

From Statutes to Stories: Finding the Law for Family History



Judy G. Russell, JD CG® CGL® FUGA

The Legal Genealogist®

Overview: The laws our ancestors lived by can tell us much about life in earlier times. Finding those laws, and the stories they tell, can be a daunting task, but—from colonial statutes to today, from the halls of Congress to the statehouses of the 50 states—the choices legislators made about what laws were needed give a rich and deep context to family history. Key to telling the stories is finding the applicable law.

Understanding the Hierarchy of the Law

Legal systems tend to be hierarchical: certain types of law outrank others. A chartering document will outrank all other forms of law, express or implied. An express statement of law in a statute will outrank a legal principle only implied from a statute. In particular, a statute that appears to change a longstanding common law principle will only be given effect if its language is very clear. Where there is no express law either in a chartering document or in a statute, common law principles will generally apply.

Chartering documents are colonial charters and the state constitutions, plus the Constitution of the United States. They control whenever there is a conflict between the chartering document and a statute or common law principle, and cannot be superseded by statute alone.

Statutory Law is the express statement of the law by the duly elected or appointed members of the legislature and, within the limits allowed by the chartering document of the time and place, controls over the former practice or principles of the common law.

The common law will provide the rule of decision where there is no statutory language or where the intent to change a common law rule is not clear in jurisdictions that began as British colonies or adopted the common law generally. Any jurisdiction that was under Civil Law (former Dutch, French or Spanish colonies in general) would not have followed the common law. Many former colonies adopted some or all of the common law later but not all. Even today, Louisiana remains essentially a civil law jurisdiction, does not follow the

common law at all, and statutory enactments will prevail. Nonetheless, most American states are common-law jurisdictions, and many early genealogical questions can be answered only by reference to the common law.

Federalism plays a role. Federalism—the American form of government—divides authority between federal and state governments. Under the 10th Amendment to the Constitution, states retain all powers not expressly delegated to the federal government. However, Article VI, clause 2, provides that: “This Constitution, and the laws of the United States ..., shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.” Therefore, if there is a direct conflict between federal and state law, federal law will generally prevail.

A System for Finding the Law

Whenever we need to know what law applied at a particular time and place, we should look first to see if the topic was covered by federal law exclusively. If it was, we look first to the United States Constitution, then to federal statutes, and last to the common law for an answer to the research question. If it's not a topic within exclusive federal control, then we look first to the appropriate chartering document (colonial charter or state constitution), then to the colonial or state statutes and then finally to the common law for the answer.

For **chartering documents**, the single best resource for historical materials is the seven-volume compilation by Francis Newton Thorpe, published in 1909. These volumes contain the Articles of Confederation and U.S. Constitution (as amended through the 14th amendment) and all colonial, state and territorial charters and constitutions to the publication date of the volumes. [See resource list #24]

For **federal statutes**, all volumes of the United States Statutes at Large from 1789 into the 21st century are digitized and word-searchable at the website of the Government Publishing Office, *Govinfo.gov*. [See resource list at #27.] Up-to-date statutes organized by topic are set out in the United States Code. [See resource list at #26.]

For **colonial, territorial and state statutes**, there's only one one-stop-shopping resource and it's a subscription-based proprietary database offered by the legal research company HeinOnline. Its Session Laws database is the most complete historical resource that exists. [See resource list at #22.] It may be available to researchers at law libraries in the jurisdiction where a genealogist lives, including the libraries at public law schools. Alternatively a

library may still have the earlier Hein microfiche collection. [See resource list at #23.] Where such access isn't possible, there may be individual state collections available online. [See the list of known state historic law resources set out at the end of the resource list.] For state-based collections available through the major digitized book services such as Google Books, HathiTrust Digital Library and the Internet Archive, the best starting point is the appropriate state page on *Cyndi's List*. [See resource list at #6.]

