

Law of the United States

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The **law of the United States** comprises many levels^[1] of codified and uncoded forms of law, of which the most important is the United States Constitution, the foundation of the federal government of the United States. The Constitution sets out the boundaries of federal law, which consists of acts of Congress,^[2] treaties ratified by the Senate,^[3] regulations promulgated by the executive branch,^[4] and case law originating from the federal judiciary.^[5] The United States Code is the official compilation and codification of general and permanent federal statutory law.

Federal law and treaties, so long as they are in accordance with the Constitution, preempt conflicting state and territorial laws in the 50 U.S. states and in the territories.^[6] However, the scope of federal preemption is limited because the scope of federal power is not universal. In the dual-sovereign^[7] system of American federalism (actually tripartite^[8] because of the presence of Indian reservations), states are the plenary sovereigns, each with their own constitution, while the federal sovereign possesses only the limited supreme authority enumerated in the Constitution.^[9] Indeed, states may grant their citizens broader rights than the federal Constitution as long as they do not infringe on any federal constitutional rights.^{[10][11]} Thus, most U.S. law (especially the actual "living law" of contract, tort, property, criminal, and family law experienced by the majority of citizens on a day-to-day basis) consists primarily of state law, which can and does vary greatly from one state to the next.^{[12][13]}

At both the federal and state levels, the law of the United States is largely derived from the common law system of English law, which was in force at the time of the American Revolutionary War.^{[14][15]} However, American law has diverged greatly from its English ancestor both in terms of substance and procedure,^[16] and has incorporated a number of civil law innovations.



The United States Constitution

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General overview

Sources of law

In the United States, the law is derived from five sources: constitutional law, statutory law, treaties, administrative regulations, and the common law (which includes case law).^[17]

Constitutionality

Where Congress enacts a statute that conflicts with the Constitution, the Supreme Court may find that law unconstitutional and declare it invalid.^[18]

Notably, a statute does not disappear *automatically* merely because it has been found unconstitutional; it must be deleted by a subsequent statute. Many federal and state statutes have remained on the books for decades after they were ruled to be unconstitutional. However, under the principle of *stare decisis*, no sensible lower court will enforce an unconstitutional statute, and any court that does so will be reversed by the Supreme Court.^[19] Conversely, any court that refuses to enforce a constitutional statute (where such constitutionality has been expressly established in prior cases) will risk reversal by the Supreme Court.^{[20][21]}



Law affects every aspect of American life, including parking lots. Note the citations to statutes on the sign.

American common law

The United States and most Commonwealth countries are heirs to the common law legal tradition of English law.^[22] Certain practices traditionally allowed under English common law were expressly outlawed by the Constitution, such as bills of attainder^[23] and general search warrants.^[24]

As common law courts, U.S. courts have inherited the principle of *stare decisis*.^[25] American judges, like common law judges elsewhere, not only apply the law, they also make the law, to the extent that their decisions in the cases before them become precedent for decisions in future cases.^[26]

The actual substance of English law was formally "received" into the United States in several ways. First, all U.S. states except Louisiana have enacted "reception statutes" which generally state that the common law of England (particularly judge-made law) is the law of the state to the extent that it is not repugnant to domestic law or indigenous conditions.^[27] Some reception statutes impose a specific cutoff date for reception, such as the date of a colony's founding, while others are deliberately vague.^[28] Thus, contemporary U.S. courts often cite pre-Revolution cases when discussing the evolution of an ancient judge-made common law principle into its modern form,^[28] such as the heightened duty of care traditionally imposed upon common carriers.^[29]

Second, a small number of important British statutes in effect at the time of the Revolution have been independently reenacted by U.S. states. Two examples that many lawyers will recognize are the Statute of Frauds (still widely known in the U.S. by that name) and the Statute of 13 Elizabeth (the ancestor of the Uniform Fraudulent Transfer Act). Such English statutes are still regularly cited in contemporary American cases interpreting their modern American descendants.^[30]

However, it is important to understand that despite the presence of reception statutes, much of *contemporary* American common law has diverged significantly from English common law.^[31] The reason is that although the courts of the various Commonwealth nations are often influenced by each other's rulings, American courts rarely follow post-Revolution Commonwealth rulings unless there is no American ruling on point, the facts and law at issue are nearly identical, and the reasoning is strongly persuasive.

