



Overview of the American Legal System

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Framework of Government in the United States

Basis of the American Legal System

The legal system of the United States is administered and carried on by the official branches of government and many other authorities acting within their official lawmaking capacity. The original basis of the law in this country is the United States Constitution, which lays the framework under which each of the different branches of government operates. The Constitution also guarantees the basic civil rights of the citizens of the United States. All authority of the federal government originates from the Constitution, and the Constitution serves as the supreme law of the land. The Constitution grants to the federal government certain enumerated powers, and grants to the states any power not specifically delegated to a branch of the federal government. Under this system, states retain significant authority and autonomy. The constitutions in each of the fifty states contain many similar provisions to those in the U.S. Constitution in terms of the basic structure of government. Under the federal and state constitutions, the United States legal system consists of a system of powers separated among branches of government, with a system of checks and balances among these branches.

Legislative Branches

The legislative branch is the primary law-making body among the three branches, although authority emanating from the other branches also constitutes law. The legislative branch consists of Congress, and is subdivided into two lower houses, the House of Representatives and the Senate. In addition to the powers granted to Congress, the Constitution sets forth specific duties of both the House and the Senate. Each Congress meets for two sessions, with each session lasting two years. For example, the 107th Congress met in its first session in 2001, and meets in its second session in 2002. State legislatures are structured similarly, with the vast majority of these legislatures consisting of two lower houses.

Judicial Branches

The judicial branch in the federal system consists of three levels of courts, with the Supreme Court serving as the highest court in the land. The intermediate courts in the federal system are the thirteen Courts of Appeals. The United States is divided by circuits, with each circuit consisting of a number of states. The Fifth Circuit, for example, consists of Texas, Mississippi, and Louisiana. Each Court of Appeals has jurisdiction to decide federal cases in its respective circuit. The trial level in the federal judicial system consists of the District

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Courts. Each state contains at least one district, with larger states containing as many as four districts. Congress has also established a number of lower federal courts with specialized jurisdiction, such as the bankruptcy courts and the United States Tax Court.

Most state court systems are similar to that of the federal system, with a three-tiered system consisting of trial courts, appellate courts, and a highest court, which is also referred to as a "court of last resort." The names of the courts are similar from state to state, such as superior court, court of appeals, and supreme court. However, some states do not follow this structure. For example, in New York, the trial level court is the Supreme Court, while the court of last resort is the Court of Appeals. Texas, as another example, has two highest courts—the Supreme Court and the Court of Criminal Appeals. In addition to the trial level courts, small claims courts or other county courts typically hear small claims, such as those seeking recovery of less than \$1000.

Executive Branches

The federal Constitution vests executive power in the President of the United States. The President also serves as the Commander in Chief of the Armed Forces and has the power to make treaties with other nations, with the advice and consent of the Senate. Besides those powers enumerated in Article II of the Constitution, much of the power of the executive branch stems from the executive departments, such as the Department of the Treasury and the Department of Justice. Congress has the constitutional authority to delegate power to administrative agencies, and many of these agencies fall under the executive branch and are known as executive agencies. Congress also has the authority to create agencies independent of the other branches of government, called independent agencies. Authority emanating from executive and independent agencies is law, and it is similar in many ways to legislation created by legislatures or opinions issued by courts. State executive branches and administrative agencies are similar to those of their federal counterparts.

Constitutional Authority

Interpretation of the Constitution

The federal Constitution is not a particularly lengthy document, and does not provide many answers to specific questions of law. It has, instead, been the subject of extensive interpretation since its original ratification. In the famous 1803 case of *Marbury v. Madison*, Chief Justice John Marshall wrote an opinion of the Supreme Court, which stated that the judicial branch was the appropriate body for interpreting the Constitution and determining the constitutionality of federal or state legislation. Accordingly, determining the extent of power among the three branches of government, or determining the rights of the citizens of the United States, almost always requires an evaluation of federal cases, in addition to a reading of the actual text of the Constitution.

Powers of Congress

Most of the enumerated congressional powers are contained in section 8 of Article I of the Constitution. Many courts have been asked to review congressional statutes to determine whether Congress had the constitutional authority to enact such statutes. Among these powers, the power of Congress "to regulate [c]ommerce among the several [s]tates" has been the subject of the most litigation and outside debate. A number of cases during the New Deal era under President Franklin D. Roosevelt considered the breadth of this provision, which is referred to as the Commerce Clause. After the Supreme Court determined that many of these statutes were unconstitutional, Roosevelt, after a landslide election in 1936, threatened to add additional justices to the court, in order to provide more support for his position with respect to the pieces of legislation passed during the New Deal era (the reason he gave to Congress at the time was that many of the justices were over the age

of seventy, and could no longer perform their job function, but the general understanding was that he wanted justices that would approve the New Deal legislation as constitutional). The threat of this so-called "Court-packing" plan succeeded, and the Commerce Clause has been construed very broadly since then. Other powers enumerated in Article I are generally construed broadly as well.

Civil Rights Provisions in the Constitutions

The main text of the Constitution does not provide rights to the citizens of the United States. These rights are generally provided in the many amendments to the Constitution. The first ten amendments, all ratified in 1791, are called the "Bill of Rights," and confer many of the cherished and fundamental rights to the citizens of the United States. Among the rights included in the Bill of Rights are the freedoms of speech and religion (First Amendment); right to keep and bear arms (Second Amendment); right to be free from unreasonable searches and seizures (Fourth Amendment); right to be free from being compelled to testify against one's self in a criminal trial (Fifth Amendment); right to due process of law (Fifth Amendment); right to a jury trial (Sixth Amendment); and right to be free from cruel and unusual punishment (Eighth Amendment).

Between 1791 and 1865, no constitutional amendments were ratified that provided civil rights to citizens. However, at the conclusion of the Civil War and during the reconstruction period following the war, three major amendments were added to the Constitution. The first was the Thirteenth Amendment, ratified in 1865, which finally abolished slavery and involuntary servitude in the United States. The Fourteenth Amendment, ratified in 1868, provided some of the most significant rights to citizens, including the guarantee of equal protection of the laws and prohibited denial of life, liberty, or property without due process of law. The Fifteenth Amendment, ratified in 1870, provided that the right to vote could not be abridged on account of race, color, or previous condition of servitude. Fifty years later, women were guaranteed the right to vote with the ratification of the Nineteenth Amendment in 1920.