For **the common law**, the primary resource is the four books of William Blackstone's *Commentaries on the Laws of England*, published in the 18th century. These volumes set out the common law as it would have been understood by those who settled in British colonial North America and who became the founders of the new United States (as well as Canada, Australia, New Zealand and other English-speaking countries). The *Commentaries* are widely available online. [See resource list at #4.]

A System for Finding the Right Law

Often the question we struggle with isn't so much finding the law generally. It's finding the **right** law: the one that applied at precisely the right time in precisely the right place. Applying a methodological approach will help find the exact law that applies:

Step 1: Identify the codification of statutes published closest in time to the date of the record or the event that is the focus of the research question. Remember that codes are topically-organized collections of all the laws in effect in a jurisdiction as of the date the code was adopted by the Legislature and/or published.

Step 2: Find the law as it applies to the event in that code. Whenever the resource we're using is digital, word-searching is often a fast and easy way to find the relevant provision.

However, we need to remember that not all digital images are word-searchable so we often have to know what words or phrases the legislature might have used to cover that topic in order to find the answer. It's often a good idea to consult a legal dictionary or encyclopedia, or even a regular thesaurus, for all possible alternative terms that might lead us to the relevant statute. Spending time with the table of contents and the index to the code we're consulting can also be helpful, allowing us to familiarize ourselves with the way the legislature used words and organized concepts at that time.

Once we've found the law in that code, we have a starting or stopping point—in most cases, the volume will have been published either before or after the date of our event, and we can't assume that the law at the time of our event will necessarily have been the same. We need to check the laws between the code date and event date as well.

Step 3: Find the session laws from the event date to the start or stop point. Remember that session laws are purely-chronological publications of all laws passed at a particular session of the legislature. One topic may be covered in multiple laws in different places in one volume—say, a marriage-related law in Chapter 10 and then another marriage-related law in Chapter 219. A single topic may be addressed in multiple volumes over the period of time between the event date and the code date.

Step 4: Work backwards or forwards through the session laws to ensure that the code reflects the law as of the date of the event. If our code is dated after the event date, then we work backwards through every one of the session laws of every session between the code date and the event date. If our code is dated before the event date, we work forwards through the session laws between the event date and the code date. What we're looking for is anything that suggests that the law was amended or changed between the event date and the date of the code we're looking at. We need to be careful in our searches, since an amendment can be phrased obliquely ("an amendment to the act of May 15, 1789"), and not contain the search words for the topic we're looking for.

A down and dirty workaround: If we can't find all of the session laws we need to be sure that the law did not change between the event date and the code date, and we need an answer quickly, we can find another version of the code to "sandwich" the event date between the two codes.

If the code we found in step 1 was after the event date, we'd find the code closest in time before the event date, and if our step 1 code was before the event date, we'd find the code closest in time after the event date. Then we simply compare the language of the two codes; if they're word-for-word identical, we can conclude that it's reasonably likely the law did not change between the two and so the version in the codes reflects the law at the time of the event. Of course, not even a down-and-dirty conclusion can be drawn if the text of the two codes is different, and we'd have to research further in printed records to have an answer.

Note: this is a workaround only and should not be used when precision is critical, such as writing for publication or for credentialing.

From Statutes to Stories

From evidence detailing individual lives to documenting local history to the overall picture of colonial, territorial or state life at a particular time, statutes can provide depth and color to family history and genealogy.

On an individual basis, public laws—those intended to affect all people or at least all people within a class in the same way—may explain why a research subject acted or refused to act in a particular way, while private laws—those passed for a single individual, family or group—provide direct information bearing on the lives of those for whose benefit the laws were passed.

