# Introduction to Law

## The American Legal System

### HISTORY

The American legal system is based on the English legal system. The English legal system had its roots in the Roman legal system. Many times, the American legal system is referred to as Anglo-American.

### ENGLISH LAW

The three main historical sources of English law are common law, legislation and equity.

**Common Law**

1. The body of law derived from judicial decisions (caselaw), rather than from statutes or constitutions (civil law). Judge-made law. Common law is inarticulate until it is expressed in a judgment. The judge, in what is now the forgotten past, decided the case in accordance with morality and custom and later judges followed his decision. They did not do so by construing the words of his judgment. They looked for the reason which had made him decide the case the way he did. Thus it was the principle of the case, not the words, which went into the common law. The common law evolved from custom and was the body of law created by and administered by the king's courts.

2. Civil law holds statutory law as the primary source of law, and the court system is usually inquisitorial, unbound by precedent, and composed of specially trained judicial officers with a limited ability to interpret law. Its roots are in Roman law and the Napoleonic Code.

3. The federal government and all states, except Louisiana, have the common law as their legal system.

**Legislation**

Law which has been promulgated or enacted by a legislature or other governing body.

**Equity**

A separate system that was developed to overcome the occasional rigidity and unfairness of the common law. Originally the king himself granted or denied petitions in equity; later the task fell to the chancellor, and later still to the Court of Chancery.

# GOVERNMENTS

## FEDERAL GOVERNMENT

**Legislative - Congress** (makes law)
- United States Constitution
- Statutes

**Judicial - Federal Courts** (interprets law)
- Cases (common law)
- Court rules

**Executive - President and Administrative Agencies** (enforces law)
- Executive Orders
- Regulations
- Decisions

## STATE GOVERNMENT

**Legislature**
- Constitution
- Statutes

**State Courts**
- Cases
- Court rules

**Governor and Administrative Agencies**
- Proclamations (Propositions)
- Regulations
- Decisions

## LOCAL GOVERNMENTS

**City Council**

**Superior and Municipal Courts**

**Mayor and Commissions**

# COURT STRUCTURE

## FEDERAL

**Highest**: Supreme Court of the United States

**Appeal**: United States Courts of Appeals
(13 circuits)

**Trial**: United States District Courts

## CALIFORNIA

**Highest**: Supreme Court of California

**Appeal**: California Courts of Appeal
(6 districts)

**Trial**: Superior Courts of California

## NEW YORK

**Highest**: New York Court of Appeals

**Appeal**: New York Supreme Court, Appellate Division
(4 departments)

**Trial**: New York Supreme Court

## COURTS AS LAWMAKERS

**Due Process Clause(s)**

**5TH Amendment**:
No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

**14th Amendment**:
All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

# CASE LAW

## *STARE DECISIS AND PRECEDENT*

**Common Law System**
Opinions operate as a statement of the law under doctrine of "stare decisis."

**"Stare Decisis et non quieta movere"**
Means "to stand by precedents and not disturb settled points."

Doctrine based on consistency with the past.
Promotes predictability.
Permits change when circumstances, information and societal values dictate a need for change.

Two ways to change:
1. Evolution - modify or reframing existing law.
2. Overrule - create a new precedent.

