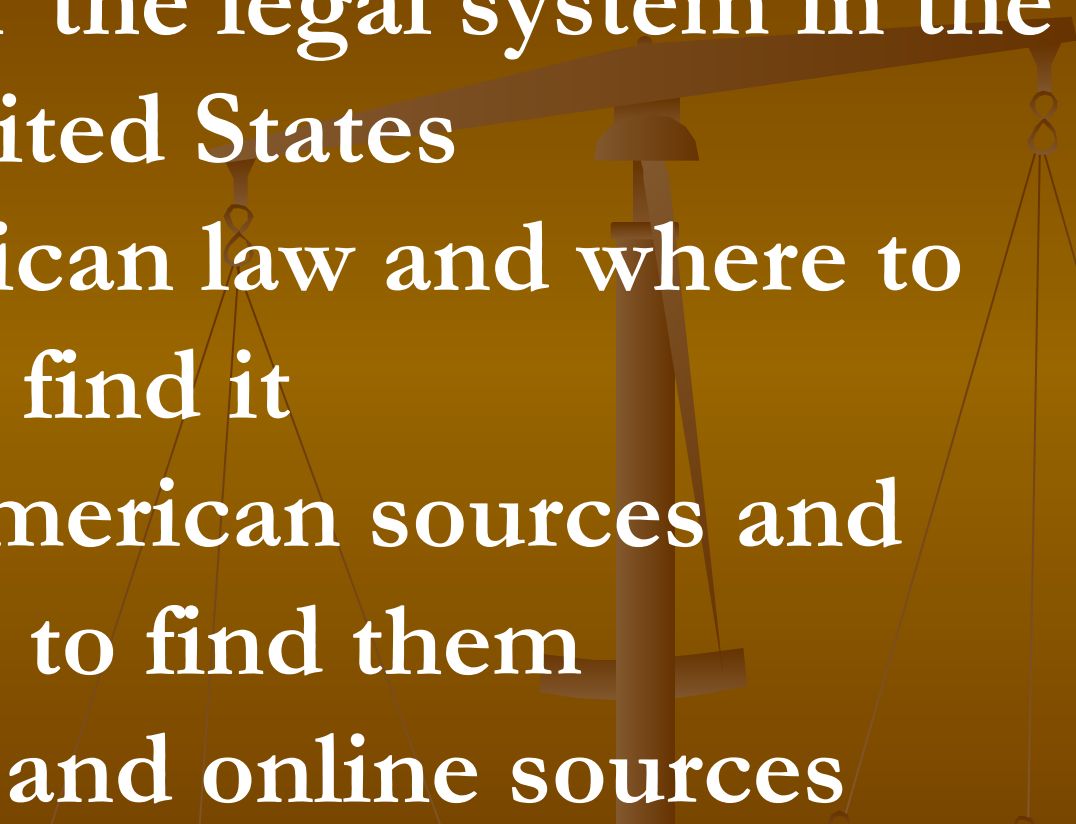


A faint, stylized illustration of a balance scale is visible in the background. The scale is tilted, with the right pan hanging lower than the left. A horizontal line, possibly a beam or a decorative element, crosses the upper part of the scale.

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:

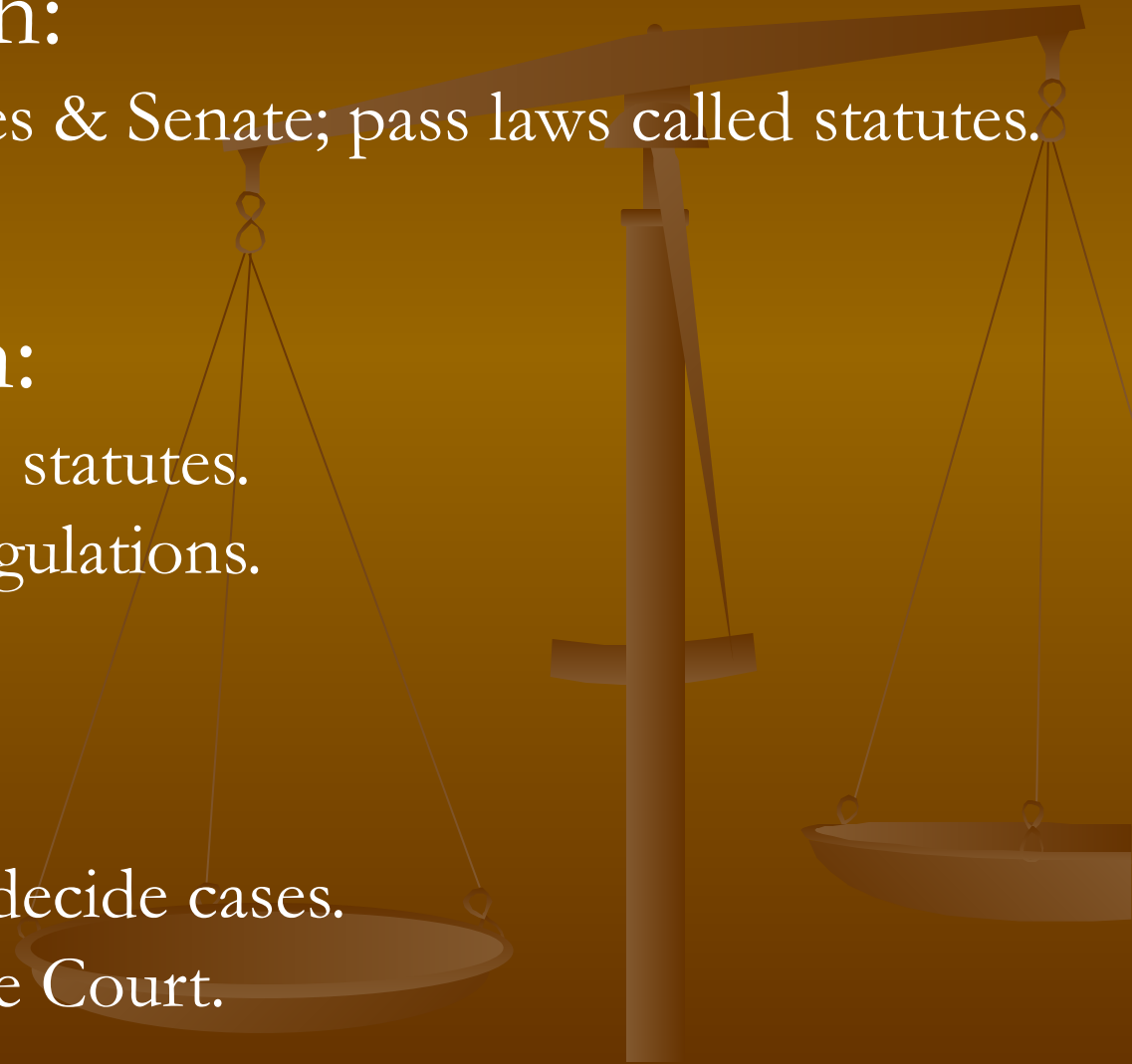
President signs or vetoes statutes.