On the **federal** level, examples of public laws of vast significance to genealogists include:

- The Act regulating passenger ships and vessels, 3 Stat. 488 (1819), first requiring passenger manifests to be submitted to the Customs Service by all arriving ship captains.
- The federal Homestead Act, 12 Stat. 392 (1862), opening up vast areas of the middle and western United States to new settlers at low or no cost except settlement and improvements.
- The combination of the Expatriation Act of 1907, 34 Stat. 1228 (1907), stripping citizenship from U.S.-born women who married non-citizens, and the Cable Act of 1922, 42 Stat. 1021 (1922), repealing that provision of the 1907 law and making citizenship individual to all, both male and female.

Examples of **federal** private laws can be found from the first federal laws of 1789 through to today. An entire volume of federal private laws was published as volume 6 of the U.S. Statutes at Large, and thereafter private laws were included in each volume. Topics range widely:

- Relief to a homeowner whose house was destroyed by American troops in an effort to repel the British invasion of Washington D.C. in the War of 1812. An Act for the Relief of William H. Washington, 6 Stat. 151 (1815).
- Relief to two children captured by the Kiowa in Texas in 1868. Joint Resolution for the Relief of Helen Lincoln and Heloise Lincoln, 16 Stat. 377 (1870).
- Promoting a retired disabled Marine Corps officer wounded in World War I from first lieutenant to captain. An Act for the relief of First Lieutenant John I. Conroy, 43 Stat. 1279 (1925).

On the **colonial, territorial and state** level, since the laws reached many more issues than federal law could, the laws both public and private had an even greater impact on the lives of our ancestors and a correspondingly great impact on the stories we can tell.

Among the more significant topics of **public** laws on this level are laws creating new counties, setting tax rates and collection systems, providing for public education and public health, and regulating marriage, divorce, inheritance and intestacy, enslavement and race, just to name a few.

Among the range of topics as to which **private** laws were passed by early legislatures were laws allowing for legitimization of children, name changes, divorces, and business monopolies, exempting individual citizens from penalties under other laws, settling estates and land titles, and manumitting the enslaved, again just to name a few.

In every case, on both the federal and more local levels, researchers looking to move from statutes to stories should begin by considering those laws that explain or expand on the records we have uncovered. As suggested by Standard 35, genealogists must consider the history of each source “including its governance [and] purpose...” in order to properly evaluate its “likely accuracy, integrity, and completeness.” Board for Certification of Genealogists, *Genealogy Standards*, 2d ed. rev. (Nashville, TN: Ancestry, 2021), Standard 35, last bullet point, at 22. We can tell much of the story of a region and even a nation looking at the laws it chose to adopt and many of the stories of its citizens in what they were expected to do or refrain from doing.

In addition, researcher must also consider what records might have been created as the result of the laws. Colonial land distribution laws often produced records that provide evidence of family structure, military or other service and, at a minimum, location of specific ancestors. Gradual emancipation laws in northern states resulted in birth records for some free children of color long before vital records existed for white children, while registration requirements for free people of color in slaveholding states provide direct information on often hard-to-research ancestors. Laws requiring financial surety for those serving as guardians, executors, or administrators or in many public offices led to an entire set of bond records that often offer at least indirect evidence of relationships. Federal post office laws requiring postmasters to notify patrons that letters sent but not collected would be sent to a dead letter office resulted in published notices in newspapers across the country.