Early on, American courts, even after the Revolution, often did cite contemporary English cases. This was because appellate decisions from many American courts were not regularly reported until the mid-19th century; lawyers and judges, as creatures of habit, used English legal materials to fill the gap.^[32] But citations to English decisions gradually disappeared during the 19th century as American courts developed their own principles to resolve the legal problems of the American people.^[33] The number of published volumes of American reports soared from eighteen in 1810 to over 8,000 by 1910.^[34] By 1879 one of the delegates to the California constitutional convention was already complaining: "Now, when we require them to state the reasons for a decision, we do not mean they shall write a hundred pages of detail. We [do] not mean that they shall include the small cases, and impose on the country all this fine judicial literature, for the Lord knows we have got enough of that already."^[35]

Today, in the words of Stanford law professor Lawrence Friedman: "American cases rarely cite foreign materials. Courts occasionally cite a British classic or two, a famous old case, or a nod to Blackstone; but current British law almost never gets any mention."^[36] Foreign law has never been cited as binding precedent, but as a reflection of the shared values of Anglo-American civilization or even Western civilization in general.^[37]

Levels of law

Federal law

Federal law originates with the Constitution, which gives Congress the power to enact statutes for certain limited purposes like regulating interstate commerce. The United States Code is the official compilation and codification of the general and permanent federal statutes. Many statutes give executive branch agencies the power to create regulations, which are published in the Federal Register and codified into the Code of Federal Regulations. Regulations generally also carry the force of law under the *Chevron* doctrine. Many lawsuits turn on the meaning of a federal statute or regulation, and judicial interpretations of such meaning carry legal force under the principle of *stare decisis*.

During the 18th and 19th centuries, federal law traditionally focused on areas where there was an express grant of power to the federal government in the federal Constitution, like the military, money, foreign relations (especially international treaties), tariffs, intellectual property (specifically patents and copyrights), and mail. Since the start of the 20th century, broad interpretations of the Commerce and Spending Clauses of the Constitution have enabled federal law to expand into areas like aviation, telecommunications, railroads, pharmaceuticals, antitrust, and trademarks. In some areas, like aviation and railroads, the federal government has developed a comprehensive scheme that preempts virtually all state law, while in others, like family law, a relatively small number of federal statutes (generally covering interstate and international situations) interacts with a much larger body of state law. In

areas like antitrust, trademark, and employment law, there are powerful laws at both the federal and state levels that coexist with each other. In a handful of areas like insurance, Congress has enacted laws expressly refusing to regulate them as long as the states have laws regulating them (see, e.g., the McCarran-Ferguson Act).

Statutes

After the President signs a bill into law (or Congress enacts it over his veto), it is delivered to the Office of the Federal Register (OFR) of the National Archives and Records Administration (NARA) where it is assigned a law number, and prepared for publication as a slip law.^[38] Public laws, but not private laws, are also given legal statutory citation by the OFR. At the end of each session of Congress, the slip laws are compiled into bound volumes called the United States Statutes at Large, and they are known as session laws. The Statutes at Large present a chronological arrangement of the laws in the exact order that they have been enacted.

Public laws are incorporated into the United States Code, which is a codification of all general and permanent laws of the United States. The main edition is published every six years by the Office of the Law Revision Counsel of the House of Representatives, and cumulative supplements are published annually.^{[39][40]} The U.S. Code is arranged by subject matter, and it shows the present status of laws (with amendments already incorporated in the text) that have been amended on one or more occasions.



The United States Code, the codification of federal statutory law

Regulations

Congress often enacts statutes that grant broad rulemaking authority to federal agencies. Often, Congress is simply too gridlocked to draft detailed statutes that explain how the agency should react to every possible situation, or Congress believes the agency's technical specialists are best equipped to deal with particular fact situations as they arise. Therefore, federal agencies are authorized to promulgate regulations. Under the principle of *Chevron* deference, regulations normally carry the force of law as long as they are based on a reasonable interpretation of the relevant statutes.^[41]

Regulations are adopted pursuant to the Administrative Procedure Act (APA). Regulations are first proposed and published in the Federal Register (FR or Fed. Reg.) and subject to a public comment period. Eventually, after a period for public comment and revisions based on comments received, a final version is published in the Federal Register. The regulations are codified and incorporated into the Code of Federal Regulations (CFR) which is published once a year on a rolling schedule.