Application of Constitutional Amendments

Like other constitutional provisions, the judicial branch is the appropriate body to interpret the Bill of Rights and other amendments to the Constitution. The plain language of the amendments can cause some confusion, since some, by their own terms, they apply specifically to Congress, while other apply specifically to states. For example, the First Amendment begins, "Congress shall make no law respecting an establishment of religion . . ." Similarly, the Fourteenth Amendment contains a provision that states, "No State shall make or enforce any law which shall abridge the privileges and immunities of the citizens of the United States . . ." Modern courts have resolved some of these questions by ruling that the Due Process Clauses of the Fifth and Fourteenth Amendments incorporate these provisions, so many provisions apply to both the federal and state governments, despite the language in the Constitution.

State Constitutions

Many state constitutions are structured similarly to the federal Constitution, except that most are more detailed than the federal Constitution. Most citizens are guaranteed basic civil rights by both the federal Constitution and their relevant state constitutions. For example, it is common for state constitutions to include provisions guaranteeing freedom of speech or equal protection, and most are phrased similarly to the provisions in the First and Fourteenth Amendments. Since the federal Constitution is the supreme law of the land, any rights provided in it are guaranteed to all citizens and cannot be lost because a state constitution's provisions conflict with the corresponding provision in the federal Constitution. A state may provide greater rights to citizens than those provided in a federal counterpart, but may not remove rights guaranteed under the federal doctrine. Section 10 of Article I of the Constitution also prohibits states from making certain laws or conducting certain acts, such as passing an ex post facto law or coining money.

International Treaties

Authority of Treaties

Article VI of the Constitution provides, "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land." An international treaty is generally considered to be on the same footing as a piece of legislation. If a treaty and a federal statute conflict, the one enacted at a later date, or the one that more specifically governs a particular circumstance, will typically govern. State legislation may not contradict provisions contained in a treaty. Similarly, states are forbidden from entering into treaties under the provisions in Article I, Section 10.

Creation of Treaties and Other International Agreements

The power to enter into treaties is vested in the President, though the executive must act with the advice and consent of the Senate, and receive the concurrence of two-thirds of the Senate before a treaty is ratified. The various Presidents have also entered into executive agreements with foreign nations when the President has not been able to receive approval from two-thirds of the Senate, or has not sought approval from the Senate. While nothing in the Constitution permits or forbids this practice, executives have entered into thousands of such agreements.

Federal and State Legislation

Federal Legislative Process

Members of Congress have the exclusive authority to introduce legislation to the floor of either the House of Representatives or Senate. Legislation is introduced to Congress in the form of bills. Most bills can originate either in the Senate or in the House, with the exception of bills to raise revenue, which must originate in the House under Article I of the Constitution. When a bill is introduced, it is designated with a bill number, and these bill numbers run sequentially through two sessions of Congress. For example, the fifty-sixth bill introduced in the House during the 108th Congress will be designated as "H.R. 56" ("H.R." is an abbreviation for House of Representatives). Likewise, the twelfth bill introduced in the Senate during the same Congress will be designated "S. 12." It is not uncommon that bills are introduced in both the House and the Senate simultaneously that address the same subject matter. These bills are referred to as "companion bills," and the actual law that is passed often contains components from both the enacted bill and its companion bill. Thousands of bills are introduced in the House and Senate each session, and a relatively small proportion is actually passed into law.

After a bill has been introduced, it is sent to one or more appropriate committees in the House or Senate. The committee or committees analyze the provisions of the bill, including the reasoning for such legislation and the expected effect of the bill if it were enacted into law. A committee conducts hearings, where it hears testimony from experts and other parties that can provide information relevant to the subject matter covered by a bill. A committee may also order the preparation of an in-depth study (called a "committee print") that provides additional background information, often in the form of statistics and statistical analysis. A number of additional documents may also be produced during the committee stage, and practically every action is documented, including the production of written transcripts of committee hearings. A committee may amend or rewrite a bill before it approves it, which generally extends the length of time that a bill remains at the committee stage. The vast majority of bills, in fact, never leave the committee stage, and these bills are commonly said to have "died in committee."

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When a committee completes its consideration of a bill, it reports the bill back to the floor of the House or Senate. A committee ordinarily accompanies the bill with a report that summarizes and analyzes each bill's provisions, and provides recommendations regarding the passage of the bill. Reports, as well as other documents, are designated with unique numbers and are made available to the public. An example of a report number is "H.R. Rep. No. 108-15," which indicates that it is the fifteenth report submitted to the House of Representatives in the 108th Congress.

Members of the houses of Congress debate the bills on the floor of the relevant house. These debates are transcribed, and the text of the transcription is routinely available to the public. During this period, the relevant chamber may amend the bill. Once the debates and other activities are completed, the chamber votes to pass the bill. If the chamber approves the bill, it is sent to the other chamber, and the entire process is repeated. The version of the bill sent to the other chamber of Congress is called the "engrossed" version of the bill. The other chamber must pass this version exactly as it appears in the engrossed version, or else the bill, assuming the second chamber passes it, is sent back to the original chamber for future consideration. If the House and Senate cannot agree to a single version of a bill, a conference, or joint, committee may be convened, where members of both chambers may compromise to complete a version of a bill acceptable to both chambers. If this conference committee is successful in doing so, the bill is returned to the House and Senate for another vote.

Once a bill passes both the House and the Senate, it is sent to the President as an "enrolled" bill. The President may sign the bill and make it law. If the President does not sign the bill, and Congress is still in session, the bill becomes law automatically after ten days. If the President does not sign the bill, and Congress adjourns within ten days, the bill does not become law. The President may also reject the bill by vetoing it. Congress may override this veto with a two-thirds majority vote in both chambers.

Types of Laws Passed by Congress

Laws that apply to and are binding on the general citizenry are called public laws. Each public law is designated with a public law number, and the numbering system is similar to that of reports and other documents described above. For example, Public Law Number 108-1 represents that this is the first public law passed in the 108th Congress. Congress may also pass laws that apply only to individual citizens or small classes of individuals. These laws are called private laws, and are usually passed in the context of immigration and naturalization. Private laws are numbered identically to public laws, such as, for example, Private Law Number 108-2, which is the second private law passed in the 108th Congress.

