



Chapter I

INTRODUCTION TO ENVIRONMENTAL LAW

This course will survey the basic legal principles applicable to environmental and health and safety issues. Federal and state law will be discussed. While some of the materials may focus on New York State law, the principles discussed are generally relevant to most states.

Before embarking upon a study of any specific area of law, it is important that one has, as a basis, an understanding of the law in general. While many of you have taken law courses before, and you have all learned about the law in the course of your everyday life, we will first embark upon a brief summary of general legal principles.

A. NATURE OF LAW

What is law? Law is the body of rules and principles by which we govern over society and order our everyday activities. It provides mechanisms for resolving disputes, as well as sanctions for those who do not comply with the established rules. It also provides rules for running our government.

The law can be divided into two general areas - civil law and criminal law. Civil law provides rules that govern and define the relationship between private parties. If one person believes that another has wrongfully injured him/her or violated his/her rights, he or she may bring a civil lawsuit against the alleged wrongdoer. The person filing the suit is the plaintiff, and the person being sued is the defendant. Usually, the plaintiff will file a complaint, which sets forth his or her claim, and the defendant will file an answer. If the defendant lodges a counterclaim against the plaintiff, the plaintiff may file a reply. A lawsuit is sometimes referred to as "litigation," and the process of prosecuting or defending a case as "litigating."

In a civil case, the plaintiff normally has the burden of proof, and must prove his or her case by a preponderance of the evidence. This means that the plaintiff must prove that it is more likely than not that he or she is correct. If a plaintiff wins, he or she may collect damages (money), or may obtain “equitable” relief, such as an injunction by which the court orders the defendant to stop certain conduct or to take certain action – like clean up a spill.

A crime is an act or omission which is prohibited by statute, and which is punishable by a criminal sanction, such as fine or imprisonment, after prosecution by the government. In order to prevail in a criminal prosecution, the prosecutor must prove his case against the accused defendant beyond a reasonable doubt - a much greater burden of proof than in a civil action.

Another way of dividing law is between substantive and procedural law. Substantive law defines legal rights and obligations, while procedural law sets forth the rules for enforcing those rights and obligations, including the process by which civil lawsuits are carried out and crimes are prosecuted.

B. BRANCHES OF GOVERNMENT

The U.S. Constitution and the various state Constitutions provide for three branches of government - executive, legislative and judiciary.

The legislative branch of government, such as the United States Congress or the New York State Legislature, makes law by enacting statutes. Nonetheless, if a law violates the Constitution, it is invalid. Thus, fundamental constitutional rights, such as the right to free speech under the First Amendment, and the rights to equal protection and due process of law under the Fifth and Fourteenth Amendments, will supersede provisions of law enacted by federal or state legislatures.

The judicial branch is charged with presiding over civil lawsuits and criminal prosecutions. In doing so, judges must interpret the law in each case. Under the principle of *stare decisis*, judicial decisions are generally relied upon as binding upon later courts. The cumulative result of judicial decisions over the years is the common law. The common law was originally developed in England, and provides the basic body of substantive law. This existing body of English common law was adopted by all 50 states except Louisiana, which based its legal system on French law.

Under the doctrine of *res judicata*, once a party loses a case, he or she cannot raise the same issue again (relitigate) in another case. The only option, if available, is appeal. Further, after losing a case, the principle of collateral estoppel forbids a party from relitigating the same issue against even parties not involved in the first case.

Finally, while the basic function of the executive branch is to enforce or carry out the law, it may be empowered to make law by the legislative branch. Thus, the President or a state's Governor may be empowered to make an executive order. Most of the functions of the executive branch are carried out by administrative agencies, such as the United States Environmental Protection Agency ("EPA").