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:

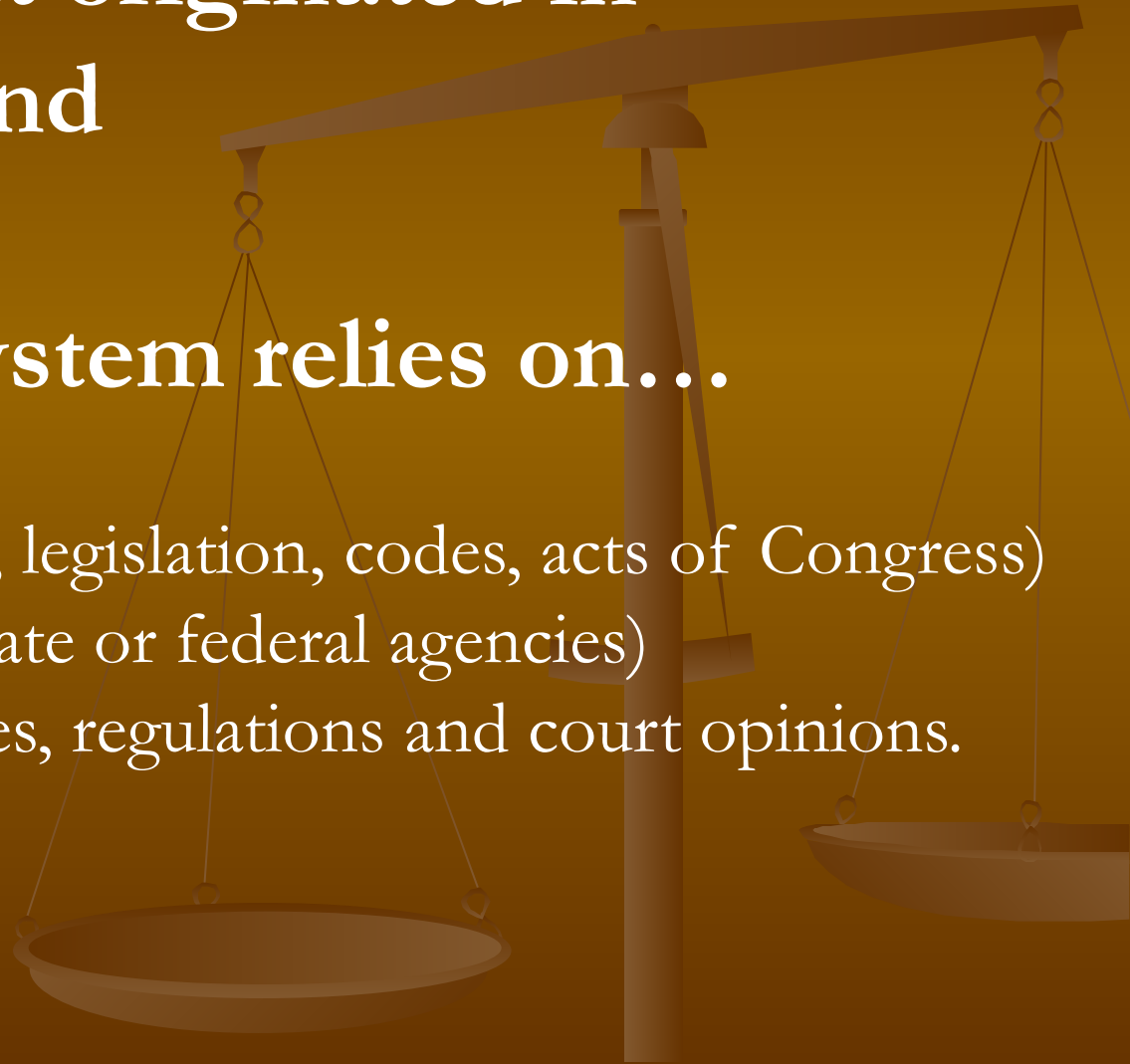
Trial & appellate courts decide cases.