**Precedent**
Decisions in past cases.

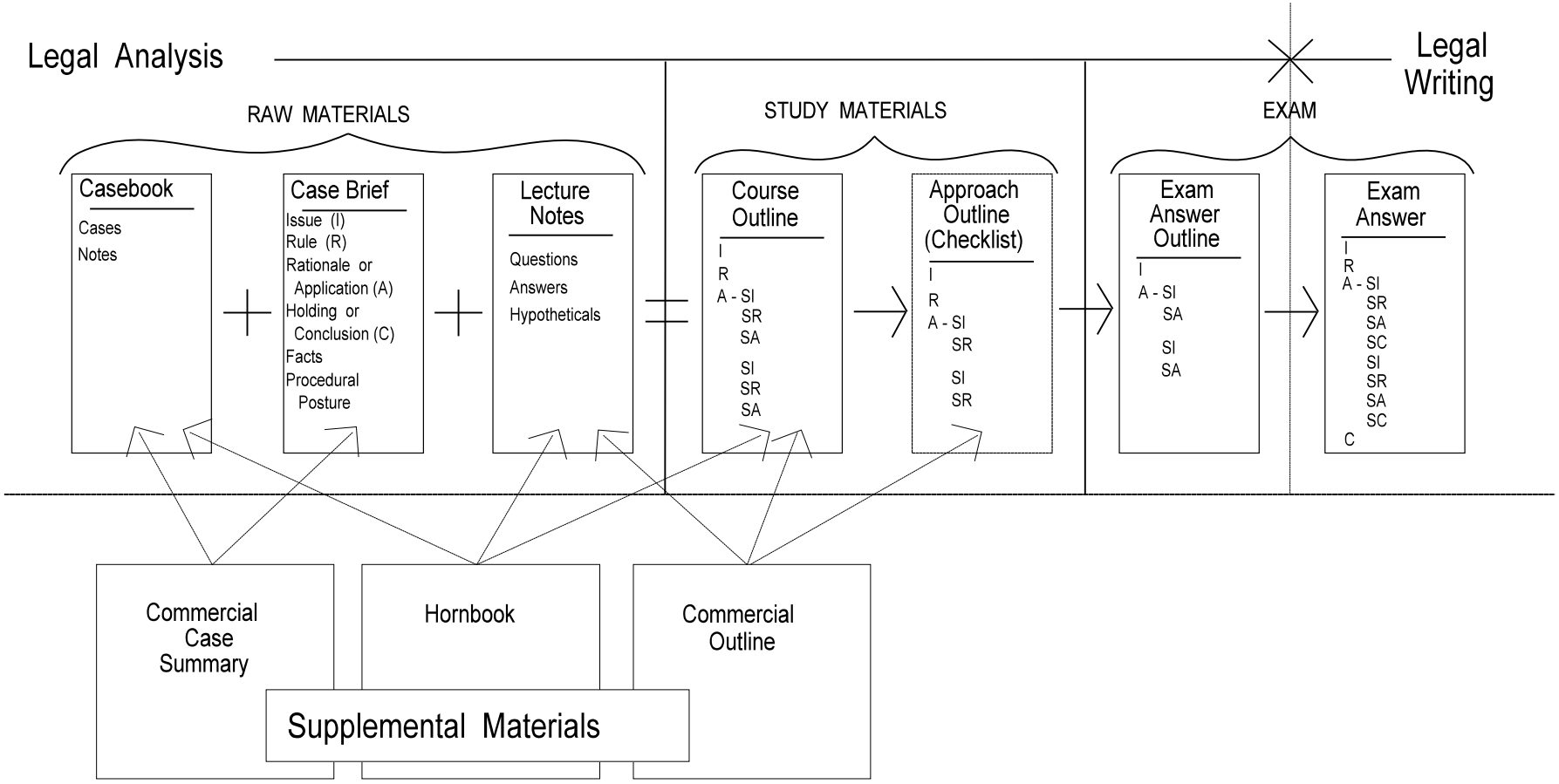
Controlling or Binding precedent - decisions which a court must follow (cases in same court system, U.S. Supreme Court cases)

Persuasive precedent - a court may choose to follow a decision from a different court system when there's no binding precedent from the same court system or law is evolving in the direction set forth by the persuasive precedent.

**Reception Statutes**
A reception statute is a statutory law in a former British colony retaining pre-independence English law, to the extent not explicitly rejected by the legislative body or constitution of the new nation.

New York Constitution of 1777 provides that:
"[S]uch parts of the common law of England, and of the statute law of England and Great Britain, and of the acts of the legislature of the colony of New York, as together did form the law of the said colony on the 19th day of April, in the year of our Lord one thousand seven hundred and seventy-five, shall be and continue the law of this State, subject to such alterations and provisions as the legislature of this State shall, from time to time, make concerning the same."

California Civil Code Section 22. 2
The common law of England, so far as it is not repugnant to or inconsistent with the Constitution of the United States, or the Constitution or laws of this State, is the rule of decision in all the courts of this State.



