

SIE 525 Information Systems Law

“Introduction”

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SIE 525 Materials on the Web

<http://www.spatial.maine.edu/~onsrud/Courses.htm>

SIE 525 Materials on First Class

First Class Mail System

<http://www.umat.maine.edu>

See Fall 2007 Courses, Drag to Desktop

Typical US Legal Philosophy:

Priority of controls should be:

1. marketplace
2. private arrangements
3. law - legislation & courts

(Perritt-Chap 1) Note: see list of books on web for full citations to references in any course slides

FUNCTIONS OF LAW RELATIVE TO INFORMATION:

1. allocate property rights
2. facilitate contracts
3. adjudicate competing claims for access to distribution channels
4. determine who has rights to government information
5. determine who bears the risks of loss from harm caused by information

FOUR TRADITIONAL CATEGORIES OF INFORMATION LAW

1. Broadcasting - radio and television*
2. Common carrier - telephone and telegraph*
3. Cable
4. Publishing - print
 - justification for legal boundaries between categories is collapsing
5. Internet Law (Cyber Law)

(Perritt-Chap 1)

* detailed regulation by FCC

U.S. CONSTITUTION+ AMENDMENTS

some powers distributed to
FEDERAL GOVERNMENT

1. enumerated powers
 - a. legislative
Congress - Art. 1
 - b. executive
President - Art. 2
 - c. judicial
U.S. Courts - Art. 3
2. implied powers
 - all those other powers necessary in order to carry out the enumerated powers

STATE GOVERNMENT

Retains all powers

1. not given to the federal government by the constitution
2. not reserved to the people

State Constitution

- a. legislative
State Legislature or Assembly
- b. executive
Governor
- c. judicial
State Courts

Which branches of government pass laws?

Essentially all.

Examples of laws:

	Federal	State
Statutes	U.S. Code	Maine Revised Statutes Annotated (MRSA)
Admin. Law	Code of Federal Regulations	Agency Regs (ARMSG Index)
Case Law	U.S. Reports + lower	ME Reporter or Atlantic Reporter +

How do you get into Federal Court in Maine rather than State Court and why would you want to?

both courts deal with both state and fed law issues

- state courts meant to be work horses
- state courts take lead in setting precedents on certain matters while fed courts take lead in setting precedents on other matters

Need to qualify for federal court

- Previous standard tests:
- federal question case, or
 - diversity of citizenship, or
 - federal government is one of parties.
- Plus amount in controversy > \$20,000

Need to qualify for federal court

(tests now more explicit by legislation - see 28 USC sec 1330-1368)

- 1330. actions against foreign states
- 1331. federal question case
- 1332. diversity of citizenship > \$75,000
- 1333. admiralty & maritime (exclusive)
- 1334. bankruptcy (exclusive)
- 1335. commerce and antitrust > \$10,000
- 1336. patents, plant variety protection, copyright, trademark (exclusive)
etc.

federal court

- one U.S. District Court in Maine but judges sit in both Portland and Bangor

versus state court

- theoretically, law outcome should be the same regardless of forum

role of judge versus jury?

Roles of Law and Limits

(Samuel Mermin, 1973)

Functions of law:

- settling disputes
- maintaining order
- provide a framework within which certain common expectations about the transactions, relationships, planned happenings, and accidents of daily life can be met

- secure efficiency, harmony, and balance in the functioning of government machinery
- protect citizens against excessive or unfair government power
- protect people against excessive or unfair private power
- ensure people an opportunity to enjoy the minimum decencies of life

- Limits of law:**
- basic socioeconomic conditions and interests have a shaping influence on the law, so one cannot expect the law to turn around and completely transcend those conditions and interests
 - the law dare not get too far away from popular attitudes, habits, and ideals
 - difficulties and risks in the administration of an otherwise desirable right may make the granting of the right more harmful than beneficial

Information is Different
(Cleveland, 1985)

Information is now our most important and pervasive resource.

Possesses characteristics inherently different from traditional resources of physical materials, labor and capital.

1. Information is expandable.
2. Information is not resource hungry.
3. Information is substitutable.
4. Information is transportable.
5. Information is diffusive.
6. Information is shareable.

Classic Economics Theories

Public Goods Theory

Those goods best provided by public are those that are:

1. non-rival (Cleveland #1)
2. non-excludable (Cleveland #6)

Market of Adam Smith

- “invisible hand” resulting from everybody pursuing their own individual economic interests

- for “invisible hand” to function, must have

1. excludability
2. rivalry
3. transparency

“Competition is ruthless, unprincipled, uncharitable, unforgiving - and a boon to society.” - Adam Smith

Information Economics

Will laws developed for controlling the exchange of traditional resources still work in controlling the flow of information?

Yesterday - (Cleveland, 1985) inherent characteristics of limited traditional resources made possible the development of:

- hierarchies of power based on **control**,
- hierarchies of influence based on **secrecy**,
- hierarchies of class based on **ownership**,
- hierarchies of privilege based on **early access** to valuable resources, and
- hierarchies of politics based on **geography** .

Today -

- the old means of control are of dwindling efficacy,
- secrets are harder and harder to keep,
- ownership, early arrival, and geography are of dwindling significance in getting access to the knowledge and wisdom which are the really valuable legal tender of our time

Data to Wisdom

(definitions by Crawford and Gorman, 1995)

Data - facts and other raw material that may be processed into useful information

Information - data processed and rendered useful

Knowledge - information transformed into meaning through action of the human mind, such that it can be recorded and transmitted

Understanding - knowledge integrated with a world view and a personal perspective, existing entirely within the human mind

Wisdom - understanding made whole and generative in the human mind

To what degree should administrative regulation continue for any part of the NII?

presence of competition - basis for eliminating administrative regulations

absence of competition - basis for justifying regulation

Assumption of American Law: (7.2 Peritt)

When competitive markets exist, market forces are a better choice in establishing relations between parties than are detailed legal regulations.

1. Law provides a basic infrastructure within which markets can operate

- consensual contracts
- government minimally involved

2. Law provides means to deal with “market failure” situations (p.301)

1. Inequality of bargaining power
2. “Externalities” not taken into account
3. Public goods situations
4. Imperfect information situations
5. Natural monopoly situations

Administration regulation tends to turn into “price regulation” (7.3 Peritt)

Price regulation becomes more complex over time because:

1. disputes over definition of product category
2. regulators get drawn into setting standards for quality
3. if price based on costs, cost accounting rules grow
4. rules must develop on when monopolist may pull out
5. rules develop on keeping private competition out