Body of law that originated in medieval England

Common law system relies on...

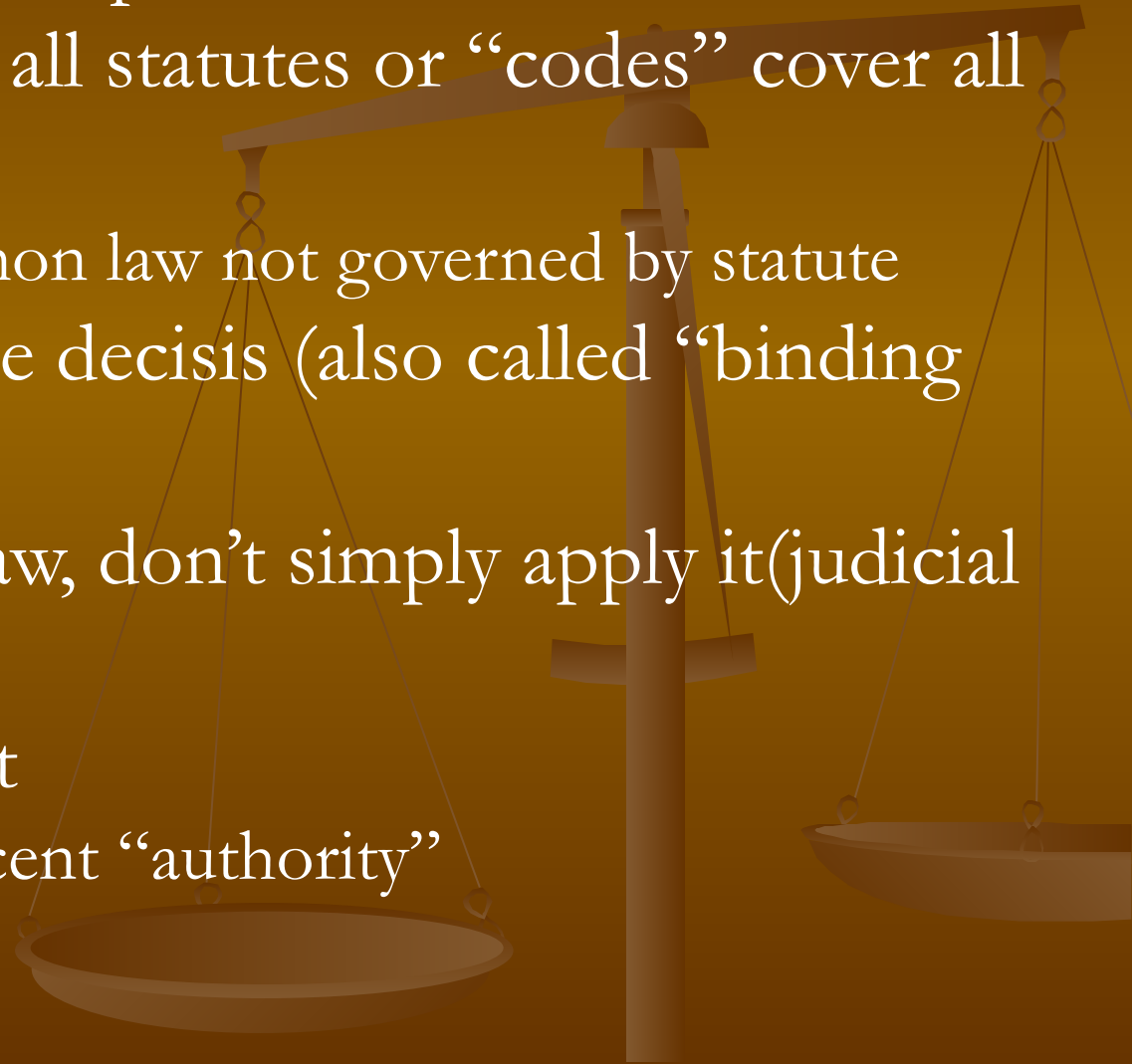
- Court opinions
- Statutes (also called laws, legislation, codes, acts of Congress)
- Regulations (issued by state or federal agencies)
- Interplay between statutes, regulations and court opinions.



