

AGEC 3603 Agricultural Law

Lecture 1 - Introduction

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- ▶ Three types of legal system:
 - ▶ Common law
 - ▶ civil law
 - ▶ Religious law (e.g. Canon law, Sharia law)
- ▶ Common law is judge made law
- ▶ Civil law is “codified law” (written law)
- ▶ Civil law derives from Napoleonic law which derives in turn from Roman law

Civil vs Common Law

- ▶ US is a mixed system
- ▶ some states influenced more by Civil law, e.g. Louisiana.
- ▶ Most US law based on British Law Louisiana based on French (Civil law)

- ▶ US constitution: written in 1787, ratified 1788, in operation since 1789.
- ▶ Same year as French La Déclaration des Droits de l'Homme et du Citoyen, 1789.
- ▶ Do not confuse the US constitution with the US Declaration of independence 1776.

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Article 1 Section 1

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Article 2 Section 1

The executive Power shall be vested in a President of the United States of America.

Article 3 Section 1

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.

The three pillars of western democracy are

The separation of the powers of government into:

- ▶ Executive branch
- ▶ Legislative branch
- ▶ Judicial branch

- ▶ Constitutions are the highest form of law in a state
- ▶ Not all countries have a formal constitution
- ▶ Some countries have a collection of laws that have the same standing as a constitution

Relationship to state constitutions

Section I-1: Supreme law of land.

The State of Oklahoma is an inseparable part of the Federal Union, and the Constitution of the United States is the supreme law of the land.

Note: That the US constitution takes precedence over the constitution of the state of Oklahoma.

Exclusive, Concurrent and Denied Powers

- ▶ Exclusive powers are powers granted only to the federal government
- ▶ concurrent powers are powers granted to both federal and state governments
- ▶ Denied powers are powers that federal or state governments have been refused (Yes, this can happen)
- ▶ Powers not mentioned in the constitution are either powers of the people or the states (This is implied)

Let's go deeper

- ▶ What are powers?

We can use Hohfeld's framework to think about this (Wesley Hohfeld (1879–1918)).

Hohfeld distinguished four basic components of rights (Hohfeldian incidents)

- ▶ privilege,
- ▶ claim,
- ▶ power
- ▶ immunity

You have a right to pick up a shell that you find on the beach. This right is a privilege:

A has a privilege to ϕ if and only if A has no duty not to ϕ .

Wenar, Leif, "Rights", The Stanford Encyclopedia of Philosophy (Fall 2015 Edition), Edward N. Zalta (ed.), URL =]

A contract between employer and employee confers on the employee a right to be paid her wages. This right is a claim: A has a claim that B ϕ if and only if B has a duty to A to ϕ .

Privileges and claims are primary rights according to Hohfeld.

A has a power if and only if A has the ability to alter her own or another's Hohfeldian incidents.

Now think about powers granted to federal and state governments or to the judiciary or congress.

“When A has the ability to alter B’s Hohfeldian incidents, then A has a power. When A lacks the ability to alter B’s Hohfeldian incidents, then B has an immunity:

B has an immunity if and only if A lacks the ability to alter B’s Hohfeldian incidents”.

Wenar, Leif, “Rights”, The Stanford Encyclopedia of Philosophy (Fall 2015 Edition), Edward N. Zalta (ed.), URL

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- ▶ Federal laws that supersede (replace) state laws are said to be preempted
- ▶ There are three types of preemption
 - ▶ Express
 - ▶ Field
 - ▶ Conflict

Express preemption

A constitution or a statute (legal paragraph) expressly preempts state law.

Field preemption

The law enacted by congress leaves no room for the states to regulate.

Field preemption is an example of implied preemption.

Example 1.1

The State of X decided to promote innovation by issuing certificates of innovation to inventors. No person in the state of X was allowed to make, use, or sell any product or service embodying an invention protected by a certificate of innovation without the written permission of the certificate holder. Federal courts have long held that protection of inventions through the patent system under Article I, Section 8, Clause 8 (the Patent and Copyright clause) occupies the field, leaving no room for state protection of inventions. It would be an adequate defense for any person sued for violation of such a state certificate to assert field preemption. Taken from: Feitshans, 2016 p. 10

Patent and Copyright Clause

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To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

Conflict preemption

Conflict preemption arises when federal and state law are in conflict. In this case federal law preempts state law.

Example 1.3 Florida Lime & Avocado Growers v Paul

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Read the case pdf on Nb.

If Wi-Fi allows we can do this now! Otherwise read it on your own time.

Consists of 7 articles

- ▶ Article I sections 7 and 8 are particularly relevant
- ▶ Section 7 Clause 1:

All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

- ▶ Section 8 Clause 1 (The spending clause):

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

- ▶ Section 8 Clause 3 (The commerce clause):

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

The Commerce Clause

In *Wickard v Filburn* Supreme court held that subsistence farming of wheat would undermine federal government efforts to support the price of wheat, because if everybody did it demand for wheat would be too low. The test is whether interstate trade may be affected.

► Section 10 Article 1

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

Finding Legal Resources

- ▶ Professional legal databases
- ▶ Free databases such as Findlaw
<http://www.findlaw.com/>
- ▶ National agricultural law center
<http://nationalaglawcenter.org/>
- ▶ Case law index <http://nationalaglawcenter.org/aglaw-reporter/case-law-index/>
- ▶ Case Briefs <http://www.casebriefs.com/>

- ▶ opinion (written by judge)
- ▶ Holding (part of the opinion that has legal force)
- ▶ Dicta (opinions on other matters that do not have legal force -this is not part of the Holding).