**Garratt v. Dailey**
Supreme Court of Washington, 1955.
46 Wash.2d 197, 279 P.2d 1091.

HILL, JUSTICE. The liability of an infant for an alleged battery is presented to this court for the first time. Brian Dailey (age five years, nine months) was visiting with Naomi Garratt, an adult and a sister of the plaintiff, Ruth Garratt, likewise an adult, in the back yard of the plaintiff's home, on July 16, 1951. It is plaintiff's contention that she came out into the back yard to talk with Naomi and that, as she started to sit down in a wood and canvas lawn chair, Brian deliberately pulled it out from under her. The only one of the three present so testifying was Naomi Garratt. (Ruth Garratt, the plaintiff did not testify as to how or why she fell.) The trial court, unwilling to accept this testimony, adopted instead Brian Dailey's version of what happened, and made the following findings:

"III. * * * that while Naomi Garratt and Brian Dailey were in the back yard the plaintiff, Ruth Garratt, came out of her house into the back yard. Some time subsequent thereto defendant, Brian Dailey, picked up a lightly built wood and canvas lawn chair which was then and there located in the back yard of the above described premises, moved it sideways a few feet and seated himself therein, at which time he discovered the plaintiff, Ruth Garratt, about to sit down at the place where the lawn chair had formerly been, at which time he hurriedly got up from the chair and attempted to move it toward Ruth Garratt to aid her in sitting down in the chair; that due to the defendant's small size and lack of dexterity he was unable to get the lawn chair under the plaintiff in time to prevent her from falling to the ground. That plaintiff fell to the ground and sustained a fracture of her hip, and other injuries and damages as hereinafter set forth.

"IV. That the preponderance of the evidence in this case establishes that when the defendant, Brian Dailey moved the chair in question *he did not have any wilful or unlawful purpose* in doing so; that *he did not have any intent to injure the plaintiff, or any intent to bring about any unauthorized or offensive contact with her person* or any objects appurtenant thereto; that the circumstances which immediately preceded the fall of the plaintiff established that the defendant, *Brian Dailey, did not have purpose, intent or design to perform a prank or to effect an assault and battery upon the person of the plaintiff."* (Italics ours, for a purpose hereinafter indicated.)

It is conceded that Ruth Garratt's fall resulted in a fractured hip and other painful and other injuries. To obviate the necessity of a retrial in the event this court determines that she was entitled to a judgment against Brian Dailey, the amount of her damage was found to be $11,000. Plaintiff appeals from a judgment dismissing the action and asks for the entry of a judgment in that amount or a new trial.

The authorities generally, but with certain notable exceptions, [c] state that when a minor has committed a tort with force he is liable to be proceeded against as any other person would be. * * *

In our analysis of the applicable law, we start with the basic premise that Brian, whether five or fifty-five, must have committed some wrongful act before he could be liable for appellant's injuries. * * *

It is urged that Brian's action in moving the chair constituted a battery. A definition (not all-inclusive but sufficient for our purpose) of a battery is the intentional infliction of a harmful bodily contact upon another. * * *

We have in this case no question of consent or privilege. We therefore proceed to an immediate consideration of intent and its place in the law of battery. In the comment on clause (a) of § 13, the Restatement says:

"*Character of Actor's Intention*. In order that an act may be done with the intention of bringing about a harmful or offensive contact or an apprehension thereof to a particular person, either the other or a third person, the act must be done for the purpose of causing the contact or apprehension or with knowledge on the part of the actor that such contact or apprehension is substantially certain to be produced." [C]

We have here the conceded volitional act of Brian, i.e., the moving of a chair. Had the plaintiff proved to the satisfaction of the trial court that Brian moved the chair while she was in the act of sitting down, Brian's action would patently have been for the purpose or with the intent of causing the plaintiff's bodily contact with the ground, and she would be entitled to a judgment against him for the resulting damages. [Cc]

The plaintiff based her case on that theory, and the trial court held that she failed in her proof and accepted Brian's version of the facts rather than that given by the eyewitness who testified for the plaintiff. After the trial court determined that the plaintiff had not established her theory of a battery (i.e., that Brian had pulled the chair out from under the plaintiff while she was in the act of sitting down), it then became concerned with whether a battery was established under the facts as it found them to be.

In this connection, we quote another portion of the comment on the "Character of actor's intention," relating to clause (a) of the rule from [Restatement, (First) Torts, 29, § 13]:

"It is not enough that the act itself is intentionally done and this, even though the actor realizes or should realize that it contains a very grave risk of bringing about the contact or apprehension. Such realization may make the actor's conduct negligent or even reckless but unless he realizes that to a substantial certainty, the contact or apprehension will result, the actor has not that intention which is necessary to make him liable under the rule stated in this section."