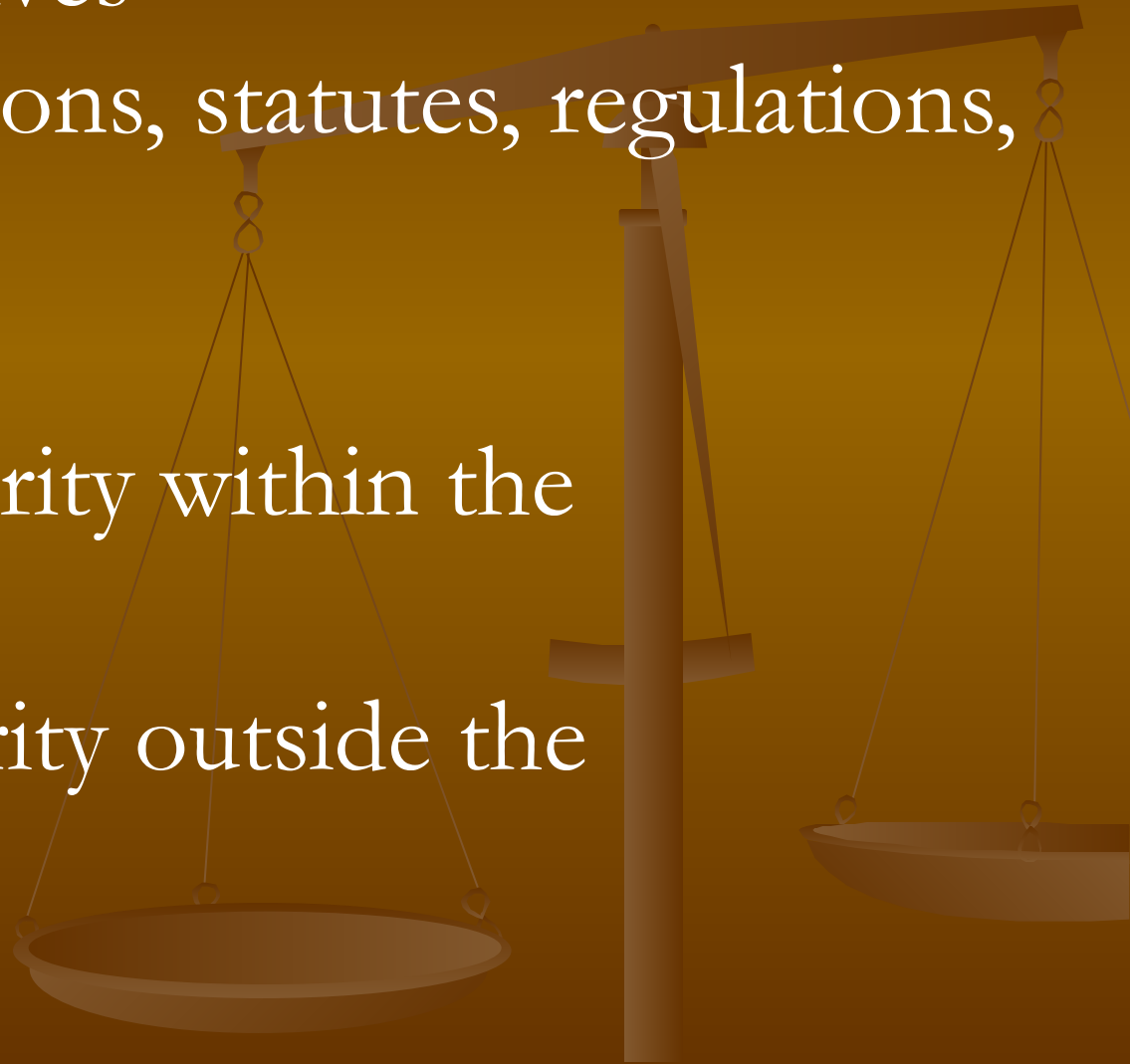
- “Codes” are subject compilations of laws
- No presumption that all statutes or “codes” cover all legal problems

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>

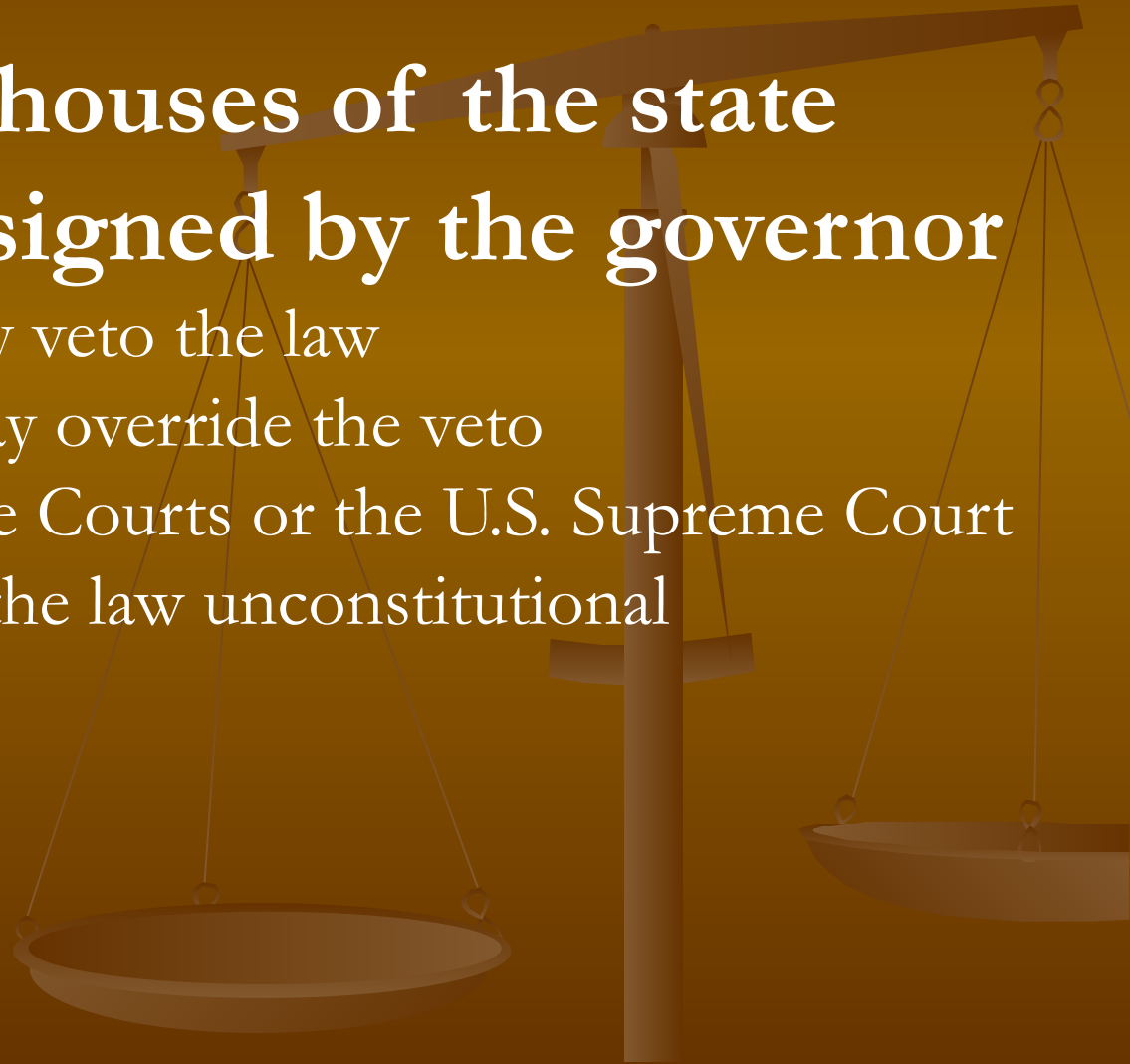
Federal statutes are also published in the United States Code,
arranged by subject