The Code of Federal Regulations, the codification of federal administrative law

Besides regulations formally promulgated under the APA, federal agencies also frequently promulgate an enormous amount of forms, manuals, policy statements, letters, and rulings. These documents may be considered by a court as persuasive authority as to how a particular statute or regulation may be interpreted (known as *Skidmore* deference), but are not entitled to *Chevron* deference.

Common law, case law and precedent

Unlike the situation with the states, there is no plenary reception statute at the federal level that continued the common law and thereby granted federal courts the power to formulate legal precedent like their English predecessors. Federal courts are solely creatures of the federal Constitution and the federal Judiciary Acts.^[42] However, it is universally accepted that the Founding Fathers of the United States, by vesting "judicial power" into the Supreme Court and the inferior federal courts in Article Three of the United States Constitution, thereby vested in them the implied judicial power of common law courts to formulate persuasive precedent; this power was widely accepted, understood, and recognized by the Founding Fathers at the time the Constitution was ratified.^[43] Several legal scholars have argued that the federal judicial power to decide "cases or controversies" necessarily includes the power to decide the precedential effect of those cases and controversies.^[44]



The United States Reports, the official reporter of the Supreme Court of the United States

The difficult question is whether federal judicial power extends to formulating binding precedent through strict adherence to the rule of *stare decisis*. This is where the act of deciding a case becomes a limited form of lawmaking in itself, in that an appellate court's rulings will thereby bind itself and lower courts in future cases (and therefore also impliedly binds all persons within the court's jurisdiction). Prior to a major change to federal court rules in 2007, about one-fifth of federal appellate cases were published and thereby became binding precedents, while the rest were unpublished and bound only the parties to each case.^[43]

As federal judge Alex Kozinski has pointed out, binding precedent as we know it today simply did not exist at the time the Constitution was framed.^[43] Judicial decisions were not consistently, accurately, and faithfully reported on both sides of the Atlantic (reporters often simply rewrote or failed to publish decisions which they disliked), and the United Kingdom lacked a coherent court hierarchy prior to the end of the 19th century.^[43] Furthermore, English judges in the eighteenth century subscribed to now-obsolete natural law theories of law, by which law was believed to have an existence independent of what individual judges said. Judges saw themselves as merely declaring the law which had always theoretically existed, and not as making the law.^[43] Therefore, a judge could reject another judge's opinion as simply an incorrect statement of the law, in the way that scientists regularly reject each other's conclusions as incorrect statements of the laws of science.^[43]

In turn, according to Kozinski's analysis, the contemporary rule of binding precedent became possible in the U.S. in the nineteenth century only after the creation of a clear court hierarchy (under the Judiciary Acts), and the beginning of regular *verbatim* publication of U.S. appellate decisions by West Publishing.^[43] The rule gradually developed, case-by-case, as an extension of the judiciary's public policy of effective judicial administration (that is, in order to efficiently exercise the judicial power).^[43] The rule of precedent is generally justified today as a matter of public policy, first, as a matter of fundamental fairness, and second, because in the absence of case law, it would be completely unworkable for every minor issue in every legal case to be briefed, argued, and decided from first principles (such as relevant statutes, constitutional provisions, and underlying public policies), which in turn would create hopeless inefficiency, instability, and unpredictability, and thereby undermine the rule of law.^{[45][46]}

Here is a typical exposition of that public policy in a 2008 majority opinion signed by Associate Justice Stephen Breyer:

Justice Brandeis once observed that "in most matters it is more important that the applicable rule of law be settled than that it be settled right." *Burnet v. Coronado Oil & Gas Co.* [...] To overturn a decision settling one such matter simply because we might believe that decision is no longer "right"

would inevitably reflect a willingness to reconsider others. And that willingness could itself threaten to substitute disruption, confusion, and uncertainty for necessary legal stability. We have not found here any factors that might overcome these considerations.^[47]

It is now sometimes possible, over time, for a line of precedents to drift from the express language of any underlying statutory or constitutional texts until the courts' decisions establish doctrines that were not considered by the texts' drafters. This trend has been strongly evident in federal substantive due process^[48] and Commerce Clause decisions.^[49] Originalists and political conservatives, such as Associate Justice Antonin Scalia have criticized this trend as anti-democratic.^{[50][51][52][53]}

Under the doctrine of *Erie Railroad Co. v. Tompkins* (1938), there is *no general federal common law*. Although federal courts can create federal common law in the form of case law, such law must be linked one way or another to the interpretation of a particular federal constitutional provision, statute, or regulation (which in turn was enacted as part of the Constitution or after). Federal courts lack the plenary power possessed by state courts to simply make up law, which the latter are able to do in the absence of constitutional or statutory provisions replacing the common law. Only in a few narrow limited areas, like maritime law,^[54] has the Constitution expressly authorized the continuation of English common law at the federal level (meaning that in those areas federal courts can continue to make law as they see fit, subject to the limitations of *stare decisis*).