Congress also passes various types of resolutions, some of which do not constitute law and do not contain binding provisions equivalent to public laws. A single chamber of Congress may pass simple resolutions, which relate to the operations of that chamber or express the opinion of that chamber on policy issues. Both chambers may pass a concurrent resolution, which relate to the entire operation of Congress, or the express opinion of the entire Congress. Neither simple nor concurrent resolutions constitute law, and are not submitted to the President for approval. Joint resolutions, on the other hand, have the same binding effect as bills, and must be submitted to the President for final approval. Appropriations and similar measures often enter Congress as joint resolutions. Some actions, particularly the introduction of a constitutional amendment, require the use of a joint resolution, and many of these actions do not require presidential approval.

Publication of Federal Legislation

Practically all documents produced by Congress during the legislative process are published by the United States Government Printing Office and made available to the public. Most of items produced since 1995 are now also available on the Internet in electronic formats. Legislation first appears in the form of a slip law, named as such because the Government Printing Office prints these on unbound slips of paper. At the

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conclusion of a session of Congress, the laws passed during that session are compiled and appear in the form of session laws, organized in chronological order. The official source for federal session laws is the United States Statutes at Large.

Most legislation in force in the United States is organized into a subject matter arrangement and published in the United States Code. A statute contained in the United States Code is called a codified statute. The U.S. Code consists of fifty titles, with each title representing a certain area of law. For example, Title 17 contains the copyright laws of the United States; Title 26 contains the Internal Revenue Code; and Title 29 contains most of the labor laws of the United States.

Relationship Between Federal and State Legislation

Federal legislation is superior to state legislation under the provisions of Article VI of the U.S. Constitution. Thus, the courts will resolve any potential conflicts between a state statute and a federal statute by enforcing the federal statute. Federal superiority, however, does not mean that states are forbidden from enacting legislation covering the same subject matter as a federal statute; it is common for both federal and state legislation to govern similar areas of law. This is true in such areas as securities regulation, consumer protection, and labor law. Federal labor relations laws, for example, apply specifically to private employers, but do not apply to public employers. Labor relations between public employers and their employees are governed generally by state labor relations laws.

If Congress wants an area of law to be governed solely by federal legislation, Congress may include a provision that such legislation preempts any state law related to the subject matter covered by the federal statute. Congress may preempt state regulation expressly through specific statutory language, or by implication based on the structure and purpose behind a federal statute. Examples of legislation that contain preemption provisions are the Employment Retirement Income Security Act of 1974, the Comprehensive Environmental Response, Compensation and Liability Act, and the Toxic Substance Control Act.

The Tenth Amendment to the federal Constitution reserves any power not delegated to the federal government to the states, or to the people. However, there have been questions among the courts and scholars regarding the extent of this amendment, and it has not generally been construed to grant any special powers to the states through its enactment. Rather, it is a clause that reserves power to the states where Congress has not acted, subject to some limitations.

Legislative Process in State Legislatures

Most state legislatures follow similar processes as Congress. Each state legislature, with the exception of Nebraska, consists of two chambers. Most legislatures meet in regular session annually, though some meet biannually with special called sessions held periodically. In many states, the process of introducing a bill is streamlined, where only one chamber may introduce certain types of bills. Several states also permit citizens to initiate legislation, which is not possible in Congress. Some states allow citizens to vote directly on a proposed piece of legislation. Other states contain provisions that all citizens, once they have received a requisite number of signatures, may force the legislature to consider and vote on a particular issue.

Publication of State Legislation

Most states publish enacted legislation in a similar manner as the publication of federal legislation. Laws passed during each session of a respective legislature are compiled as session laws, and laws currently in force are compiled in a subject matter arrangement. In most states, laws in force are compiled according to a numbering system similar to the United States Code, with title or chapter numbers representing the subject matter of the statute. Other states, most notably California and Texas, have created codes that are named to

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represent the subject matter of the statutes contained in them. For example, the California Family Code contains the family law statutes of that state; similarly, the Texas Finance Code contains the statutes governing many of the financial operations in that state.

Bills introduced in every legislature during a current session are now available on the various legislatures' Internet sites, as are the current statutes. However, very little documentation from the legislative process is published in a fashion to make it readily available to interested members of the public. Legal researchers interested in such information must often travel to their respective state capitol to obtain this information.

Interpretation of Legislation

The language of a statute may be somewhat ambiguous regarding their application, and the courts have the responsibility to interpret or construe the language to determine the proper application of the statute. Courts have developed "canons of construction" to aid in this interpretation. The most basic form of statutory construction is consideration of the text and plain meaning of a statute. This consideration includes the process of defining the terms and phrases used in statute, including the use of a dictionary to derive the common meaning of a term. Courts will also consider the application of the statute in the context of the broader statutory scheme, which can often indicate what the purpose of the statute was when the statute was enacted.

If the plain meaning of a statute cannot be derived from the statute or statutory scheme, courts may look to the history of the legislation to determine the intent of the legislature when it enacted the statute. It is possible that Congress or a state legislature specifically addressed a concern during the legislative process, and members of the legislature may have made statements indicating how the legislature intended for the statute to apply in a particular circumstance. Locating this information requires a legal researcher to locate documentation prepared during the legislative process, in a process called "compiling" a legislative history.

Substantive vs. Procedural Laws

Many of the laws passed by legislatures are considered "substantive" laws, because they create, define, and regulate legal rights and obligations. If an individual has been harmed and wants to bring litigation against the person or group that harmed him or her, substantive statutes often provide the law that governs that situation, and also include provisions regarding the appropriate damages that can be awarded to the plaintiff should the plaintiff successfully prove his or her case.

By comparison, procedural laws are those that set forth the rules used to enforce substantive laws. These laws may dictate the steps that a litigant must take to bring a suit to court, or may dictate the appropriate courts where a case may be brought. Some statutes, called statutes of limitations, also limit the amount of time in which a particular case may be brought. Procedural laws are as important as substantive laws in many respects, because a party with a valid claim may nevertheless lose a case if the proper procedures are not followed, or if the claim is not filed in the time required under a statute of limitations.

