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Legislative Service Commission Library Law Room

Appendix C: Statutory and Common Law



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Statutes often are contrasted with another form of law, the common law. The General Assembly enacts statutes. Courts make common law as they decide cases that do not involve statutory interpretation. The doctrine of precedent (*stare decisis*) is the mechanism by which the courts apply the common law. Under this doctrine, when a court decides a case, it generally is required to follow prior decisions that deal with facts similar to the facts in the case under consideration (precedents). Additionally, in all cases, the courts are required to take notice of and apply relevant statutes. When a statute applies to a case, and its precise application is not plain, the courts interpret the statute in order to apply it to the case. The General Assembly may modify the common law by statute.

Finding Statutes and the Common Law

Statutes are enacted in two forms: codified and uncodified. Statutes having a general and permanent nature are codified; statutes of a special or temporal nature are left uncodified. An example of a codified statute is section 5747.02 of the Revised Code, which levies the state income tax; the state income tax is a subject having a general and permanent nature. An example of an uncodified statute is one authorizing the sale of a parcel of state-owned real estate; because each parcel of land is unique and the authority to convey it is subject to specified conditions and a deadline, such a statute is special and temporal.

Acts of the General Assembly (and the codified and uncodified statutes they contain) are compiled in Ohio's "session laws," the *Laws of Ohio*. Codified statutes are compiled from the *Laws of Ohio* and organized according to subject matter in the Ohio Revised Code, which is published voluntarily by private publishers. In addition to their inclusion in *Laws of Ohio*, uncodified statutes may

appear in the private publications of the Revised Code at the discretion of the editors.

Although the common law is sometimes said to be "unwritten," this assertion is not really accurate. The common law is written down, in large part, in opinions issued by the courts. When courts decide cases, they often write opinions to explain the reasoning by which they have reached their decisions. These opinions, when not based on statutory interpretation, state the common law. Court opinions often are compiled and published in volumes known as "reports" and then are available as precedents for future court decisions.

Statutes and Common Law as Checks and Balances

Statutes and the common law interact with each other in such a way as to serve as checks and balances between the General Assembly and the courts. The power of the General Assembly to enact statutes that modify the common law, together with the duty of the courts to take notice of and apply statutes, is a check upon the power of the courts. On the other hand, the General Assembly may only enact statutes within the scope of its constitutional power. If the General Assembly exceeds its constitutional authority in enacting a statute, the courts may invalidate the statute by declaring it unconstitutional. Under the principle of severability, such a decision makes the statute unenforceable to the extent of its unconstitutionality. To the extent that the statute is not unconstitutional, it remains enforceable.

Because the courts have no power to amend or repeal statutes, an unconstitutional statute "remains on the books" in spite of its unenforceability until the General Assembly amends or repeals it, as appropriate.