A battery would be established if, in addition to plaintiff's fall, it was proved that, when Brian moved the chair, he knew with substantial certainty that the plaintiff would attempt to sit down where the chair had been. If Brian had any of the intents which the trial court found, in the italicized portions of the findings of fact quoted above, that he did not have, he would of course have had the knowledge to which we have referred. The mere absence of any intent to injure the plaintiff or to play a prank on her or to embarrass her, or to commit an assault and battery on her would not absolve him from liability if in fact he had such knowledge. [C] Without such knowledge, there would be nothing wrongful about Brian's act in moving the chair and, there being no wrongful act, there would be no liability.

While a finding that Brian had no such knowledge can be inferred from the findings made, we believe that before the plaintiff's action in such a case should be dismissed there

should be no question but that the trial court had passed upon that issue; hence, the case should be remanded for clarification of the findings to specifically cover the question of Brian's knowledge, because intent could be inferred therefrom. If the court finds that he had such knowledge the necessary intent will be established and the plaintiff will be entitled to recover, even though there was no purpose to injure or embarrass the plaintiff. [C] If Brian did not have such knowledge, there was no wrongful act by him and the basic premise of liability on the theory of a battery was not established.

It will be noted that the law of battery as we have discussed it is the law applicable to adults, and no significance has been attached to the fact that Brian was a child less than six years of age when the alleged battery occurred. The only circumstance where Brian's age is of any consequence is in determining what he knew, and there his experience, capacity, and understanding are of course material.

From what has been said, it is clear that we find no merit in plaintiff's contention that we can direct the entry of a judgment for $11,000 in her favor on the record now before us.

Nor do we find any error in the record that warrants a new trial. * * *

The cause is remanded for clarification, with instructions to make definite findings on the issue of whether Brian Dailey knew with substantial certainty that the plaintiff would attempt to sit down where the chair which he moved had been, and to change the judgment if the findings warrant it. * * *

Remanded for clarification.

[On remand, the trial judge concluded that it was necessary for him to consider carefully the time sequence, as he had not done before; and this resulted in his finding "that the arthritic woman had begun the slow process of being seated when the defendant quickly removed the chair and seated himself upon it, and that he knew, with substantial certainty, at that time that she would attempt to sit in the place where the chair had been." He entered judgment for the plaintiff in the amount of $11,000, which was affirmed on a second appeal in Garratt v. Dailey, 49 Wash.2d 499, 304 P.2d 681 (1956).]

## NOTES AND QUESTIONS

1. The trial court judge found that plaintiff suffered damages in the amount of $11,000. For most intentional torts, the court will award nominal damages even if no actual damages were proved. Of course, if the plaintiff does prove actual damages, as she did in this case, defendant is liable for those actual damages. How would Ms. Garratt's lawyer prove actual damages? See Chapter 10, Damages.

2. Note that the trial judge was the finder of fact at both trials. Why do you think his findings of fact were different the second time? Might he have been influenced by the appellate court's view of the facts as well as its view of the law?

3. Can a child five years and nine months old have an intent to do harm to another? And if so, how can that intent be "fault"? Suppose that a boy of seven, playing with a bow and arrow, aims at a girl of five and hits her, and she is injured. Is he liable? Weisbart v. Flohr, 260 Cal.App.2d 281, 67 Cal.Rptr. 114 (1968). See generally Restatement (Second) of Torts § 8A.

4. Can a four-year-old child who strikes his babysitter in the throat, crushing her larynx, be held liable for an intentional tort? Bailey v. C.S., 12 S.W.3d 159 (Tex. App. 2000) (rejecting argument that four-year-old was capable of intent). What about a two-year-old child who bites an infant? See Fromenthal v. Clark, 442 So.2d 608 (La.App.1983), cert. denied, 444 So.2d 1242 (1984) (affirming trial court ruling that two-year-old was too young to form intent).

5. Can a young child commit a tort requiring a "malicious" state of mind? Ortega v. Montoya, 97 N.M. 159, 637 P.2d 841 (1981). Some states have parental responsibility statutes that make parents liable for their child's malicious torts.

**Fisher v. Carrousel Motor Hotel, Inc.**
Supreme Court of Texas, 1967.
424 S.W.2d 627.

[Action for assault and battery. Plaintiff, a mathematician employed by NASA, was attending a professional conference on telemetry equipment at defendant's motor hotel. The meeting included a buffet luncheon. As plaintiff was standing in line with others, he was approached by one of defendant's employees, who snatched the plate from his hand, and shouted that a "Negro could not be served in the club." Plaintiff was not actually touched, and was in no apprehension of physical injury; but he was highly embarrassed and hurt by the conduct in the presence of his associates. The jury returned a verdict for $400 actual damages for his humiliation and indignity, and $500 exemplary (punitive) damages in addition. The trial court set aside the verdict and gave judgment for the defendants notwithstanding the verdict. This was affirmed by the Court of Civil Appeals. Plaintiff appealed to the Supreme Court.]

