

SOURCES OF LAW

There are four sources of law at the state and federal levels:

- Constitutions
- Statutes
- Court Opinions
- Administrative Regulations

Constitutions

A constitution establishes a system of government and defines the boundaries of authority granted to the government. The United States Constitution is the preeminent source of law in the American legal system. All other statutes, court opinions and regulations must comply with its requirements. Each state also has its own constitution. A state constitution may grant greater rights than those secured by the federal constitution but cannot provide lesser rights than the federal constitution. Copies of the U.S. Constitution and the Idaho Constitution are found at the beginning of the *Idaho Code*.

Statutes

Statutes are statements of law enacted by federal and state legislatures. Statutes passed during a legislative session are organized by subject and published in a code. Federal statutes are published in the *United States Code*. Idaho statutes are published in the *Idaho Code*.

Court Opinions

Courts interpret statutes promulgated by the legislative and rules created by the executive branch of government. Statute and rules deemed unconstitutional by the court are invalidated. As a source of law, court opinions are known as the common law. Although the courts can create common law, legislatures have the power to change or abolish them, if the legislation is constitutional. There are many publications, called reports or reporters, that publish cases. See attached charts for reports and reporters that publish federal and Idaho cases.

Administrative Regulations

Administrative agencies are created by legislative action and operate under the control of the executive branch. Agencies regulate statutorily defined areas of law. For example, the Environmental Protection Agency (EPA) was created, in part, to promulgate and enforce standards for pollution control in the United States. Administrative law can act like legislatures (by creating regulations), like the executive branch (by enforcing regulations) and like courts (by adjudicating violations). Federal

regulations are published in the *Code of Federal Regulations*. Idaho regulations are published in the *Idaho Administrative Code*.

TYPES OF AUTHORITY

Primary v. Secondary Authority

Primary authority is the rule of law. Constitutions, statutes, court opinions and administrative regulations are all considered primary authority.

Secondary authority refers to any other commentary or analysis of the law. For example, an opinion issued by the U.S. Supreme Court is considered primary authority, but an article written by a law professor explaining or analyzing that opinion is secondary authority. Other examples of secondary authority are legal encyclopedias (*C.J.S. or Am. Jur. 2d*), American Law Reports (*ALR's*), and legal treatises.

Mandatory v. Persuasive Authority

Mandatory authority refers to authority that the court must follow and is binding on the court. For example, lower courts are required to follow decisions from higher courts in the same jurisdiction. The higher court opinion is considered mandatory authority for the lower court.

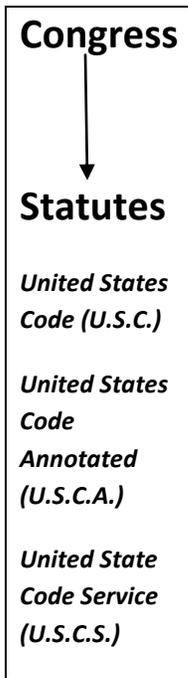
Persuasive authority refers to authority that the court may follow if it is persuaded to do so. The highest court in a jurisdiction is not required to follow a lower court decision, but may choose to do so. Likewise, courts in one jurisdiction are not required to follow the decisions of courts operating in another jurisdiction. Courts sometimes look to persuasive authority to decide an issue if there is no mandatory authority in its own jurisdiction on that issue.

Primary authority can be either mandatory (in its own jurisdiction) or persuasive (outside of its jurisdiction). Secondary authority, however, is always persuasive authority.

SOURCES OF LAW---Federal

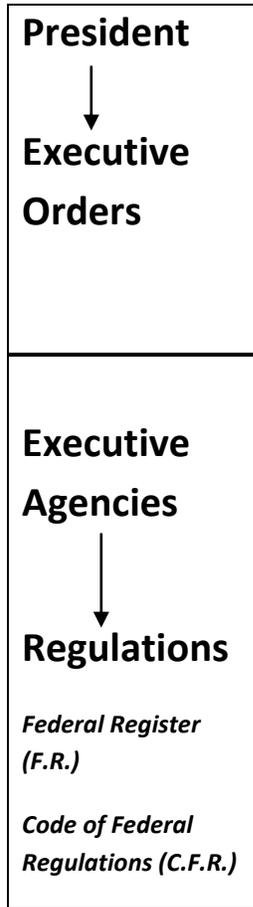
UNITED STATES CONSTITUTION

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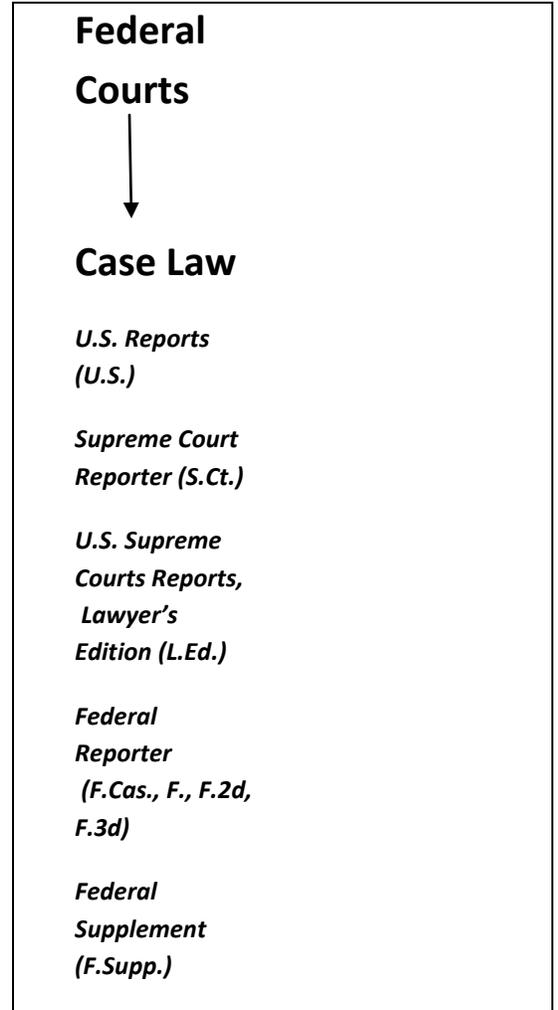


**Independent
Agencies**

EXECUTIVE



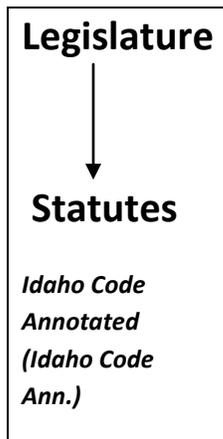
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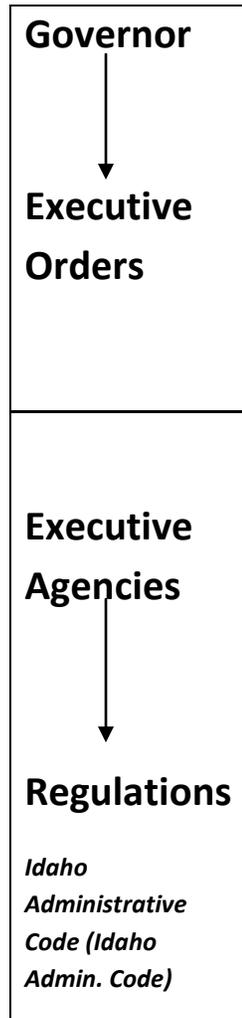
SOURCES OF LAW---State

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