Criminal Law vs. Civil Law

Criminal laws are those designed to punish private parties for violating the provisions contained in these laws. Violations of these laws are crimes against society, and are brought as criminal actions against the alleged offenders by state or federal attorneys acting on behalf of the people. All citizens of the United States are guaranteed rights in criminal investigations and criminal trials, and law enforcement officers and prosecutors must follow certain procedures in order to protect these rights. For this reason, criminal procedure differs significantly from the procedures for bringing a civil case to court. Among the most fundamental rights is that all accused individuals are presumed innocent until the state proves them guilty beyond a reasonable doubt.

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This places the burden of proof in a criminal action on the state, rather than on the defendant. Title 18 of the U.S. Code contains most of the federal criminal laws, while state penal codes generally contain the state criminal laws.

The term "civil law" has different meanings in two distinct contexts. First, it refers to a system of law that differs from the common law system employed by the United States. This is discussed below. Second, it refers to a type of law that defines rights between private parties, and, as such, differs from criminal law. Civil laws are applicable in such situations as when two parties enter into a contract with one another, or when one party causes physical injury to another party. The procedures that must be followed in a civil court case are generally less stringent than those in a criminal case. Some civil laws include provisions designed to punish wrongdoers, usually in the form of punitive, or exemplary, damages that are paid to the other party.

Municipal Ordinances and Other Local Laws

Local government entities are generally created by the various states, and are typically referred to as municipalities. The powers of a municipality are limited to those granted to it by the state, usually defined in the municipal charter that created the municipality. Charters are somewhat analogous to state constitutions, and usually were created by vote of the voters in the municipality. Local governing bodies may include a city council, county commission, board of supervisors, etc., and these bodies enact ordinances that apply specifically to the locality governed by these bodies. Ordinances are similar to state legislative acts in their function. In many municipalities, ordinances are organized into a subject matter arrangement and produced as municipal codes.

Local laws often govern everyday situations more so than many state or federal laws. These laws include many provisions for public safety, raise revenue through the creation and implementation of sales and other local taxes, and govern the zoning of the municipality. Decisions regarding education are also generally made through local boards of education, though these boards are entities distinct from the municipal government. Local laws cannot contradict federal or state law, including statutory or constitutional provisions.

Cases and Case Law in the Judicial Systems of the United States

Adversarial System

The judicial system in the United States is premised largely on the resolution of disputes between adversaries after evidence is presented on both sides to a judge or jury during a trial. Civil cases usually involve the resolution of disputes between private parties in such areas as personal injury, breach of contract, property disputes, or resolution of domestic relations disputes. Criminal cases involve the prosecution by the state or federal government of an individual accused of violating a criminal statute. The rules and procedures that parties must follow differ between criminal and civil trials, although similarities exist between the two types of rules. Some courts, such as probate courts and juvenile courts, have been developed to hear specific types of suits in a particular jurisdiction. Other tribunals, such as small claims courts and justice of the peace courts, have also been established to resolve minor disputes or try cases involving alleged infractions of minor crimes. The systems by which parties appeal decisions are also premised on an adversarial process.

Civil Trials

A party commences a civil trial by filing a petition or complaint with an appropriate court. The party bringing the suit is usually referred to as the plaintiff, though in some cases the party is referred to as the petitioner. A petition or complaint must generally name the parties involved, the cause of action, the legal theories under

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which recovery may be appropriate, and the relief sought from the court. Once the petition or complaint is filed with the court, the plaintiff must serve the party or parties against whom the action was brought. The party against whom the case is brought is referred to as the defendant, though in some cases this party is referred to as the respondent. A defendant generally responds to a petition or complaint by filing an answer admitting or denying liability, though the filing of a pre-answer motion or motions may precede this.

A number of events occur between the time a petition or complaint is filed with a court and the time of trial. During the pretrial stage, the parties will usually file a series of motions with the court, requesting the addition or removal of a party, limits on evidence that may be presented at trial, or the complete dismissal of the case in its entirety. Parties also collect information in a process called discovery. During discovery, parties file interrogatories, which are written questions submitted to the other party or parties; seek admissions to certain facts from the other party or parties; and take depositions, which are oral questions asked of witnesses who are under oath. The pretrial stage is very important to the eventual resolution of a dispute, and many cases are settled by the parties outside of court or dismissed before the case actually goes to trial.

When a civil case goes to trial, a judge or a jury may try it. If a judge tries a case, he or she makes findings of facts and rulings of law, and the trial is usually referred to as a bench trial. If a jury tries a case, the jury makes findings of facts, such as whether a contract existed or whether one party assaulted another party. However, the judge makes rulings of law in a jury trial. A plaintiff who wants a jury to try his or her case must usually request it as a jury demand, or else the case will proceed as a bench trial. Some types of cases, such as family law cases, are never tried with juries. If a jury is requested, the case proceeds with the selection of jurors. During this time, a specified number of jurors are selected randomly from a pool of potential jurors. Both parties are permitted to question the jurors in a process called voir dire, and may ask that a certain number of jurors be removed from the final jury.

At the beginning of a trial, both sides give opening statements, providing an overview of the evidence that will be presented during the trial. After opening statements, both sides present evidence by questioning its own witnesses (called direct examination) and introducing physical items into evidence. Each party has the right to cross-examine witnesses produced by the opposing party. All jurisdictions have developed detailed rules of evidence that must be followed by both parties. Many of these rules govern the questions that may be asked on direct or cross-examination of witnesses. If one party enters something into evidence that violates the rules of evidence, the other party must raise an objection to the entry of this evidence, and the judge may sustain or overrule this objection. Some violations of the rules of evidence may result in a mistrial, in which the entire trial process must be repeated because it would be unfair to continue with the case. Even if the rule violation is not enough to cause a mistrial, a party who may wish to appeal an adverse ruling must raise objections during trial to "preserve error" for future consideration by appellate courts. Appellate courts will generally only consider points of possible error when the party seeking the appeal raised an objection and preserved error at the trial level.