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



State statutes:

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...

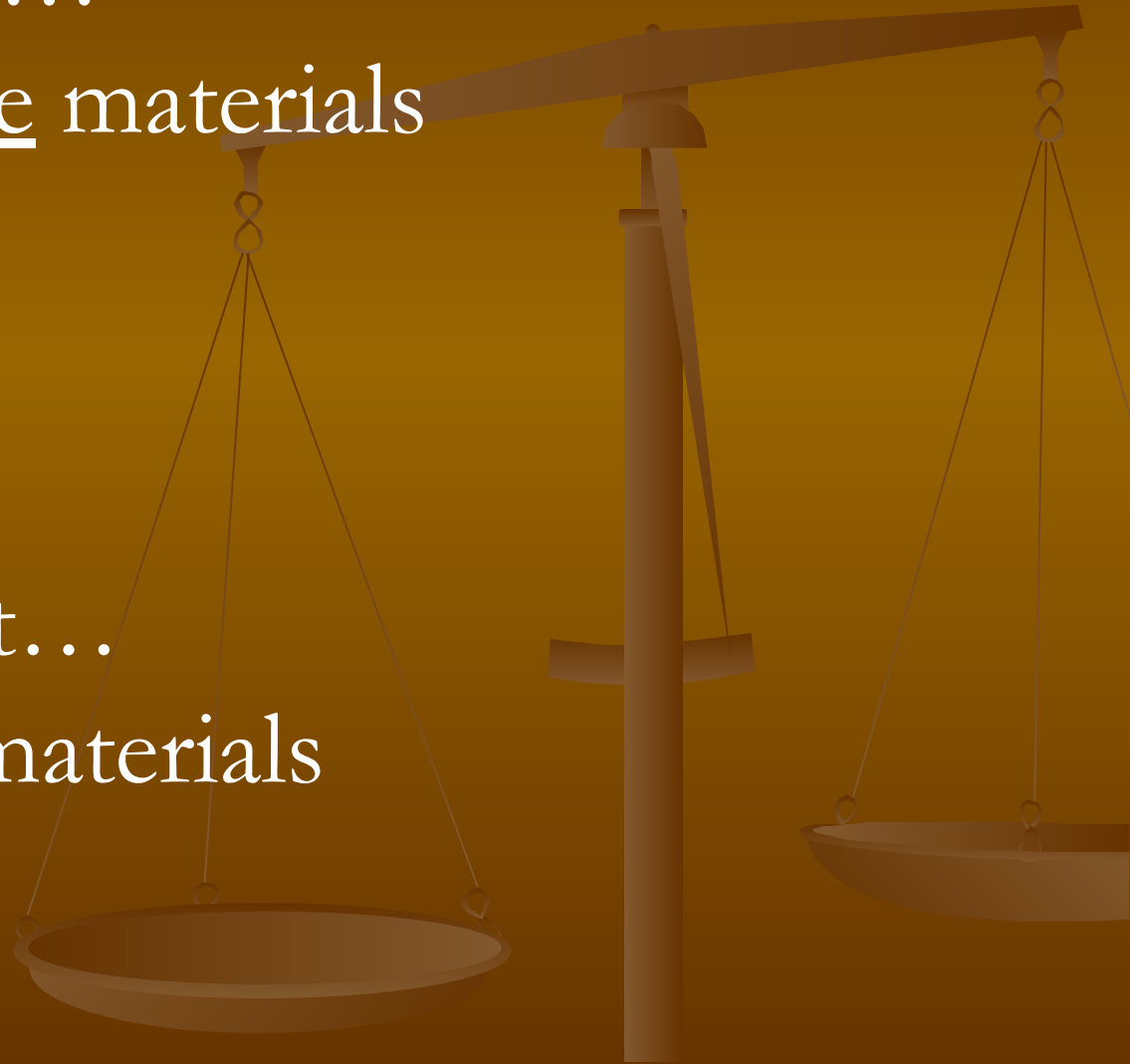
Primary legislative materials

- Constitutions
- Statutes
- Regulations

Now we'll look at...