The other major implication of the *Erie* doctrine is that federal courts cannot dictate the content of state law when there is no federal issue (and thus no federal supremacy issue) in a case.^[55] When hearing claims under state law pursuant to diversity jurisdiction, federal trial courts *must* apply the statutory and decisional law of the state in which they sit, as if they were a court of that state,^[56] even if they believe that the relevant state law is irrational or just bad public policy.^[57] And under *Erie*, deference is one-way only: state courts are not bound by federal interpretations of state law.^[58]

Although judicial interpretations of federal law from the federal district and intermediate appellate courts hold great persuasive weight, state courts are *not* bound to follow those interpretations.^[59] There is only one federal court that binds all state courts as to the interpretation of federal law and the federal Constitution: the U.S. Supreme Court itself.^[60]

State law

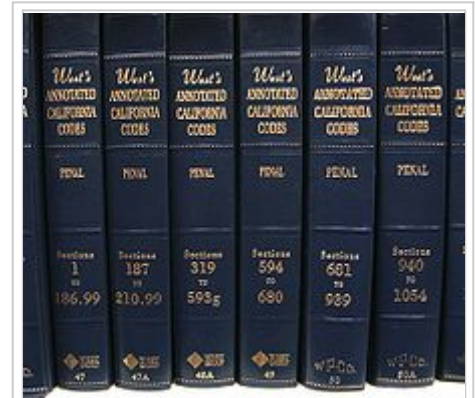
The fifty American states are separate sovereigns,^[61] with their own state constitutions, state governments, and state courts. All states have a legislative branch which enacts state statutes, an executive branch that promulgates state regulations pursuant to statutory authorization, and a judicial branch that applies, interprets, and occasionally overturns both state statutes and regulations, as well as local ordinances. They retain plenary power to make laws covering anything not preempted by the federal Constitution, federal statutes, or international treaties ratified by the federal Senate. Normally, state supreme courts are the final interpreters of state constitutions and state law, unless their interpretation itself presents a federal issue, in which case a decision may be appealed to the U.S. Supreme Court by way of a petition for writ of certiorari.^[62] State laws have dramatically diverged in the centuries since independence, to the extent that the United States cannot be regarded as one legal system as to the majority of types of law traditionally under state control, but must be regarded as 50 *separate* systems of tort law, family law, property law, contract law, criminal law, and so on.^[63]

Most cases are litigated in state courts and involve claims and defenses under state laws.^{[64][65]} In a 2012 report, the National Center for State Courts' Court Statistics Project found that state trial courts received 103.5 million newly filed cases in 2010, which consisted of 56.3 million traffic cases, 20.4 million criminal cases, 19.0 million

civil cases, 5.9 million domestic relations cases, and 1.9 million juvenile cases.^[66] In 2010, state appellate courts received 272,795 new cases.^[67] By way of comparison, all federal district courts in 2010 together received only about 282,000 new civil cases, 77,000 new criminal cases, and 1.5 million bankruptcy cases, while federal appellate courts received 56,000 new cases.^[68]

State legal systems

- Law of Alabama
- Law of Alaska
- Law of Arizona
- Law of Arkansas
- Law of California
- Law of Colorado
- Law of Connecticut
- Law of Delaware
- Law of Florida
- Law of Georgia (U.S. state)
- Law of Hawaii
- Law of Idaho
- Law of Illinois
- Law of Indiana
- Law of Iowa
- Law of Kansas
- Law of Kentucky
- Law of Louisiana
- Law of Maine
- Law of Maryland
- Law of Massachusetts
- Law of Michigan
- Law of Minnesota
- Law of Mississippi
- Law of Missouri
- Law of Montana
- Law of Nebraska
- Law of Nevada
- Law of New Hampshire
- Law of New Jersey
- Law of New Mexico
- Law of New York
- Law of North Carolina
- Law of North Dakota
- Law of Ohio
- Law of Oklahoma
- Law of Oregon
- Law of Pennsylvania
- Law of Rhode Island
- Law of South Carolina
- Law of South Dakota
- Law of Tennessee
- Law of Texas
- Law of Utah