A plaintiff generally has the burden to prove a case, and always introduces evidence before the defendant. Because a plaintiff has the burden of proof, a defendant is not required to introduce evidence, though the defendant will almost always do so. After the defendant concludes his or her presentation of evidence, the plaintiff may present evidence that rebuts evidence offered by the defense. Once all evidence has been introduced, both parties make closing arguments. Closing arguments are followed by jury deliberation, in which the jury determines whether the plaintiff or plaintiffs deserve to recover, and what amount of damages is appropriate. A jury relies on jury instructions (or court charges) given to them by the court, which describe the law and procedure that the jury must use to make its decision. The percentage of jurors that must be in agreement to render a decision ranges among different jurisdictions.

Once a jury renders a verdict, the parties may file post-trial motions that may still affect the outcome of the trial. These motions may include motion for new trial, which is usually awarded if something occurred during

the trial that rendered the process unfair to one of the parties; or a motion for judgment notwithstanding the verdict (commonly referred to as "JNOV"), where the court renders judgment for one party, though the jury decided in favor of the other party, because the evidence presented at trial did not support the jury's decision. A party who wishes to appeal an adverse decision may also file a notice of appeal with the trial court, indicating that it wishes to appeal the ruling to an appellate court. Filing a notice of appeal within a certain time frame (30 days is common) is required in most jurisdictions in order to appeal a case to a higher court.

Criminal Trials

State and federal prosecutors initiate criminal cases, which involve charges that an individual has violated a criminal law. In all criminal cases, the state or federal government serves as the plaintiff, while the person charged is the defendant. Criminal laws, which are promulgated by the various legislatures, consist of two major types of laws: felonies and misdemeanors. Felonies consist of the more serious crimes, and carry with them the most serious punishment. Both felonies and misdemeanors can result in jail or prison time, and both will usually result in a significant fine.

Citizens are guaranteed a number of rights in the context of criminal prosecution, and exercise of these rights is often the focus of criminal trials. The Fourth Amendment of the U.S. Constitution requires that law enforcement officials obtain a search warrant, upon showing of probable cause, before conducting searches or seizures of individuals or the property of individuals. The Fifth and Sixth Amendments contain a number of guarantees to all citizens that must be provided in a criminal trial. If a citizen's constitutional rights have been violated, the state may be required to proceed without the introduction of relevant evidence obtained illegally, or may be required to terminate the criminal action altogether.

When a person is arrested for violation of a criminal law, he or she must generally be brought before a judge within twenty-four hours of the arrest. The judge must inform the individual of the charges brought against him or her, and set bail or other condition of release. After other preliminary matters, the defendant is formally charged in one of two ways. First, the prosecutors may file a "trial information," which formally states the charges against the defendant. In more serious cases, such as murder trials, a panel of citizens will be convened as a grand jury to consider the evidence against the defendant. A grand jury, unlike a trial jury, only determines whether sufficient evidence to support the criminal charge exists, and will issue an indictment if evidence is sufficient. Either the filing of a trial information, or the return of an indictment, formally begins the trial process by charging the defendant. Once the defendant has been formally charged, he or she must appear for an arraignment, where the court reads the charge and permits the defendant to enter a plea. The defendant may enter a plea of guilty or not guilty at this time. Where it is permitted or required as a prerequisite to an insanity defense, the defendant may enter a plea of not guilty by reason of insanity. In some jurisdictions, including federal courts, the defendant may plead *nolo contendere*, or "no contest," which means that the defendant does not contest the charges. Its primary effect is the same as a plea of guilty, and its primary significance is that a plea of *nolo contendere* cannot be introduced into evidence in a subsequent civil action as proof of the defendant's guilt in the criminal action. *Nolo contendere* pleadings may usually only be entered with the permission of the court.

The Sixth Amendment guarantees the accused in a criminal prosecution a speedy and public trial. When a defendant enters a plea of not guilty, the trial is usually scheduled within ninety days of the filing of the trial information or indictment. The Sixth Amendment also guarantees citizens accused of crimes the right to a jury trial, though a defendant may waive this right and request a bench trial. During the pre-trial stage, the defendant may file motions with the court, such as those requesting exclusion of evidence from a trial because the evidence may have been obtained illegally. A defendant may also engage in pretrial discovery, including requests to view evidence in the possession of the prosecution. The prosecution and the defendant may engage in plea bargaining, whereby the prosecution may agree to reduce charges against the defendant in exchange for a plea of guilty or *nolo contendere*.

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When a case proceeds to a jury trial, the parties have an opportunity to question prospective jurors, similar to the selection of jurors in a civil case, except that the final number of jurors in a criminal trial is usually larger than the number used in a civil case. Both the state and the defendant have the opportunity to strike jurors from the final jury. Once the final jury is selected and the trial begins, the prosecution reads the indictment or trial information, reads the defendant's plea, and makes an opening statement. The defendant may make an opening statement immediately after the prosecution, or may wait to do so until the time the defense introduces its evidence. Introduction of evidence in a criminal case is similar to that of a civil case, and the prosecution bears the burden of proving that the defendant is guilty beyond a reasonable doubt. Until the state proves otherwise, the defendant is presumed innocent. The defendant is not required to introduce evidence since the prosecution bears the burden of proof, but if the defendant does produce evidence, the prosecution may present rebuttal evidence and cross-examine any witnesses. Once both sides have presented the evidence, each party may give a closing argument.

A jury in a criminal trial must return a unanimous verdict of "guilty" or "not guilty." If a jury fails to reach a unanimous verdict, it is referred to as a "hung" jury, and a mistrial is declared. In such a situation, a new jury must retry the entire case. If the jury returns a unanimous verdict of guilty, then the jury's duty is usually complete, since a jury in most jurisdictions is not involved in the sentencing of the defendant. A judge, when determining an appropriate sentence for a convicted defendant, considers testimony and reports from a number of different sources, such as probation officers and victims. The federal government and many state governments have established detailed sentencing guidelines that must be followed by judges in criminal cases. In addition to a sentence of imprisonment or of a fine, a court may place a convicted defendant on probation, meaning that the defendant is placed under the supervision of a local correctional program. A defendant must comply with specific terms and conditions of the probation in order to avoid time in prison or jail. Similar to probation, a judge may also give the defendant a deferred judgment, or may suspend the defendant's sentence. In either case, the defendant is given the opportunity to remove the crime from his or her criminal record by successfully completing a period of probation.