C. THE COURTS

Courts are impartial tribunals that have been authorized to decide civil and criminal cases. There are both federal and state court systems. A court can only decide cases within its jurisdiction – meaning those that are specifically authorized by statute or the Constitution to hear. In order to decide a case, a court must first determine the facts. Then, it must apply the law to the facts and reach its decision. In so doing, a judge may interpret a statute or regulation, or may rely upon other courts' decisions as precedent.

Both criminal and civil cases generally start in a trial court. In all criminal cases, an accused has a right to trial by jury. In a civil case, while there is often a right to trial by jury, often (depending upon the type of case) only a “bench trial” before a judge is allowed. However, no trial must be held in a civil case if the trial judge decides that it is unnecessary, either because the plaintiff’s claims, as stated in his or her complaint, do not state a valid claim or “cause of action” (dismissal), or there are no pertinent facts in dispute (summary judgment).

If there is a jury, the jury decides whether the plaintiff or prosecutor has carried their burden or proving the facts they alleges. It is still up to the judge to apply the law to the case. In doing so, the judge gives instructions to the jury, which frame the factual questions before them. Further, even if there is a right to a trial by jury, the defendant in a criminal case or the parties in a civil matter can waive their right to a jury, and ask that the judge determine both the law and the facts.

Usually, a party who loses a lawsuit can appeal the decision. However, the appellate court generally has no power to make a new decision with regard to the facts, and it does not hear testimony. Rather, it decides whether or not the law was applied to the facts correctly by the lower court.

In the federal system, the trial court of general jurisdiction is the district court. Each state has at least one district court. New York has four federal district courts, which each covers a portion of the state, while some states and the District of Columbia have only one district court. Decisions from the district courts may be appealed to the Court of Appeals for the judicial circuit in which the district court lies. There are twelve circuits, including the Second Circuit, based in New York City, which covers New York, Vermont, Connecticut and Puerto Rico.

The highest court in the federal system is the United States Supreme Court. While the Supreme Court has original jurisdiction to hear certain limited cases (*e.g.* cases between states), it generally hears appeals from the circuit courts. Although some cases are appealable by right, most cases may only be heard by the Supreme Court if it grants a writ of *certiorari*.

There are certain other courts with limited jurisdiction in the federal system. These include the United States Tax Court, Claims Court and Bankruptcy Court.

Most states have three levels of courts. Trial courts, such as local, district and county courts, which are named differently in each state, are the courts of original jurisdiction where cases are commenced. These are appealable to an appellate court, and in very limited situations, to the highest court of the state, generally called the state's Supreme Court. It is also sometimes possible to appeal the decision of a state's highest court to the United States Supreme Court.

In New York State, the trial court (*i.e.* the lowest court) with general jurisdiction is curiously called the Supreme Court. Each county has a branch of the Supreme Court. Decisions of the Supreme Court may be appealed to the Appellate Division of the Supreme Court. There are four departments of the Appellate Division, each of which covers a different portion of the state (including the Fourth Department, which sits in Rochester). The highest court in New York State is known as the Court of Appeals, which hears appeals from the Appellate Division.

New York State has numerous other courts, including County Courts, which are based in each county outside New York City, and have jurisdiction of criminal matters, and City, Town and Village Courts, which generally hear minor criminal (misdemeanor and violation) cases, as well as civil matters involving small sums. Other courts include Surrogate's Court, which has jurisdiction over estates of deceased persons, Family Court, which covers family matters, including adoption and child neglect, and the Court of Claims, which hears suits against the state.

Most states have corresponding courts, although they often have different names or combined functions.

D. LEVELS OF GOVERNMENT

Under the doctrine of federalism, the United States federal government is the highest level of government. Laws or regulations inconsistent with the United States Constitution or federal laws or regulations are generally void as preempted. Preemption may either be expressly provided for by federal law, or implied. For example, local regulations addressing nuclear power plants would most likely be preempted. However, except as preempted, under the Tenth Amendment to the U.S. Constitution, the states have reserved the right to enact laws and regulations as they deem appropriate.