Volumes of the Thomson West annotated version of the California Penal Code, the codification of criminal law in the state of California

- Law of Vermont
- Law of Virginia
- Law of Washington
- Law of West Virginia
- Law of Wisconsin
- Law of Wyoming

Local law

States have delegated lawmaking powers to thousands of agencies, townships, counties, cities, and special districts. And all the state constitutions, statutes and regulations (as well as all the ordinances and regulations promulgated by local entities) are subject to judicial interpretation like their federal counterparts.^[69]

It is common for residents of major U.S. metropolitan areas to live under six or more layers of special districts as well as a town or city, and a county or township (in addition to the federal and state governments).^[70] Thus, at any given time, the average American citizen is subject to the rules and regulations of several dozen different agencies at the federal, state, and local levels, depending upon one's current location and behavior.

Legal subjects

American lawyers draw a fundamental distinction between procedural law (which controls the procedure followed by courts and parties to legal cases) and substantive law (the actual substance, or principles of law, which is what most people think of as law).^[71]

Criminal law and procedure

Criminal law involves the prosecution by the state of wrongful acts which are considered to be so serious that they are a breach of the sovereign's peace (and cannot be deterred or remedied by mere lawsuits between private parties). Generally, crimes can result in incarceration, but torts (see below) cannot. The majority of the crimes committed in the United States are prosecuted and punished at the state level. Federal criminal law focuses on areas specifically relevant to the federal government like evading payment of federal income tax, mail theft, or physical attacks on federal officials, as well as interstate crimes like drug trafficking and wire fraud.

All states have somewhat similar laws in regard to "higher crimes" (or felonies), such as murder and rape, although penalties for these crimes may vary from state to state. Capital punishment is permitted in some states but not others. Three strikes laws in certain states impose harsh penalties on repeat offenders.

Some states distinguish between two levels: felonies and misdemeanors (minor crimes). Generally, most felony convictions result in lengthy prison sentences as well as subsequent probation, large fines, and orders to pay restitution directly to victims; while misdemeanors may lead to a year or less in jail and a substantial fine. To simplify the prosecution of traffic violations and other relatively minor crimes, some states have added a third level, infractions. These may result in fines and sometimes the loss of one's driver's license, but no jail time.

For public welfare offenses where the state is punishing merely risky (as opposed to injurious) behavior, there is significant diversity across the various states. For example, punishments for drunk driving varied greatly prior to 1990. State laws dealing with drug crimes still vary widely, with some states treating possession of small amounts of drugs as a misdemeanor offense or as a medical issue and others categorizing the same offense as a serious felony.

The law of criminal procedure in the United States consists of a massive overlay of federal constitutional case law interwoven with the federal and state statutes that actually provide the foundation for the creation and operation of law enforcement agencies and prison systems as well as the proceedings in criminal trials. Due to the perennial inability of legislatures in the U.S. to enact statutes that would actually force law enforcement officers to respect the constitutional rights of criminal suspects and convicts, the federal judiciary gradually developed the exclusionary rule as a method to enforce such rights.^[72] In turn, the exclusionary rule spawned a family of judge-made remedies for the abuse of law enforcement powers, of which the most famous is the Miranda warning. The writ of *habeas corpus* is often used by suspects and convicts to challenge their detention, while the Civil Rights Act of 1871 and *Bivens* actions are used by suspects to recover tort damages for police brutality.

Civil procedure

The law of civil procedure governs process in all judicial proceedings involving lawsuits between private parties. Traditional common law pleading was replaced by code pleading in 24 states after New York enacted the Field Code in 1850 and code pleading in turn was subsequently replaced again in most states by modern notice pleading during the 20th century. The old English division between common law and equity courts was abolished in the federal courts by the adoption of the Federal Rules of Civil Procedure in 1938; it has also been independently abolished by legislative acts in nearly all states. The Delaware Court of Chancery is the most prominent of the small number of remaining equity courts.

Thirty-five states have adopted rules of civil procedure modeled after the FRCP (including rule numbers). However, in doing so, they had to make some modifications to account for the fact that state courts have broad general jurisdiction while federal courts have relatively limited jurisdiction.