Appeals

If a party in a case is not satisfied with the outcome of a trial decision, he or she may appeal the case to a higher court for review. Not all parties have the right to appeal, however, and parties must follow proper procedures for the higher court to agree to hear the appeal. During trial, parties must "preserve error" by making timely objections to violations of the rules of evidence and other procedural rules. After trial, the party seeking an appeal must file a notice of appeal with the trial court. The opposing party may file a notice of cross-appeal if that party is not satisfied with the final judgment from the lower court. The party bringing the appeal is usually referred to as the appellant (though in some cases this party is the petitioner), and the opposing party is referred to as the appellee (or respondent in some cases).

Once a party has filed a notice of appeal, both parties must comply with a series of rules of appellate procedure to continue with the appeal. The appellant usually requests that the transcript of the trial court proceeding from the trial court reporter be sent to the court of appeals. The appellant must also pay a docketing or similar fee with the court of appeals. Both parties then file briefs with the appellate court stating the facts from the case, stating the legal arguments and reasons for appeal, and requesting relief from the appellate court. Both parties have access to the other party's briefs submitted to the court. Parties also request an oral argument, where both sides are given the opportunity to make their legal arguments before the court, and answer questions from the appellate court justices. Appellate courts do not hear testimony from witnesses or consider evidence that was not introduced in the trial. Rather, a court of appeals reviews the trial court proceeding to determine whether the trial court applied substantive or procedural law to the facts of the case correctly. At the end of the appeal, the court will issue an opinion that states the conclusion of the court of appeals.

Almost all judicial systems in the United States consist of three tiers, and an intermediate appellate court hears the first level of appeals. If a party is dissatisfied with an intermediate court's opinion, the party may seek an appeal by its jurisdiction's court of last resort. In many cases, the decision of a court of last resort to hear an appeal is discretionary, and a party must petition the court to hear the appeal (intermediate appellate courts, by comparison, typically do not have this discretion). The United States Supreme Court is the court of last resort for all cases in the United States, including the intermediate federal courts of appeals and the highest state courts. The U.S. Supreme Court only hears cases involving the application of federal law, and in most cases, the decision to grant an appeal is completely discretionary on the part of the Supreme Court. A party seeking review from the Supreme Court must file a petition for writ of certiorari requesting that the Court review the lower court's decision, and if the Court grants the writ, the Court orders the submission of the lower court's case. The Supreme Court grants a writ of certiorari in a very small percentage of cases, usually when there is a controversial issue of federal law in question in the case.

Civil appeals and criminal appeals are similar, with two main exceptions. First, with very few exceptions, the state may not appeal an acquittal of a criminal in a trial court case. Second, in some criminal cases, especially murder cases where the defendant has received the death penalty, the right to appeal is guaranteed and automatic.

Jurisdiction and Venue

When a party brings a lawsuit in a court in the United States, the party must determine which court has appropriate jurisdiction to hear the case, and which court is the proper venue for such a suit. Jurisdiction refers to the power of a court to hear a particular case, and may be subdivided into two components: subject matter jurisdiction and personal jurisdiction. Venue refers to the appropriateness of a court to hear a case, and applies differently than jurisdiction.

A court has proper subject matter jurisdiction if it has been given the power to hear a particular type of case or controversy under constitutional or statutory provisions. For example, a county court of law may have jurisdiction to hear cases and controversies where the amount in controversy of the claim is less than \$5,000. If a claimant brings a case before the county court with an amount in controversy of \$7,500, the court lacks jurisdiction to hear the case and will dismiss it. Subject matter jurisdiction is often a difficult issue with respect to the jurisdiction of federal courts, discussed below. Personal jurisdiction is based on the parties or property involved in the lawsuit. In personam jurisdiction refers to the power of a court over a particular person or persons, and usually applies when a party is a resident of a state or has established some minimum contact with that state. In rem jurisdiction, by comparison, refers to the power of a court over property located in a particular state.

Venue is often confused with jurisdiction because it applies when determining whether a particular court may hear a case. A court may have jurisdiction to hear a case, but may not be the proper venue for such a case. Statutes often provide that proper venue in a particular case is the county or location where the defendant or defendants reside. Even if a court in the county where the plaintiff resides has proper jurisdiction to hear the case, it may not be the proper venue because of a provision in a statute regarding venue.

Jurisdiction of Federal Courts

Federal courts in the United States have limited jurisdiction to hear certain claims, based primarily on provisions in Article III of the U.S. Constitution. Federal courts can hear cases involving the application of the Constitution, federal statutes, or treaties. Federal courts may also hear cases where the amount in controversy is more than \$75,000, and all of the parties are citizens of different states. State courts may also hear cases with federal questions or where parties reside in different states. If a party brings a case in state court and a federal court has jurisdiction to hear the case, the opposing party may remove the case to federal court. The

federal court generally reviews each case to determine whether jurisdiction is appropriate. If federal jurisdiction is not appropriate, the court remands the case to state court.

Some suits may only be brought in federal court, such as those brought by or against the government of the United States. Other examples are those involving bankruptcy, patents, and admiralty.

Legal vs. Equitable Remedies

Some remedies available from courts are considered "legal" remedies, while others are considered "equitable" remedies. Legal remedies are usually those involving an award of monetary damages. By comparison, a court through use of an equitable remedy may require or prohibit certain conduct from a party. The distinction between legal and equitable remedies relates to the historic distinction between "law" and "equity" courts that existed in England as far back as the fourteenth century. Law courts traditionally adhered to very rigid procedures and formalities in resolving the outcome of a legal conflict, while equity courts developed a more flexible system where judges could exercise more discretion. This system transferred to the United States, but today, most courts in the United States may hear cases in both law and equity, although the procedure and proof required to request an equitable remedy may differ from the requirements to request a legal remedy. Examples of equitable remedies are specific performance of a contract, reformation of a contract, injunctions, and restitution.

Procedural Rules of the Courts

In addition to procedural laws promulgated by legislatures, judicial systems also adopt various rules of procedure that must be followed by the courts and parties to a case. Two main types of court rules exist. First, some rules have general applicability over all courts in a particular jurisdiction. Examples of such rules are rules of civil procedure, rules of appellate procedure, rules of criminal procedure, and rules of evidence. Second, some rules apply only to a particular court, and are referred to as local court rules. Many counties draft local court rules that apply to all courts in those particular counties. Local court rules are generally more specific than rules of general applicability, and both must be consulted in a given case.