RESOURCES FOR FURTHER RESEARCH

1. *Avalon Project: Documents in Law, History and Diplomacy*. Yale University. <https://avalon.law.yale.edu>
2. Babbitt, Charles J., compiler. *Hand-List of Legislative Sessions and Session Laws...* Boston: Wright & Potter, State Printers, 1912.
3. Black, Henry Campbell. *A Dictionary of Law...* 1st edition. St. Paul, Minn.: West Publ. Co., 1891.
4. Blackstone, William. *Commentaries on the Laws of England*, 4 vols. (Oxford, England : Clarendon Press, 1765-1770).
5. Bouvier, John. *A Law Dictionary...* Rev. 6th ed., Philadelphia: Child & Peterson, 1856.
6. Cyndi's List. <https://www.cyndislist.com/us/> [For each state, see the Laws & Statutes link]
7. Devine, Donn. "The Common Law of England: A Key Resource for American Genealogists." *National Genealogical Society Quarterly* 95 (September 2007): 165.
8. Fleming, Ann Carter. "Genealogical Applications of American Statute Law." *National Genealogical Society Quarterly* 95 (September 2007): 197.
9. Georgetown Law Library, DigitalGeorgetown. Digitized law dictionaries. <https://repository.library.georgetown.edu/handle/10822/559416>
10. Google Books. <https://books.google.com/>
11. Hale, Sir Matthew. *The History of the Common Law of England*. 3d ed. London, England : Nutt & Gosling, printers, 1739.
12. HathiTrust Digital Library. <https://www.hathitrust.org/>
13. Holmes, Oliver Wendell. *The Common Law*. Boston: Little, Brown, 1881.
14. Internet Archive. <https://archive.org/>
15. Kinsella, N. Stephan. "A Civil Law to Common Law Dictionary." 54 *Louisiana Law Review* 1265-1305 (May 1994). <https://digitalcommons.law.lsu.edu/lalrev/vol54/iss5/5/>
16. Law Librarians' Society of Washington, D.C. "State Legislatures, State Laws, and State Regulations: Website Links and Telephone Numbers," *LLSDC Legislative Source Book*. <https://www.llsdc.org/state-legislation>
17. Legal Information Institute (LII). Cornell Law School. <https://www.law.cornell.edu/>
18. MacDonald, Grace E., compiler. *Check-List of Statutes of States of the United States of America*. Providence: Oxford Press, 1937.
19. Rome, Gregory W. and Stephan Kinsella. *Louisiana Civil Law Dictionary*. New Orleans: Quid Pro LLC, 2011.
20. Ryskamp, George. "Common-Law Concepts for the Genealogist: Real-Property Transactions." *National Genealogical Society Quarterly* 84 (September 1996): 165-181.
21. ———. "Fundamental Common-Law Concepts for the Genealogist: Marriage, Divorce, and Coverture." *National Genealogical Society Quarterly* 83 (September 1995): 165-179.
22. *Session Laws Library*. Proprietary subscription-only database. <https://heinonline.org/>
23. *Session Laws of American States and Territories: A Compilation of All States and Territories, 1775-2003*. Buffalo, N.Y.: William S. Hein, 2005. [Microfiche]
24. Thorpe, Francis Newton, editor. *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws*, 7 vols. Washington, D.C. : Government Printing Office, 1909.
25. Tucker, St. George, editor and compiler. *Blackstone's Commentaries with Notes of Reference to ... the Commonwealth of Virginia*. 5 vols. Philadelphia: Birch and Small, 1803.
26. United States Code. Office of the Law Revision Counsel. United States House of Representatives. <https://uscode.house.gov/> Popular Name tool to locate statutes by common names: <https://uscode.house.gov/popularnames/popularnames.htm>
27. United States Statutes at Large, volumes 1-134 (1951 – 2020). U.S. Government Publishing Office.. <https://www.govinfo.gov/app/collection/STATUTE>