New York, Illinois, and California are the most significant states that have not adopted the FRCP. Furthermore, all three states continue to maintain most of their civil procedure laws in the form of codified statutes enacted by the state legislature, as opposed to court rules promulgated by the state supreme court, on the ground that the latter are undemocratic. But certain key portions of their civil procedure laws have been modified by their legislatures to bring them closer to federal civil procedure.^[73]

Generally, American civil procedure has several notable features, including extensive pretrial discovery, heavy reliance on live testimony obtained at deposition or elicited in front of a jury, and aggressive pretrial "law and motion" practice designed to result in a pretrial disposition (that is, summary judgment) or a settlement. U.S. courts pioneered the concept of the opt-out class action, by which the burden falls on class members to notify the court that they do not wish to be bound by the judgment, as opposed to opt-in class actions, where class members must join into the class. Another unique feature is the so-called American Rule under which parties generally bear their own attorneys' fees (as opposed to the English Rule of "loser pays"), though American legislators and courts have carved out numerous exceptions.

Contract law

Contract law covers obligations established by agreement (express or implied) between private parties. Generally, contract law in transactions involving the sale of goods has become highly standardized nationwide as a result of the widespread adoption of the Uniform Commercial Code. However, there is still significant diversity in the interpretation of other kinds of contracts, depending upon the extent to which a given state has codified its common law of contracts or adopted portions of the Restatement (Second) of Contracts.

Parties are permitted to agree to arbitrate disputes arising from their contracts. Under the Federal Arbitration Act (which has been interpreted to cover *all* contracts arising under federal or state law), arbitration clauses are generally enforceable unless the party resisting arbitration can show unconscionability or fraud or something else which undermines the entire contract.

Tort law

Tort law generally covers any civil action between private parties arising from wrongful acts which amount to a breach of general obligations imposed by law and not by contract.

Tort law covers the entire imaginable spectrum of wrongs which humans can inflict upon each other, and of course, partially overlaps with wrongs also punishable by criminal law. Although the American Law Institute has attempted to standardize tort law through the development of several versions of the Restatement of Torts, many states have chosen to adopt only certain sections of the Restatements and to reject others. Thus, because of its immense size and diversity, American tort law cannot be easily summarized.

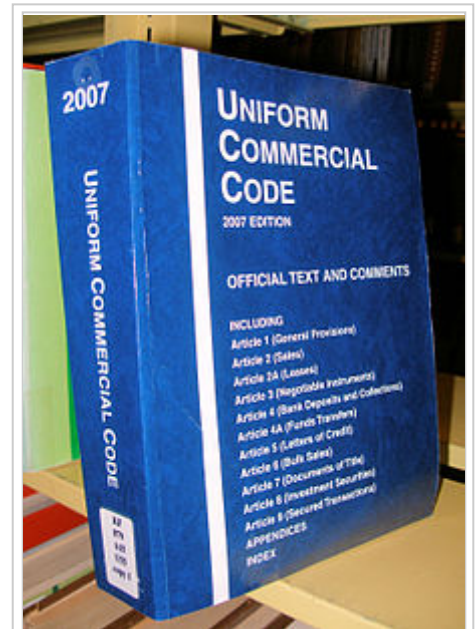
For example, a few jurisdictions allow actions for negligent infliction of emotional distress even in the absence of physical injury to the plaintiff, but most do not. For any particular tort, states differ on the causes of action, types and scope of remedies, statutes of limitations, and the amount of specificity with which one must plead the cause. With practically any aspect of tort law, there is a "majority rule" adhered to by most states, and one or more "minority rules."

Notably, the most broadly influential innovation of 20th-century American tort law was the rule of strict liability for defective products, which originated with judicial glosses on the law of warranty. In 1963, Roger J. Traynor of the Supreme Court of California threw away legal fictions based on warranties and imposed strict liability for defective products as a matter of public policy in the landmark case of *Greenman v. Yuba Power Products*.^[74] The American Law Institute subsequently adopted a slightly different version of the *Greenman* rule in Section 402A of the *Restatement (Second) of Torts*, which was published in 1964 and was very influential throughout the United States.^[75] Outside the U.S., the rule was adopted by the European Economic Community in the Product Liability Directive of July 1985^[76] by Australia in July 1992^[77] and by Japan in June 1994.^[78]

By the 1990s, the avalanche of American cases resulting from *Greenman* and Section 402A had become so complicated that another restatement was needed, which occurred with the 1997 publication of the *Restatement (Third) of Torts: Products Liability*.^[79]