Primary judicial materials

- Court opinions



District Courts

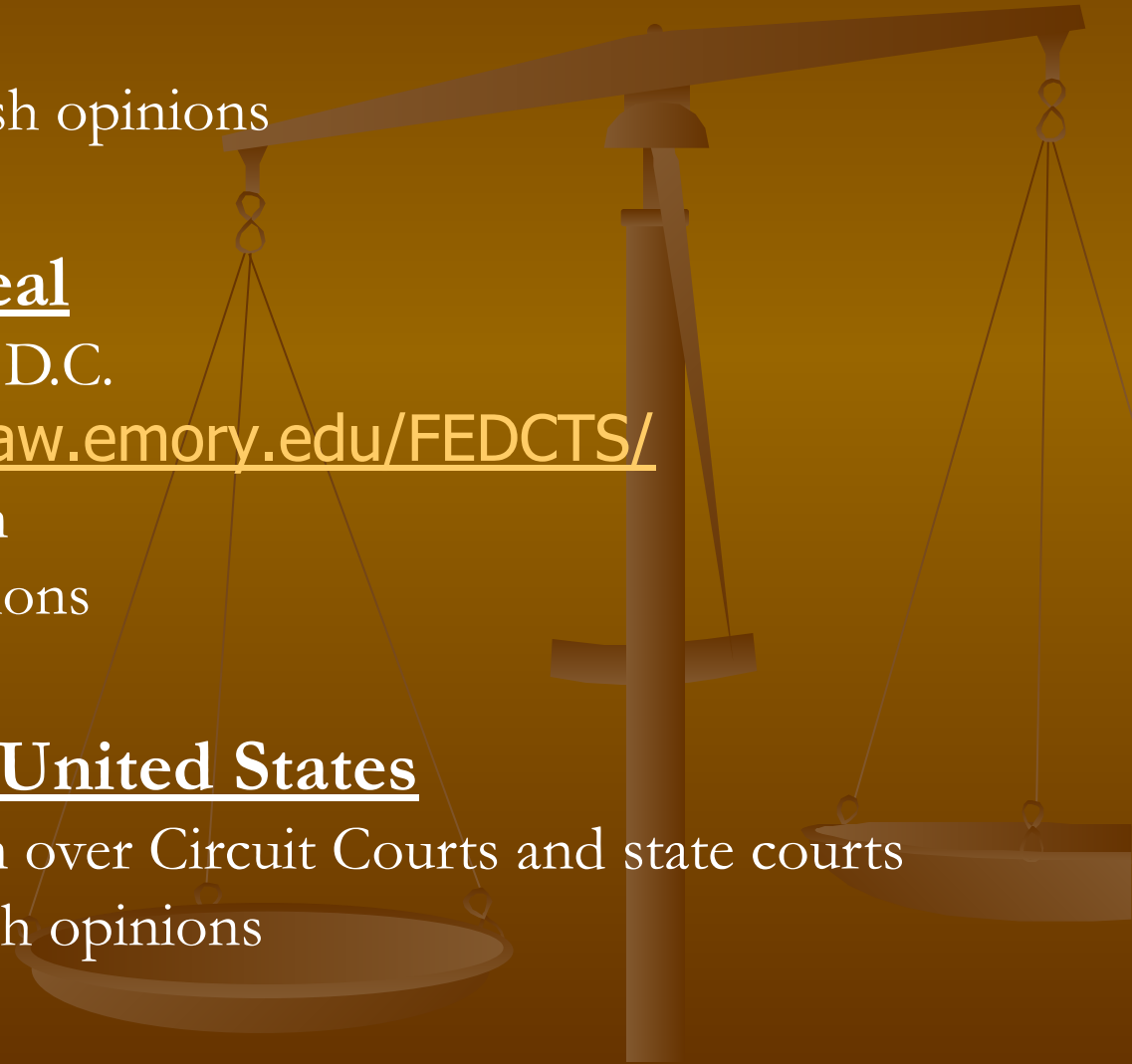
- Trial court level
- Usually do not publish opinions

