Appendix D
Statutory and Common Law

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Types of Law

In addition to statutes, there is another form of law, the common law. The General Assembly enacts statutes. Courts make common law as they decide cases. 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 follows 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 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 temporary 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. Such a statute is special and temporary because each parcel of land is unique, and the authority to convey it is subject to specified conditions and a deadline.

Acts of the General Assembly (and the codified and uncodified statutes they contain) are officially archived by the Secretary of State and compiled by that office in Ohio's "session laws," the *Laws of Ohio*. Since the 2007-2008 edition, the *Laws of Ohio* has been published exclusively in electronic form at the Legislation and Ballot Issues link on the Secretary of State website: ohiosos.gov. Codified statutes are compiled from the *Laws of Ohio* and organized in the Revised Code, which is published online by the Legislative Service Commission at the Ohio Laws & Administrative Rules website: codes.ohio.gov, and in various formats by commercial publishers for their subscribers. Uncodified statutes may appear as annotations in commercial 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 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. Court opinions often are compiled and published in volumes known as "reports" and then are available as precedents for future court decisions. Opinions of the Ohio Supreme Court, Courts of Appeals, and select other courts are available online both through commercial publishers and through the "Cases & Opinions" and "Reporter of Decisions" links on the Supreme Court's website: supremecourt.ohio.gov.

Checks and Balances

Statutes and the common law interact with each other 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 on 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 it considers appropriate.