See also

- Admission to the bar in the United States
- Attorneys in the United States
- *Black's Law Dictionary*
- Courts of the United States
- Legal education in the United States
 - Law school in the United States
- Legal systems of the world
- Privacy laws of the United States



The Uniform Commercial Code



The Restatement (Second) of Torts, a highly influential restatement of United States tort law

Lists

- Legal research in the United States
- List of sources of law in the United States
- List of Uniform Acts (United States)—intended for state-level legislation
- List of United States federal legislation
- List of United States Supreme Court cases

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4. *Skidmore v. Swift & Co.*, 323 U.S. 134 (<https://supreme.justia.com/cases/federal/us/323/134/>) (1944).
5. *Cooper v. Aaron*, 358 U.S. 1 (<https://supreme.justia.com/cases/federal/us/358/1/>) (1958).
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16. G. Edward White, *Law in American History, Volume 1: From the Colonial Years Through the Civil War* (Oxford: Oxford University Press, 2012), 48-51.
17. Paul Bergman and Sara J. Berman-Barrett, *Represent Yourself In Court: How to Prepare & Try a Winning Case*, 6th ed. (Berkeley: Nolo, 2008), 481.
18. See *Marbury v. Madison*, 5 U.S. (Cranch 1) 137 (<https://supreme.justia.com/cases/federal/us/5/137/>) (1803).
19. *James B. Beam Distilling Co. v. Georgia*, 501 U.S. 529 (<https://supreme.justia.com/cases/federal/us/501/529/>) (1991). In this case, the Supreme Court of Georgia had stubbornly refused to retroactively apply a 1984 U.S. Supreme Court decision which had declared a Hawaii statute to be unconstitutional as a violation of the Commerce Clause, even though it was clear that the Georgia statute had exactly the same flaw as the Hawaii statute. The high court reversed by a 6-3 majority.
20. See *Casarotto v. Lombardi*, 886 P.2d 931, 940 (Mont. 1994) (Trieweiler, J., specially concurring), vacated and remanded by 515 U.S. 1129 (1995), reaff'd and reinstated by 901 P.2d 596 (Mont. 1995), rev'd sub nom. *Doctor's Assocs., Inc. v. Casarotto*, 517 U.S. 681 (1996).
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22. Friedman, 67-69.
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24. U.S. Const., Amend. IV.
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28. *Ibid.*

29. See, e.g., *Gomez v. Superior Court* (https://scholar.google.com/scholar_case?case=4265121664793655548), 35 Cal. 4th 1125, 29 Cal. Rptr. 3d 352, 113 P.3d 41 (2005) (citing *Lovett v. Hobbs*, 89 Eng. Rep. 836 (1680)). The *Gomez* court relied on a line of cases originating with *Lovett* in order to hold that Disneyland was a common carrier.
30. See, e.g., *Phillippe v. Shapell Industries* (https://scholar.google.com/scholar_case?case=16064340394300540634), 43 Cal. 3d 1247, 241 Cal. Rptr. 22, 743 P.2d 1279 (1987) (citing original Statute of Frauds from England) and *Meija v. Reed* (https://scholar.google.com/scholar_case?case=7235426128583899206), 31 Cal.4th 657, 3 Cal. Rptr. 3d 390, 74 P.3d 166 (2003) (citing Statute of 13 Elizabeth).
31. Burnham, 43-44.
32. Friedman, 69.
33. Elizabeth Gaspar Brown, "Frontier Justice: Wayne County 1796-1836," in *Essays in Nineteenth-Century American Legal History*, ed. Wythe Holt, 676-703 (Westport, CT: Greenwood Press, 1976): 686. Between 1808 and 1828, the briefs filed in court cases in the Territory of Michigan changed from a complete reliance on English sources of law to an increasing reliance on citations to American sources.
34. Friedman, 475.
35. *People v. Kelly* (https://scholar.google.com/scholar_case?case=5759475885234465900), 40 Cal.4th 106, 51 Cal. Rptr. 3d 98, 146 P.3d 547 (2006).
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54. *Romero v. International Terminal Operating Co.*, 358 U.S. 354, 360-361 (1959).
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57. *Trident Center v. Connecticut Gen. Life Ins. Co.*, 847 F.2d 564 (9th Cir. 1988). In this opinion, federal judge Alex Kozinski attacked a 1968 Supreme Court of California opinion at length before conceding that under *Erie*, he had no choice but to apply the state court's reasoning despite his strong dislike of it.
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