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

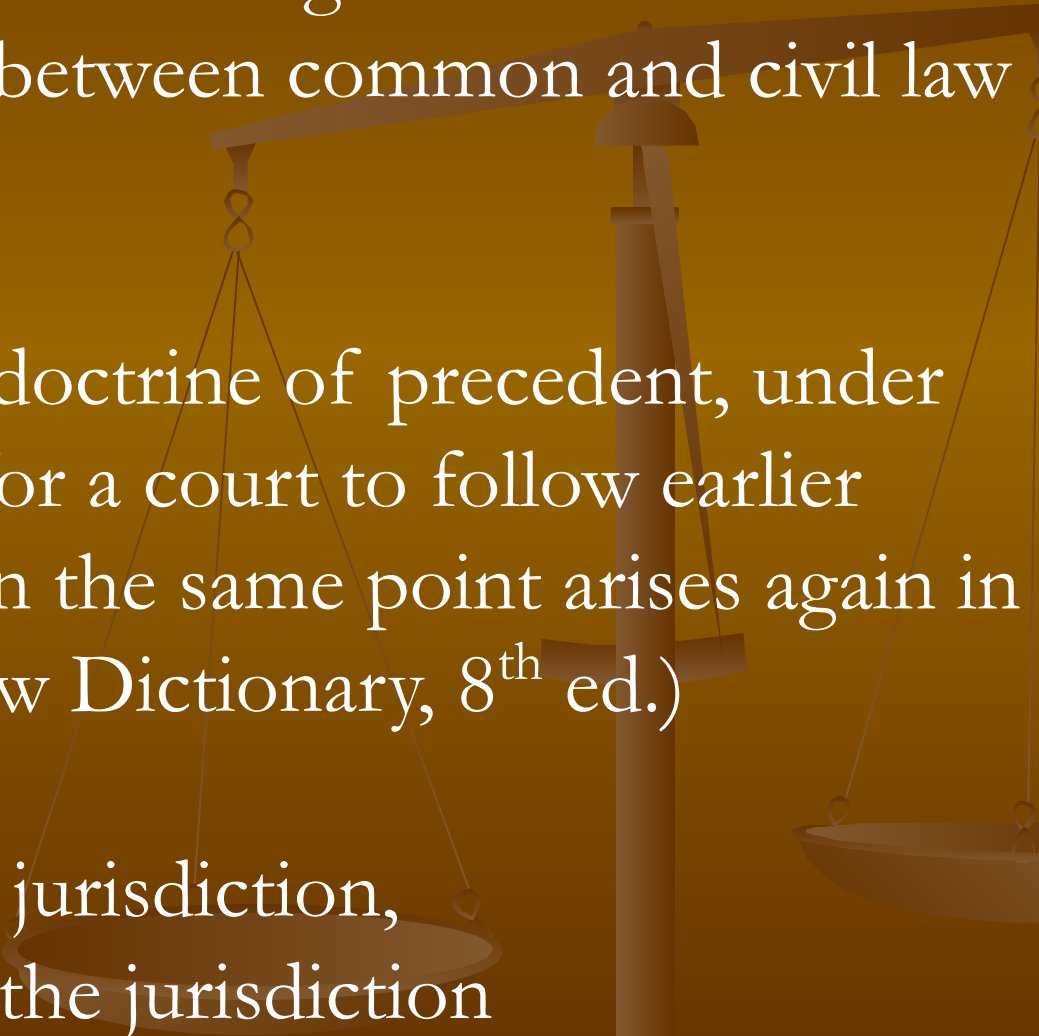
State Court of Appeal

- 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, 8th 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*

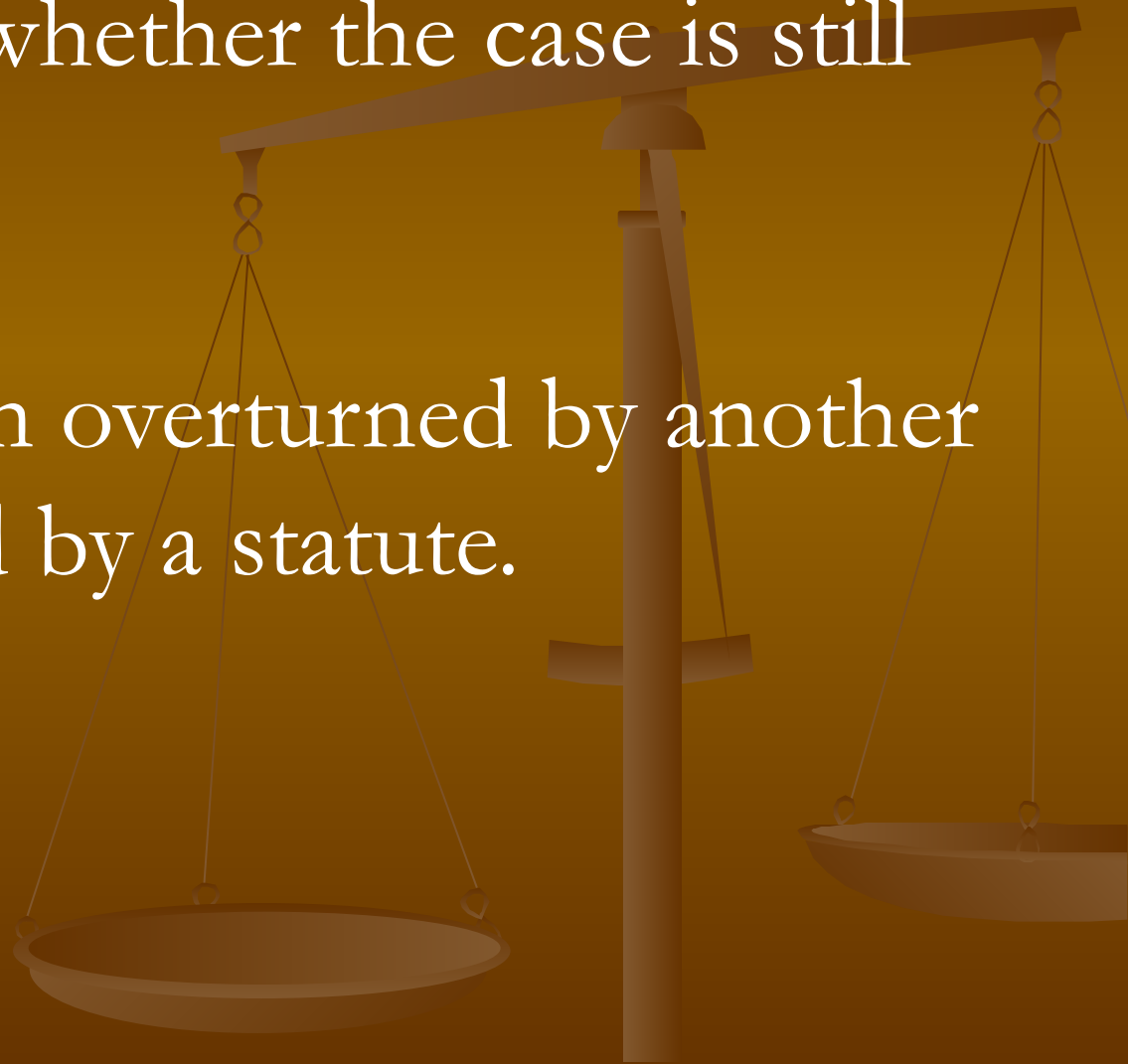
- Both online <http://www.law.emory.edu/caselaw/>