Pro Se Litigants and the Right to Representation

A litigant representing himself or herself, without the assistance of counsel, is called a pro se litigant. It is almost always advisable to seek counsel with respect to a legal claim, if possible. Defendants in criminal cases are entitled to legal representation, and a lawyer will be provided to a criminal if the criminal shows indigence. Such assistance in criminal cases is usually provided by a public defender's office. Claimants in civil cases, on the other hand, are not entitled to attorneys, though any of a number of legal aid societies may be willing to provide legal services free of charge. Many of these legal aid societies are subsidized by public agencies, and will accept a case only if a person meets certain criteria, usually focusing on the income of the party.

In a civil case, a court may appoint counsel after considering a number of factors, including the validity of the party's position, and the ability of the party to try the case. A party who is indigent must usually file a written motion with the court, explaining the party's indigence and need for counsel. An attorney who provides free legal assistance is said to provide a pro bono service. Attorneys are generally free to determine when they will provide pro bono services, and it is common in every jurisdiction for the number of litigants seeking the appointment of counsel to outweigh the number of attorneys willing to provide pro bono services.

If a party must continue pro se, the rules regarding sanctions of attorneys apply equally to this party. A party must verify the accuracy and reasonableness of any document submitted to the court. If any submission contains false, improper, or frivolous information, the party may be liable for monetary or other sanctions.

Likewise, a pro se litigant may be held in contempt of court for failure to follow the directions of a court. Many courts provide handbooks that assist pro se litigants in following proper trial procedures.

Small Claims Courts and Other Local Tribunals

Cases involving a relatively small amount in controversy may be brought before small claims court. These courts exist only at the state court level. The maximum amount in controversy for a small claims court is usually \$1,000 for a money judgment sought, or \$5,000 for the recovery of personal property, though these amounts vary among jurisdictions. Witnesses are sworn, as they are in any trial, but the judge in a small claims court typically conducts the trial in a more informal fashion than in a trial at the district court level. Judges may permit the admission of evidence in a small claims action that may not be admissible under relevant rules of evidence or rules of procedure. One major exception is that privileged communication is usually not admissible in a small claims action. A small claims court usually only has the power to award monetary damages. If a party is unsatisfied with the judgment of the small claims court, the party may ordinarily appeal the case to a district court or other trial court.

Alternative Dispute Resolution

A variety of procedures may be available to parties, which can serve as alternatives to litigation in the court system. Alternative dispute resolution, or ADR, has become rather common, because it is typically less costly and does not involve the formal proceedings associated with a trial. Parties usually enter into one of two types of ADR: arbitration or mediation. If a case is submitted to arbitration, a neutral arbitrator renders a decision that may be binding or non-binding, depending on the agreement of the parties. An arbitrator serves a function analogous to a judge, though the presentation of each party's evidence does not need to follow the formal rules that must be followed in a judicial decision. Though parties are generally not able to appeal an arbitrator's award, parties may seek judicial relief if the arbitrator acts in an arbitrary or capricious manner, shows bias towards one of the parties, or makes an obvious mistake. Arbitration may be ordered by a court, may be required under certain laws, or may be voluntary.

Mediation is similar to arbitration because it involves the use of a neutral third party to resolve a dispute. A mediator assists the parties to identify issues in a dispute, and makes proposals for the resolution of the dispute or disputes. However, unlike arbitrators, a mediator does not have the power to make a binding decision in a case. Also unlike arbitrators, a mediator typically meets with each of the interested parties in private to hold confidential discussions. Mediation may be court-ordered, may be required under certain laws, or may be voluntary. A number of organizations, including state bar associations, offer mediation services.

A number of other forms of ADR exist. For example, parties may employ the use of a fact finder, who resolves factual disputes between two parties. In some jurisdictions, parties may be required to submit a dispute to early neutral evaluation, where a neutral evaluator provides an assessment of the strengths and weaknesses of each party's position.

Case Law in the Common Law System

Cases play a very important part in the legal system of the United States, not only because courts adjudicate the claims of parties before them, but also because courts establish precedent that must be followed in future cases. The United States adopted the common law tradition of England as the basis for its legal system. Under the common law system, legal principles were handed down from previous generations, first on an unwritten basis, then through the decisions of the courts. Though legislatures possess constitutional power to make law, in a common law system there is no presumption that legislation applies to every legal problem in the area addressed by the legislation. This differs from the legal systems based on the civil law tradition derived from Roman law (the use of the term civil law also refers to non-criminal laws, as discussed below, and the two

uses of the term are distinct). In a civil law system, legislatures develop codes that are presumed to apply to all situations relevant to the code, and courts are employed only to adjudicate claims. The only state in the United States that does not consider itself a "common law state" is Louisiana, which adopted the civil law tradition based on its roots in French law. Accordingly, the codes (legislation) in that state are somewhat different than those in other states.

Courts in the United States follow the doctrine of precedent, which was also adopted from the English common law system. Under this doctrine, courts not only adjudicate the claims of the parties before them, but also establish a precedent that must be followed in future cases. The ruling of a court binds not only itself for future cases, but also any courts under which the court has appellate jurisdiction. Though trial level courts make rulings of law that are binding on future cases, the doctrine of precedent is most important in the legal system at the appellate levels.

Publication of Case Law

Unlike statutes, cases are usually not available in a subject matter arrangement. When a case is first published, it is issued as a "slip opinion," named as such because these are printed on unbound sheets of paper. These opinions are compiled, and eventually published in bound case reporters. Cases from the U.S. Supreme Court and from courts in many jurisdictions are contained in reporters published by government bodies, and are called official reporters. These cases and other cases are also published in the National Reporter System, originally created by West Publishing Company (now West Group) in 1879. Case reporters in this system include state cases, federal cases, and cases from specialized tribunals, such as the bankruptcy courts. Cases may be readily located by finding their citation in the National Reporter System, or in another case reporter. An example of such a citation is "Roe v. Wade, 93 S. Ct. 705 (1973)." "Roe v. Wade" refers to the names of the parties of the case; "93" refers to the volume of the reporter; "S. Ct." is an abbreviation for Supreme Court Reporter; "705" refers to the page in the reporter where the case begins; and "(1973)" refers to year the case was decided.