GREENHILL, JUSTICE. * * * Under the facts of this case, we have no difficulty in holding that the intentional grabbing of plaintiff's plate constituted a battery. The intentional snatching of an object from one's hand is as clearly an offensive invasion of his person as would be an actual contact with the body. "To constitute an assault and battery, it is not necessary to touch the plaintiff's body or even his clothing; knocking or snatching anything from plaintiff's hand or touching anything connected with his person, when done in an offensive manner, is sufficient." Morgan v. Loyacomo, 190 Miss. 656, 1 So.2d 510 (1941).

Such holding is not unique to the jurisprudence of this State. In S.H. Kress & Co. v. Brashier, 50 S.W.2d 922 (Tex.Civ.App.1932, no writ), the defendant was held to have committed "an assault or trespass upon the person" by snatching a book from the plaintiff's hand. The jury findings in that case were that the defendant "dispossessed plaintiff of the book" and caused her to suffer "humiliation and indignity."

The rationale for holding an offensive contact with such an object to be a battery is explained in 1 Restatement (Second) of Torts § 18 (Comment p. 31) as follows:

"Since the essence of the plaintiff's grievance consists in the offense to the dignity involved in the unpermitted and intentional invasion of the inviolability of his person and not in any physical harm done to his body, it is not necessary that the plaintiff's actual body be disturbed. Unpermitted and intentional contacts with anything so connected with the body as to be customarily regarded as part of the other's person and therefore as partaking of its inviolability is actionable as an offensive contact with his person. There are some things such as clothing or a cane or, indeed, anything directly grasped by the hand which are so intimately connected with one's body as to be universally regarded as part of the person."

We hold, therefore, that the forceful dispossession of plaintiff Fisher's plate in an offensive manner was sufficient to constitute a battery, and the trial court erred in granting judgment notwithstanding the verdict on the issue of actual damages. * * *

Damages for mental suffering are recoverable without the necessity for showing actual physical injury in a case of willful battery because the basis of that action is the unpermitted and intentional invasion of the plaintiff's person and not the actual harm done to the plaintiff's body.

Restatement (Second) of Torts § 18. Personal indignity is the essence of an action for battery; and consequently the defendant is liable not only for contacts which do actual physical harm, but also for those which are offensive and insulting. [Cc]. We hold, therefore, that plaintiff was entitled to actual damages for mental suffering due to the willful battery, even in the absence of any physical injury. [The court then held that the defendant corporation was liable for the tort of its employee.]

The judgments of the courts below are reversed, and judgment is here rendered for the plaintiff for $900 with interest from the date of the trial court's judgment, and for costs of this suit.

## NOTES AND QUESTIONS

1. What if the plate had been snatched without the racial epithet? Or suppose the waiter had not touched plaintiff's plate, but said in a loud voice, "Get out, we don't serve Negroes here!"? What if the doorman at the hotel shouted a racial epithet and kicked plaintiff's car when he was about to leave. Battery?

2. Does the utilization of the tort of battery confuse things? Why not characterize what happened as "intentional infliction of emotional harm"? See Browning v. Slenderella Systems, 54 Wash.2d 440, 341 P.2d 859 (1959). Might the case be regarded as one of imaginative lawyering, assuming the state was not ready to recognize intentional infliction of emotional harm as a tort? What other remedies might have been available to plaintiff? Compare this with the *State Rubbish Collectors* case, page 50.

3. Defendant, unreasonably suspecting the plaintiff of shoplifting, forcibly seized a package from under her arm and opened it. Morgan v. Loyacomo, 190 Miss. 656, 1 So.2d 510 (1941). Defendant deliberately blew pipe smoke in plaintiff's face, knowing she was allergic to it. Richardson v. Hennly, 209 Ga.App. 868, 434 S.E.2d 772 (1993).

4. A is standing with his arm around B's shoulder, and leaning on him. C, passing by, violently jerks B's arm, as a result of which A falls down. To whom is C liable for battery? Reynolds v. Pierson, 29 Ind.App. 273, 64 N.E. 484 (1902).