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.



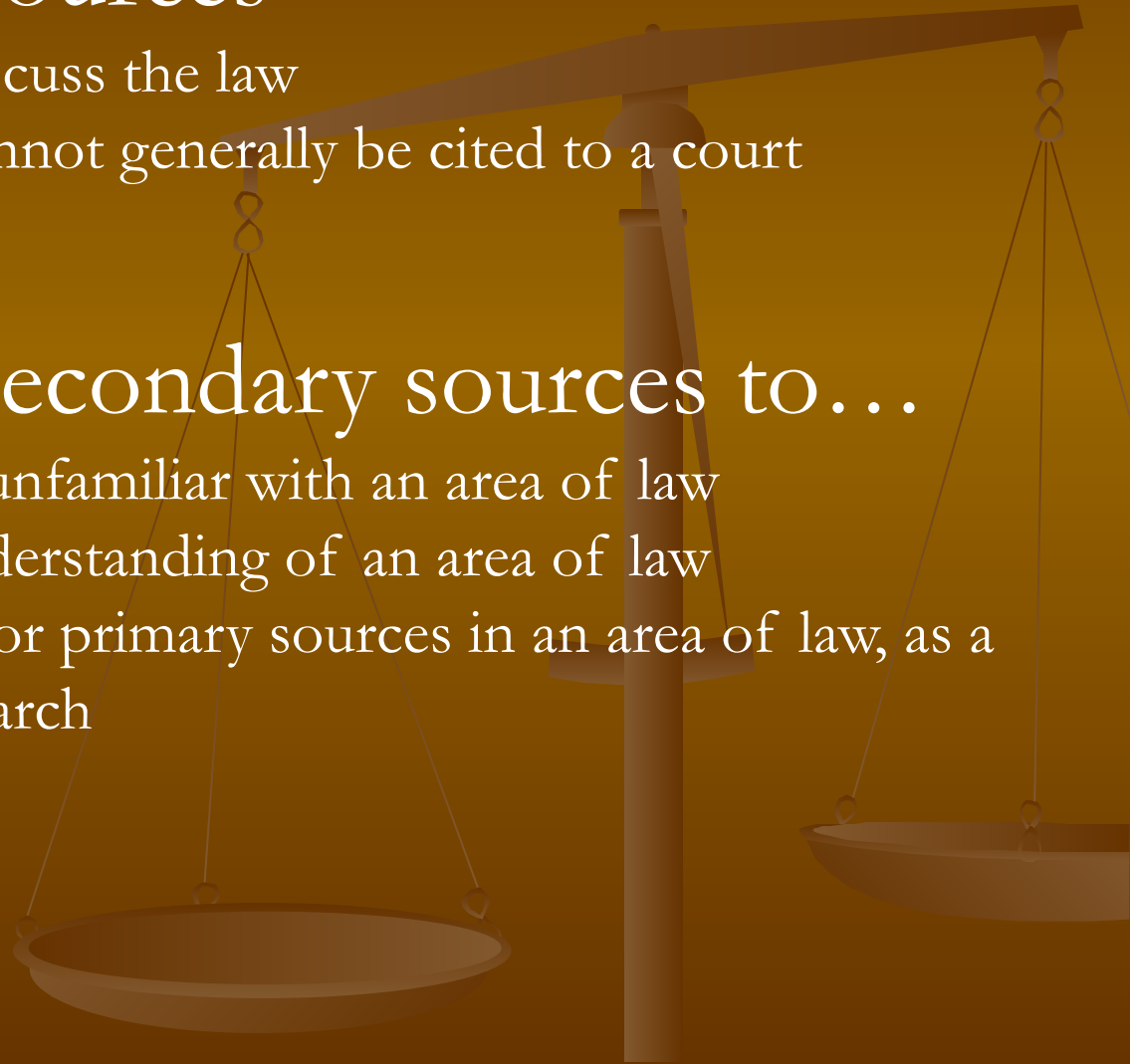
- Common law jurisdiction
 - Mirror-image structure of federal and state legal systems
 - Primary materials: the law itself
 - Legislative materials
 - Judicial materials
 - Now let's talk about the process of American legal research...
- 
- A large, stylized illustration of a balance scale, symbolizing justice or legal research. The scale is positioned on the right side of the slide, with its beam extending horizontally across the upper right. Two pans hang from the beam, one on each side. The entire illustration is rendered in a dark brown color, matching the background.

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

