

COMMON LAW VS. STATUTORY LAW

Common Law is law made by Judges; Statutory Law is made by Legislatures.

Common Law:

For hundreds of years dating back to the early Justice system of England, the courts have developed what has been called the “Common Law.” Early in England’s history, judges had to decide a legal case according to what they felt most people (the common person) would think was the correct decision. To find out what most persons thought was the right decision, the judges followed the customs of the community and the common beliefs of the people.

In deciding a particular case, the judge would look to previously decided cases with the similar issues and facts. The earlier decision was given precedent or priority and closely followed by the second judge in making a decision on the case at issue. When a large number of judges decided the same kind of case or question of law in the same way, the decision became the “common law.” It could only be changed when the customs and beliefs of the community changed.

Lawyers learned common law by reading reports in which judges gave reasons for their decisions. By reading many decisions of the same kind, a lawyer could see how a law developed and how it to apply the decision to the facts presented to the judge.

Statutory Law:

Statutory law is made by the state legislature. Most state legislatures meet every year to consider passing new laws that are considered for new and emerging problems. In the current justice system, not only are Judges often asked to apply “Common Law” to a case but they are also asked to interpret “Statutory Law” and to apply it to a variety of fact situations. Many of the laws that are passed are then used as a basis for bringing a lawsuit and it is at that time that the Judge is asked to interpret the meaning of the statute to the facts of the particular case.