

PART I Introduction to the Law and the Judicial Process

Chapter 1

Legal Concepts and the Judicial Process

Learning Objectives

- 1.1 Define the term *law* and contrast the four sources from which law is derived, including constitutional, statutory, administrative, and judicial (decisional) law.
- 1.2 Investigate and contrast selected legal concepts, precedents, and processes.
- 1.3 Analyze classifications of laws and means by which they can be altered or changed.
- 1.4 Distinguish between substantive and procedural law, and defend why each is important to professional nursing practice.
- 1.5 Compare and contrast the roles of trial courts, appellate courts, and supreme courts at both the state and federal levels.
- 1.6 Evaluate statutes of limitations, their significance, and their purpose at law.

Introduction:

The disciplines of law and professional nursing have been officially integrated since the first mandatory nurse practice act was passed by the New York legislature in 1938. The nursing profession has continuously relied on statutory law for its right to exist on a licensure basis and on court decisions for interpretation of these statutes. The civil rights movement of the 1960s and the malpractice crisis of the 1970s led to a heightened legal-mindedness in the 1980s and 1990s, which is still very present in practice settings today. Professional practitioners must know, understand, and apply legal decisions and doctrines in their everyday nursing practice. Part of this understanding comes from an appreciation of the origin of laws and the judicial system. This chapter presents an overview of the legal system, sources and types of laws, and the role of the American court system.

I. Definition of Law

- A. The word *law* is from Anglo-Saxon term *lagu*: fixed or laid down**
- B. A set of rules or principles governing society and subdivided into: constitutional, judicial, and legislative law**
 1. Dynamic and fluid, reflecting the ever-changing needs and expectations of society, created by people and existing to regulate all persons
 2. All three branches of government have the authority and right to create laws

PowerPoint Lecture Slides

- Definition of Law

II. Sources of Law

A. Constitutional law

1. System of fundamental laws or principles for the governance of a nation, society, corporation, or other aggregate of individuals; basis of a governing system
2. Highest form of statutory law: statutory laws govern existing conditions, constitutional law protects the law from frequent fluctuations in public opinion, therefore governing for future as well as present
3. First three articles enumerate the powers of the three branches of the federal government: Congress, executive branch, judicial branch
4. U.S. Constitution places limits on the federal government through the Bill of Rights (the first 10 amendments of the Constitution)
5. Federal constitutional law is the supreme law of the land and prevails over state and local law
6. The federal government derives positive grants of power from the U.S. Constitution
7. State governments possess plenary powers subject only to limitations by their individual state constitutions, the U.S Constitution, and limitations necessary for operation of the federal system

B. Statutory laws

1. Made by the legislative branch of government (Congress, state legislative bodies, city councils); designed to declare, command, or prohibit, and referred to as statutes
2. Compiled into codes, collections of statutes, or city ordinances
3. *Police power* is a term often used to describe states' inherent power to legislate and govern to maintain public order, health, safety, and welfare
4. Statutory laws affecting nursing: nursing licensure laws (also known as nurse practice acts or nursing practice acts), statutes of limitations, protective and reporting laws, natural death acts, and informed consent laws

C. Administrative laws

1. Enacted by administrative agencies: specific governing bodies composed of persons with qualifications and experience and charged by the legislature with implementing particular legislation (e.g., state boards of nursing are predominantly composed of registered nurses)
2. Administrative agencies create rules and regulations that enforce statutory laws, and conduct investigations and hearings to enforce the law
3. Procedural acts: may also govern administrative bodies delineating how the agency promulgates rules and regulations; provide for comments from the public before the rules and regulations are enforceable
4. Agency has authority to determine how rules and regulations are enforced; decisions may be appealed through the state court system
5. Courts then review agencies' actions:
 - a. *Was the delegation of power to the specific administrative agency constitutional and proper?*
 - b. *Did the specific administrative agency follow proper procedures in enforcing the statutory law?*

- c. *Is there a substantial basis for the decision?*
- d. *Did the administrative agency act in a nondiscriminatory and nonarbitrary manner?*
- e. *Was the issue under review included in the delegation to the agency?*

D. Attorney general's opinions

- 1. When national or state attorney generals are requested to give an interpretation of the law; binding until a subsequent statute, regulation, or court order amends the attorney general's opinion; type of administrative law
- 2. Attorney general's opinion provides guidelines based on both statutory and common law principles when statutes are written in vague terms
- 3. A board of nursing may request a state attorney general's opinion to ensure compliance of the nurse practice act
- 4. Opinions may be formal or informal; the greater the liability risk, the more likely it is a formal opinion