Cases from all three levels of the federal judicial system are published. With few exceptions, only appellate court opinions from state courts are published. Unlike appellate courts, state trial judges seldom issue formal legal opinions about their cases, although rulings of law may be available in the record of the trial court. Most legal research in case law focuses on location of appellate court decisions.

Reading a Judicial Opinion

Like other types of law, reading and understanding the meaning of a judicial opinion is more of an art than a science. The opinion of the case includes the court's reasoning in deciding a case, and is binding on future courts only if a majority of the court deciding the case joins the opinion (in which case the opinion is called the majority opinion). If an opinion is written in support of the court's judgment, but is not joined by a majority of justices, then the opinion is termed a plurality. Plurality opinions are not binding on future courts, but may be highly persuasive since they support the judgment of the court. Some justices may agree with the judgment, but may not agree with the majority opinion. These justices may write concurring opinions that state their reasons in support of the judgment. These opinions have no precedential value, but may be persuasive in future cases. Similarly, justices who disagree with the judgment, the opinion, or both, write dissenting opinions that argue against the judgment or majority opinion.

Some components of a majority opinion are binding on future courts, while others are not. The actual holding or reason for deciding (traditionally referred to as the ratio decidendi) provides the rule of law that is binding precedent in future cases. By comparison, dictum is the portion of an opinion that is not essential to a court's holding, and is not binding on future courts. Dicta may include background information about the holding, or may include the judge's personal comments about the reasoning for the holding. Dicta may be highly

persuasive and may alter the holdings of future cases.

Administrative Law and Procedure

Creation and Empowerment of Government Agencies

Although the branches of government are primarily responsible for the development of law and resolution of disputes, much of the responsibility of the administration of government has been delegated to government agencies. While branches of government may not delegate essential government functions to agencies, agencies may administer government programs, and promulgate and enforce regulations. When a legislature creates a government agency, it does so through the passage of an enabling statute, which also describes the specific powers delegated to the agency. The Administrative Procedure Act (APA) governs agency action at the federal level, and state counterparts to the APA govern state agencies.

Types of Government Agencies

Some government agencies are formed to carry out government programs, but do not promulgate regulations that carry the force of law. A number of these agencies have been established to administer such programs as highway construction, education, public housing, and similar functions. Other government agencies promulgate rules and regulations that govern a particular area of law. Examples of regulatory agencies include the Environmental Protection Agency and Nuclear Regulatory Commission, both of which promulgate regulations that are similar in function to legislation. Legislatures also create agencies that resolve dispute among parties, similar to the function of a judicial body. Agency decisions are usually referred to as agency adjudications. Examples of agencies that adjudicate claims are the National Labor Relations Board and Securities and Exchange Commission.

Agency Rulemaking

Most agencies that have regulatory power promulgate regulations through a process called notice and comment rulemaking. Before a regulatory agency can promulgate a rule, it must provide notice to the public. Federal agencies provide notice in the Federal Register, a daily government publication that provides the text of proposed and final agency rules. After considering comments from the public and making additional considerations, the agency may issue a final, binding rule. The promulgation of a final rule can take months, or may take years, to complete. State agencies must follow similar procedures, including publication of proposed rules in a publication analogous to the Federal Register. Agency rules are functionally equivalent to statutes. Federal agency rules currently in force are published in a subject matter arrangement in the Code of Federal Regulations. Each state publishes its rules in force in a state administrative code.

Some agencies at the state and federal levels are required to follow more formal procedures. Agencies may not exceed the power delegated by a respective legislature, and may adopt rules without following the proper procedures provided in the enabling legislation or legislation governing administrative procedures.

Agency Adjudications

Agencies with power to adjudicate claims operate similarly to a court. Such an agency considers evidence presented in a hearing, and makes a final, binding decision based on an application of the law to the facts in a case. An agency that adjudicates a claim must maintain a record of the hearing, and parties are generally able to seek judicial review of a decision, much like judicial review of a lower court decision. A court may overrule an agency decision if the agency acted in an arbitrary or capricious manner, made a decision

unsupported by substantial evidence, or made a decision unsupported by the facts presented to the agency.

Relationship Among Various Laws and Other Authority

Laws in the United States do not exist in a vacuum, and determining the appropriate outcome of a case may require consultation with several different types of laws. A single case may be governed by application of a statute, an administrative regulation, and cases interpreting the statute and regulation. Understanding the application of laws usually requires an understanding of the nature of legal authority.

Any authority emanating from an official government entity acting in its lawmaking capacity is referred to as primary authority, and this authority is what is binding on a particular case. Primary authority can be subdivided into two types: primary mandatory authority and primary persuasive authority. Primary mandatory authority is law that is binding in a particular jurisdiction. For example, a Fifth Circuit Court of Appeals decision is primary mandatory authority in Texas, Mississippi, and Louisiana, since the Fifth Circuit governs these states. By comparison, primary authority that is not binding in a particular jurisdiction is referred to as primary persuasive authority. It is considered persuasive because though such authority does not bind a decision-maker in a jurisdiction, the decision-maker may nevertheless be persuaded to act in a familiar fashion as the authority from outside the jurisdiction. In the example above, a Fifth Circuit decision in a court in California would be considered primary persuasive authority, and could influence the California tribunal in its decisionmaking.

A second type of authority—secondary authority—may also be helpful in determining the appropriate application of the law. Secondary authority includes a broad array of sources, including treatises (a term used for law book); law review articles, which are usually written by law professors, judges, or expert practitioners; legal encyclopedias, which provide an overview of the law; and several other items that provide commentary about the law. An individual who is not trained in the law (and in many cases those who are trained in the law) should ordinarily begin his or her legal research by consulting such authority to gain a basic understanding of the law that applies in a particular situation.

A final consideration that cannot be overlooked is that the law constantly changes. If a legal researcher comes across literature describing the law in a given area, he or she must always verify that the discussion in the literature reflects the current state of the law. Legislatures and agencies constantly add new laws, and revise and amend existing laws. Similarly, courts routinely overrule previous decisions and may rule that a statute or regulation is not valid under a relevant constitutional provision. Updating legal authority involves a process of consulting supplements and other resources, and is necessary to ensure that an individual knows the current state of the law.

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