States, in turn, have delegated authority to municipalities. Most states, like New York, are divided into counties, which in turn contain towns, cities, and/or villages. Pursuant to state law, municipalities are authorized to enact local laws or ordinances. Nonetheless, these laws generally must be consistent with state laws. If a municipality exceeds the authority given to it by the state, its law or ordinance is void. Further, if a local law or ordinance is inconsistent with the state law, it is preempted, although sometimes state law will expressly give municipalities the power to supersede specific state laws.

While state law or regulations may, in some cases, be preempted by federal law, many federal laws specifically envision corresponding state regulations to carry out the federal program. Under many federal environmental laws, if the state regulatory program is at least as strict as the corresponding federal regulations, the state is designated to handle permitting or other aspects of the federal program in lieu of the federal regulations. For example, state

regulations generally govern hazardous waste management in New York instead of the federal regulations.

In other cases, however, such as the Superfund program for cleanup of abandoned hazardous waste sites, federal and state governments have similar programs which operate at the same time. In these areas, action may be taken by either level of government, or the two agencies may act cooperatively.

E. SOURCES OF THE LAW

The highest source of law is the United States Constitution, which is the supreme law of the land. Similarly, each state has its own Constitution, which is the supreme law of the state, subject only to federal law. These Constitutions are the basic source of law.

Generally, the legal principles we will study in this course are based upon one of three sources: (1) common law, (2) federal law, and (3) state (including local) law. Many environmental issues are addressed by application of ancient common law principles, such as negligence and nuisance. The common law can only be enforced through civil lawsuits in the court, or by agreement between the parties.

The second source is federal law. Congress has enacted a host of statutes designed to address environmental issues, including the Clean Water Act, Clean Air Act, Resource Conservation and Recovery Act (“RCRA”), and the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”).

Congress often empowers a federal agency to promulgate regulations to carry out the intent of these statutes, and to administrate the designated program. These functions may include planning, grants, permitting, studies, enforcement, cleanups, or construction projects.

The third source is state and local legislation. New York and many other states have enacted comprehensive environmental legislation that corresponds to, and in some cases goes beyond, federal law. In New York, these laws are contained in the Environmental Conservation Law and administered by the New York State Department of Environmental Conservation (“DEC”).

F. LEGAL RESEARCH

Legal references are available at law libraries maintained by courts or schools. The RIT library has a good law collection. Often, the best place to start research on a point is to call a state or federal agency directly. Further, through Freedom of Information laws, government agencies must make regulations and policies available for inspection and copying (at a nominal charge).

One of the best and easiest methods of research of environmental legal issues is on the World Wide Web. Federal laws (www.law.cornell.edu/uscode) and regulations (www.access.gpo.gov/nara/cfr/cfr-table-search.html) are available on the Web, as well as the Federal Register (<http://www.gpoaccess.gov/fr/index.html>) and the Congressional Record (<http://www.gpoaccess.gov/crecord/index.html>). Perhaps the best starting point is the U.S. Government Printing Office (www.access.gpo.gov/index.html#info) or the Library of Congress (www.loc.gov). Recent U.S. Supreme Court (supct.law.cornell.edu/supct) and Circuit Court of Appeals cases (<http://www.law.cornell.edu/federal/opinions.html>) are also available.

EPA has a very good Web site (www.epa.gov), which allows you to review materials including explanations of regulatory programs and lists of waste sites. The Occupational Safety and Health Administration (“OSHA”) (www.osha.gov) also has an excellent Web page. Likewise, the New York State Department of Environmental Conservation has an excellent site

that was recently revised at www.dec.ny.gov. Many states also have laws, regulations and court decisions on the Web, including New York (www.law.cornell.edu/states/ny.html).

Westlaw and Lexis are commercial services provide cases, laws and regulations from the federal government and all fifty states. You can access them at <http://wally.rit.edu/electronic/electronic.html>, and use them if you log in with your RIT password.