E. Judicial laws

- 1. Made by the courts, interpret legal issues that are in dispute
- 2. Judicial (or decisional) law may be made by a single justice—with or without a jury—or by a panel of justices
- 3. In deciding cases the court interprets statutes and regulations or decides which of two conflicting statutes or regulations apply to a given fact situation
- 4. Courts decide whether the statute violates a constitution (state or federal)
- 5. Two constitutional doctrines guide decision-making role of courts: doctrine of precedent (*stare decisis*) and *res judicata*
 - a. *Stare decisis means "to let the decision stand," applied in cases with similar fact patterns previously decided by court system, and court arrives at similar decision in current case*
 - b. *Previous case must be within the jurisdiction of the court hearing current case*
 - c. *Court may depart from previous decision and set a landmark decision when societal needs have changed, technology has advanced, or adhering to precedent will further harm already injured person*
 - d. *Res judicata means "a thing or matter settled by judgment" and is employed in duplication of litigation and seemingly apparent contradiction in decisions*

F. All laws are subject to change

- 1. Constitutional laws may be amended
- 2. Statutory laws may be amended, repealed, or expanded by future legislative action
- 3. Administrative bodies may be dissolved, expanded, or redefined
- 4. Judicial or decisional laws may be modified or completely altered by new court decisions

PowerPoint Lecture Slides

- Constitutional Law
- United States Constitution
- Statutory Laws
- Administrative Laws
- Attorney General's Opinion
- Judicial Laws
- All Laws Are Subject to Change

III. Classifications (Types) of Law

A. Common law

1. Law derived from principles rather than rules and regulations; based on justice, reason, and common sense
2. Federal courts and 49 state courts follow the common law of England
3. After the American Revolution, individual states adopted various parts of the common law; differences in interpretation and enforcement still exist to this day

B. Civil law

1. Civil law: area of the law concerned with the rights and duties of private persons and citizens; administered between citizens (private persons) and enforced through the courts as damages or money compensation
2. No fine or imprisonment is assessed in civil law, and injured parties usually collect money damages from individuals who have harmed them
3. Court may decide that an action be performed rather than allow money damages
4. Civil law specialties: contract law, labor law, patent law, and tort law
5. Tort law most relevant to nursing: compensation to those wrongfully injured by others' actions; used in malpractice claims that name specific health care providers

C. Public law

1. Branch of law concerned with the state in its political capacity; relationship of a person to the state is at the crux of public law

D. Criminal law

1. Refers to conduct that is offensive or harmful to society as a whole; example of public law
2. Crime: an act that is expressly forbidden or prohibited by statute or by common law principles and viewed as an offense against the state rather than against individuals
3. State, city, or administrative body brings the legal action against the offender
4. Examples of crimes: minor traffic violations, theft, arson, and unlawfully taking another's life
5. Punishment ranges from simple fines to imprisonment to execution
6. Classified as either misdemeanors (lesser criminal actions generally enforced through monetary fines) or felonies (more serious criminal actions, usually involving fines of greater than \$1,000, and punishment by prison terms of greater than one year)

7. Same action by a given individual may be basis for both a civil lawsuit and a criminal action; e.g., if a nurse removes a ventilator-dependent patient from a ventilator and the patient subsequently dies, the state board of nursing may revoke the nurse's license to practice nursing (a criminal action) and the family may file a wrongful death suit (a civil suit) against the nurse
 - a. *Criminal cases: court considers the intent of the defendant as well as the actual action*
 - b. *Civil cases: court considers only the action performed and the standard of evidence is less stringent*
8. The number of criminal cases against nurses appears to be increasing (backdating of records, narcotics/medication diversion, mistreatment of patients, falsifying records, substandard nursing care, practicing without a license, driving under the influence of alcohol, identity theft, administration of drugs that cause or hasten a patient's death)

E. Substantive law

1. Defines the substance of the law, may be further classified into civil, administrative, and criminal laws, and concerns the specific wrong, harm, or duty that caused the lawsuit or action to be brought against an individual
2. Lawsuits brought to remedy violations of these laws must prove the existence of the elements that comprise the actual claims

F. Procedural law

1. Governs the procedure or rules to create, implement, or enforce substantive law
2. Concerns the process and rights of the individual charged with violating substantive law
3. Procedural issues: admissibility of evidence, the time frame for initiating lawsuits, and the qualifications of expert witnesses

