

Introduction to Environmental Law

- What is Environmental Law?
 - It is the regulation of actions that threaten or actually harm the natural world, including people or the environment (animals, plants, air, and water).

Foundations of Environmental Law

- Federal Courts
- Congress
- Federal administrative agencies
- International treaties
- State legislatures
- State courts
- State administrative agencies
- Local governments

Sources of Law

- Constitutional Law
 - The U.S. Constitution is an “organic” law that created a tripartite form of government consisting of executive, legislative, and judicial branches.
 - An organic law is the fundamental law (or constitution) of a state or nation and can be written or unwritten.
 - The organic law (or system of laws or principles) defines and establishes the organization of that government and sets the limits of that government’s power.
- Statutes
 - Rules of general applicability passed by the legislative branch of a federal or state government
- Common Law
 - A body of case law based on generally accepted legal principles adopted from England and modified over the years
 - It is based on judicial decisions rather than legislative actions.

Substantive Areas of the Law Related to Environmental Law

- Constitutional law
- Civil law (including common law)
- Administrative law
- Criminal law
- Tort law

Administrative Law

- What does it encompass?
 - Laws and legal principles governing the administration and regulation of city, county, state and federal government agencies involving rules, regulations, applications, licenses, permits, available information, hearings, appeals, and decision-making.
- Why is it important?
 - Executive agencies at the federal level, and at most state levels, are required to comply with laws concerning how regulations and administrative decisions are made.

Administrative Procedure Act (APA)

- A federal act that sets forth the procedures that agencies must follow in adopting regulations and making administrative decisions
 - These procedures include requirements of prior notice and opportunity to be heard before a rule is adopted or a decision is made
- Environmental Protection Agency (EPA)
 - The federal agency tasked with administering and enforcing most of the federal environmental acts

Administrative Law: Key Concepts

- Administrative agencies have only “delegated” authority; they have no ability to create their own authority.
- Administrative agencies must abide by the provisions of the Administrative Procedure Act (APA) or other applicable external procedural requirements, as well as whatever rules the agency itself adopts concerning its activities.
- Administrative agencies must maintain a record of their activities that can be reviewed by the public or a court.

Administrative Law: Key Concepts (cont.)

- In rendering decisions, an administrative agency may not act in an “arbitrary and capricious” manner; in other words, there must be a legal and evidentiary reason for the action taken.
- The decisions of administrative agencies may be appealed once the decision is final and there are no other administrative avenues of relief for a party; that is, a party must “exhaust its administrative remedies” prior to any appeal.
- If proper administrative procedures are followed, the decisions of administrative agencies will be given great deference by the courts.

Information Concerning Environmental Matters

- Federal Registrar
 - A periodical containing the notices, written decisions, and records of other administrative action that is published by the federal government to ensure that the public has adequate information concerning administrative proceedings
- Freedom of Information Act (FOIA)
 - A federal act giving the public access to records kept by governmental bodies and agencies

Tort Law

- An area of law, outside the field of environmental law, that has a considerable impact on environmental law
- A tort is a civil, as opposed to a criminal, wrong
- Concerned with the general legal responsibility of private parties toward each other
 - If a person violates this general legal responsibility and injures another, the injured party may sue in court to receive damages
 - Damages are money payments for injuries
- There are many types of torts, but the following have particular significance for environmental law students:
 - Negligence
 - Negligence per se
 - Strict liability
 - Nuisance
 - Trespass to land

Tort Law (cont.)

- The 5 types of torts relevant to environmental law:
 - Negligence
 - A breach of a duty to another person that causes an injury.
 - Reasonable person test
 - Part of the test for negligence that is based upon whether a person of ordinarily prudent care would have exercised that care under the particular circumstances of a case
 - Proximate cause
 - The act (or failure to act) without which an injury would not have occurred; the event that produces an injury without an intervening cause
 - Negligence per se
 - A situation where conduct is treated as negligence even when there is no actual evidence concerning a breach of duty

Tort Law (cont.)

- Strict liability
 - Liability for damages as a result of engaging in an activity even when there is no proof that the liable party breached a duty while engaging in that activity
 - Very common liability standard in environmental law
- Nuisance
 - Results from an annoyance or a disturbance that unreasonably interferes with the enjoyment of property
- Trespass to land
 - Occurs when there is an unlawful entry onto another's real property but does not require that a person set foot on someone else's property
 - Sending noxious odors or water onto someone else's property is sufficient

Criminal Law

- Differs from a tort case in that the suit is always brought by the government (federal, state, or local) against a specific defendant(s) for an alleged violation of a specific criminal statute.
- Penalties for violations of criminal statutes:
 - Fines, imprisonment, or both
- Related but noncriminal remedy
 - Injunction: a court order to do (or refrain from doing) a specific act
 - If the injunction is violated, the individual violating the order is guilty of contempt of court.
 - Contempt of court is not a criminal action but the court can punish the person committing contempt by fine and/or jail.

Litigation Process

- Civil Litigation
 - Plaintiff
 - Defendant
 - Complaint
 - Answer
 - Discovery
 - Trial
 - Appeal
 - Settlement
 - Standing to sue
 - Injury in fact
 - Burden of proof
 - Preponderance of the evidence
 - Rules of evidence
 - Rules of Civil Procedure

Litigation Process (cont.)

- Criminal litigation
 - Summons or indictment
 - Discovery
 - Trial or plea bargain
 - Appeal (if trial)
 - Burden of proof
 - Beyond a reasonable doubt
 - Rules of evidence
 - Rules of Criminal Procedure

Burden of Proof

- The responsibility of one or the other parties to litigation to produce evidence to prove a fact in dispute
- Criminal cases
 - The government has the burden of proof to show that the defendant is guilty beyond a reasonable doubt.
- Civil cases
 - The plaintiff has the burden of proof to show that the defendant is liable by a preponderance of the evidence.

Rules of Evidence

- Governs the information that may be presented to a court or an administrative tribunal
- Specifies what information can be presented and in what form
- All courts are bound by them
- Procedural rules that address items such as expert witnesses, physical evidence, and other matters concerning admissibility of information to the court