Known State-Specific Sources for Historical Laws

Alabama: <https://archive.org/details/alabama-acts?&sort=date>
Alaska: <https://catalog.hathitrust.org/Record/100634525> [territory]
Arizona: session laws 1912-present, <https://azmemory.azlibrary.gov/nodes/view/64>
Arkansas: <https://advancinggenealogist.com/historic-arkansas-statutory-law/>
California: https://clerk.assembly.ca.gov/archive-list?archive_type=statutes
Colorado: <https://scholar.law.colorado.edu/colorado-session-laws/>
Connecticut: <https://hdl.handle.net/11134/3867375>
Delaware: <https://delaware.contentdm.oclc.org/digital/collection/p15323coll1>
Florida: <https://ufdc.ufl.edu/law/>; and see <https://bit.ly/legalgen0734> and <https://bit.ly/legalgen0735>
Georgia: https://dlq.usg.edu/collection/dlq_zlq1 and https://digitalcommons.law.uga.edu/ga_code/
Hawaii: <https://law-hawaii.libguides.com/hawaiilawsonline>
Idaho: <https://legislature.idaho.gov/statutesrules/sessionlaws/> [Session laws 1945-2024]
Illinois: http://www.wiu.edu/libraries/govpubs/illinois_laws/
Indiana (1817-1852): <https://bit.ly/legalgen0089> [Indiana Historical Laws]
Indian Territory: <http://advancinggenealogist.com/historic-indian-territory-law/>
Iowa: <https://www.legis.iowa.gov/archives/code>
Kansas: <http://advancinggenealogist.com/historic-kansas-statutes/>
Kentucky: <https://catalog.hathitrust.org/Record/100143504> [incomplete]
Louisiana: https://digitalcommons.law.lsu.edu/la_civilcode/
Maine: <https://legislature.maine.gov/legis/lawlib/lldl/open.htm>
Maryland: <https://bit.ly/legalgen0688> [codes]; <https://bit.ly/legalgen0689> [session laws]
Massachusetts: <https://bit.ly/legalgen0052> and see <https://bit.ly/legalgen0090>
Michigan: <https://catalog.hathitrust.org/Record/002018817> (territorial laws, reprint)
<https://catalog.hathitrust.org/Record/000060523> (statehood)
Minnesota: <https://www.revisor.mn.gov/statutes/?view=archive>
Mississippi: <https://catalog.hathitrust.org/Record/100790220> [incomplete]
Missouri: <https://cdm16795.contentdm.oclc.org/digital/collection/molaws>
Montana: <http://advancinggenealogist.com/historic-montana-statutory-law/>
Nebraska: <http://advancinggenealogist.com/historic-nebraska-statutory-law/>
Nevada: <https://www.leg.state.nv.us/law1.html>
New Hampshire: <https://scholars.unh.edu/lawsnh/> and <https://bit.ly/legalgen0454>
New Jersey: <https://bit.ly/legalgen0440> (codes) and <https://hdl.handle.net/10929/50419> (session laws)
New Mexico: <https://www.nmonesource.com/nmos/en/nav.do>
New York: <https://www.nysl.nysed.gov/scandocs/historical.htm>
North Carolina: <https://bit.ly/legalgen0690>
North Dakota: <https://www.ndlegis.gov/legislative-histories/session-laws>
Ohio: <https://catalog.hathitrust.org/Record/001625675> (to 1833)
<https://catalog.hathitrust.org/Record/006728845> [incomplete]
Oklahoma: <https://babel.hathitrust.org/cgi/mb?a=listis&c=1180441765> (1890-1923)
Oregon: <https://catalog.hathitrust.org/Record/010083778> [incomplete]
Pennsylvania: <https://www.palrb.gov/Preservation>
South Carolina: https://www.carolana.com/SC/sc_state_government_sources.html
South Dakota: <https://bit.ly/legalgen0520>
Texas: <https://guides.sll.texas.gov/historical-texas-statutes>
Utah: https://collections.lib.utah.edu/search?facet_setname_s=uu_law_uschs
Vermont: <https://libguides.vermontlaw.edu/vermontlawguide/vermonthistoriclegislation>
Virginia (and West Virginia): <https://bit.ly/legalgen0754> and see <https://bit.ly/legalgen0691> [incomplete]
Washington: <https://bit.ly/legalgen0741>
West Virginia: <https://babel.hathitrust.org/cgi/mb?a=listis&c=862882432>
Wisconsin: <https://docs.legis.wisconsin.gov/archive/law>
Wyoming: <https://wyominglegislation.wyo.gov/>
And see Debbie Mieszala, *Law Library Index*, <https://advancinggenealogist.com/laws-and-statutes-index/>

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