PowerPoint Lecture Slides

- Common Law
- Civil Law
- Public Law
- Criminal Law
- Substantive Law
- Procedural Law

IV. Due Process of Law and Equal Protection of the Law

A. Due process of law

1. Clause of the U.S. Constitution intended to prevent a person from being deprived of "life, liberty, or property" by actions of state or local government; difficult to define
2. Applies only to state actions and not to actions of private citizens
3. Founded on the fundamental principle of justice rather than a rule of law
4. Due process is violated if laws do not operate equally among all persons

5. Two primary elements: the rule as applied must be reasonable and definite, and fair procedures must be followed in enforcing the rule

B. Equal protection of the law

1. Restricts state actions and has no reference to private actions
2. The concept has become the source of many civil rights
3. Laws need not affect every man, woman, and child alike, but reasonable classifications of persons must be treated similarly
4. Thus, states may not enforce rules and regulations based solely on classifications as determined by race, religion, and/or gender

C. Rational basis test

1. Used to determine whether equal protection of the law has been achieved, states that persons in the same classes must be treated alike
2. Legitimate governmental interests exist in making distinction between those persons who fall within the class and those persons who fall outside the class

D. Distinction between due process and equal protection

1. Due process emphasizes fairness between state and individual
2. Equal protection emphasizes disparity in treatment by a state between classes of individuals whose situations arguably are indistinguishable

PowerPoint Lecture Slides

- Due Process of Law
- Equal Protection of the Law

V. The Judicial Process

A. Questions of law or fact

1. Facts are determined by evidence presented by both sides in a legal controversy
 - a. *Questions of fact present the dispute that the jury answers*
 - b. *Nursing questions of fact typically concern professional practice standards and whether these practice standards have set the standard of care for individual patients*
2. The fact-finder has the responsibility of weighing admissible evidence as presented and to decide where the facts of the case really lie
 - a. *Jurors are fact finders in trials by jury and the final authority on the credibility of witnesses and thus determine the facts that are admissible*
 - b. *Trial without a jury: judge serves as both the fact-finder and the determiner of questions of law*
3. Questions of law involve the application or interpretation of laws and are determined by the judge in the court
 - a. *Judge may rule that a particular provision in a nurse's contract was against public policy and is therefore nonenforceable, or that a provision is reasonable and enforceable*

- b. Federal and state statutes, rules and regulations, prior court decisions, new technology, and societal needs: determine the law as it applies to a specific trial*

PowerPoint Lecture Slides

- Questions of Fact
- Questions of Law

VI. Jurisdiction of the Courts

A. Jurisdiction

1. Power and authority of a court to hear and determine a judicial proceeding
2. Subject matter jurisdiction (*res jurisdiction*)
 - a. Refers to the court's competency to hear and to determine a given case within a particular class of cases (e.g., probate, family, or criminal)*
 - b. May be determined by the amount or value of the claim (e.g., pled-damage figure up to \$1,000, or between \$1,000 and \$5,000)*
3. Personal jurisdiction (*in personam jurisdiction*)
 - a. Legal power of a court to render a judgment against a party or parties to the action or proceeding*
 - b. A court situated in the county of the defendant's or the plaintiff's residence can have personal jurisdiction over the parties to the lawsuit*
4. Territorial jurisdiction
 - a. Any court possesses jurisdiction over matters only to the extent granted it by the constitution or legislation of the sovereignty on behalf of which it functions; courts may be either state or federal in origin*
 - b. Determines the scope of federal and state court power*
 - c. Determined by the U.S. Constitution's Fourteenth Amendment; federal court jurisdiction determined by the Fifth Amendment*
 - d. U.S. Supreme Court has jurisdiction over all of the United States and its territories*
5. Overlapping or concurrent jurisdiction
 - a. When more than one court is qualified to hear a given dispute; frequently occurs in cases with multiple defendants and in cases that involve parties residing in different states*
 - b. If there is no mandatory court of jurisdiction: attorneys representing the party filing the lawsuit advise on which is the optimal court in which to file the lawsuit; based on shorter length of time to trial, more favorable damage awards, and shorter distances for witnesses to travel*

PowerPoint Lecture Slides

- Jurisdiction
- Overlapping or Concurrent Jurisdiction

VII. State Courts

A. Trial courts

1. Court of original jurisdiction
2. Applicable law is determined, evidence is evaluated to ascertain facts, and judge or jury functioning under the guidance of a judge applies the law to the admissible facts
3. Judge may find evidence inadmissible or insufficient and dismiss a case or overrule a jury decision
4. State courts operate on a three-tier system; trial courts sometimes called *inferior courts* and usually are the original court
 - a. *Other names include circuit courts, superior courts, supreme courts (New York), courts of common pleas, chancery courts, and district courts*

B. State appellate courts

1. Side that loses the case at trial level may decide to pursue the case at the appellate level if there are procedural or legal grounds on which to base an appeal
2. In a three-tier system, state appellate courts or courts of intermediate appeal do not rehear the entire trial, but base decisions on record of trial hearing; no witnesses, new evidence, or jurors.
3. Intermediate court may concur, reverse, remand, or order new trial
4. Intermediate courts of appeal have different names throughout the states, including courts of appeal, intermediate appellate courts (Hawaii), appellate divisions of the supreme court (New York), superior courts, courts of special appeals (Maryland), courts of civil appeals, and courts of criminal appeals

C. State supreme courts

1. Highest court of appeal in state, hears appeals from the intermediate appellate courts, adopts rules of procedure for the state to license attorneys
2. Final authority for state issues, unless a federal issue or constitutional right is involved
3. State supreme court may hear cases directly from the trial level; e.g., if the trial court case concerned the interpretation of the state constitution or a state statute
4. Other names for this highest court of appeals within the state include supreme court of appeals (West Virginia), supreme judicial court (Maine, Maryland, and Massachusetts), and court of appeals (New York and the District of Columbia)
 - a. *Some states may also have a separate supreme court of criminal appeals (Texas, Oklahoma)*

PowerPoint Lecture Slides

- State Courts

VIII. Federal Courts

A. Overview

1. Structure of the federal court system has varied a great deal throughout U.S. history
2. Constitution provides merely that the judicial power of the United States be “vested in one Supreme Court, and in inferior courts as Congress may from time to time ordain and establish” (Article III, Section 8, 1787)
3. The only indispensable court is the Supreme Court
 - a. *Congress has established and abolished other U.S. courts as national needs have changed over time*

B. District courts

1. Federal court system mimics the majority of state court systems
2. Currently 94 district courts: at least one district court in each state as well as the District of Columbia, and federal specialty courts (e.g., Tax Court, Court of Federal Claims, Court of Veterans Appeals, and the Court of International Trade)
3. Hear cases involving a federal question or diversity of citizenship

C. Courts of appeal

1. Currently 13 courts of appeal, not including the U.S. Court of Appeals for the Armed Forces; frequently called *U.S. circuit courts*
2. Located in 13 areas (or circuits) of the country
3. Serve to correct potential errors that have been made in the decisions of the trial courts

D. Supreme Court

1. Highest level of the federal court system and its decisions are binding in all state and federal courts
2. Nine-justice court hears appeals from the U.S. courts of appeal and from various state supreme courts when state court decisions involve federal laws or constitutional questions
3. Ensures the uniformity of decisions: reviews cases for previous decisions on constitutional issues or for different conclusions reached by multiple lower courts
4. Rare for lawsuits involving nurses as primary defendants to be heard in the federal court system; exceptions are nurses working in the military or veterans’ hospitals or other federally funded health care centers

PowerPoint Lecture Slides

- Federal Courts

IX. Statutes of Limitations

A. Procedural law time frames

1. Time intervals during which a case must be filed or the injured party is barred from bringing the lawsuit

2. Set by the individual state legislatures; most states currently allow 1 to 2 years for the filing of a personal injury lawsuit
3. Begin measuring time when injured party actually discovered injury; treatment for the same condition must have been continuous and not sporadic for this time frame to apply
4. In disease cases, statute of limitations may be less strictly applied, because it may be some time before the patient becomes aware of the possible malpractice event
5. *Discovery rule*: generally patients have 2 years from the time that they knew or should have known of the injury to file a personal injury lawsuit; time frames have been altered by some state law and range from 6 months to 10 years
6. Different statute of limitations for minors; many states have become more restrictive and have opted to disallow the right of a minor to bring suit upon reaching adulthood
7. Purpose of statutes of limitations: suppress fraudulent claims after the facts concerning them have become obscure from lapse of time, defective memory, or death or removal of witnesses

PowerPoint Lecture Slides

- Statutes of Limitations