State v Federal Court:

* District Court – Geographically divided, every state has 1, but many have more/multiple
* Circuit Court – 13 courts, divided by region (NY has 4, for example), 12 are divided by region and one is specialized in DC (called federal circuit)
* Supreme Court – The end-all be-all in terms of federal law, appellate court
* What judges can do – institutionally or otherwise
  + District courts collect facts, create records, they are where we “enter” the judicial system
  + Appellate courts – How does a body of case law apply to these facts, and why does it apply this way and how?
    - They announce law
  + Judges decide A PARTICULAR CASE AT HAND – “who wins”
  + Supreme Court can announce tests and principles – “clear and present danger,” but new fact patterns emerge that require law to be fine-tuned
    - Ex: Court in early 20th century says it protects political speech, yet new media arrives (movies, etc) so now we ask: what counts as speech?
    - Judge does not want to be accused of just making stuff up
      * But they kind of do, because they don’t have much to go on – have to turn to different types of reasoning
      * Constitutional Text, Precedent, History, Pinch of philosophy and common sense are ALL used in judicial sense
    - 1st Amendment: Since the 1970s, not so much free-floating philosophizing (have a huge body of case law), so there is a huge emphasis on precedent
      * Why do some things apply? Look at facts and beholding to general principle
      * When you make a legal argument, prove a reason why you are right. Reasons are limited by case law, history, statutes, Constitution
        + Advocates are FURTHER limited – limited by role. You are trying to tell them that based off what they have already said, you are already right. Case Law applies x or y way, but because of what they have already said
  + Precedent
    - Civil Law vs Common Law
      * Common Law: Past legal precedent is used to discuss cases had hand (US, UK, India)
      * Civil Law: certified ordinances that govern the land, core principles that are codified into the referable system that serves the primary purpose of law
        + Precedent is NOT as important
        + Countries such as European, South American, African, and Japan and China
    - Stare Decisis: Legal doctrine to consider previous cases, require that cases follow precedent, ALL courts rely on Supreme Court Precedent
      * Factors:
        + Settled Expectations (idea of stable system)
        + Predictable advancements and don’t want precedents to change with time and circumstance
        + Judges CANNOT overturn precedent because they “don’t like” precedent, there has to be a good reason to do so

If principles under the decision become indefensible, or the original decision was clearly wrong

Cause significantly hurts a group

Precedent is unworkable – in practice, it is an ineffective way to continue in building a body of case law

Precedent has been eroded by subsequent decisions

* + - * Why adhere to precedent?
        + Limits the power of the judiciary, especially in hyper-partisan times
* How to Make a Legal Argument:
  + In its simplest possible form – have the law, apply it to the set of facts, and this will yield the outcome
  + Ex: Illegal to rob a bank, Sarah robs a bank? Sarah broke the law!
    - What does it mean to rob a bank? Is it ACTUALLY illegal to rob the bank?
    - Lot of law is unclear
  + Show what the law is? Three forms of authority:
    - Constitution: use the text of it
    - Statutes: Law passed by congressional body (state or federal) that outline what the law is
    - Precedent: Old cases under common law that can be applied to the facts
  + Lot of the laws we deal with aren’t in the Constitution or Statute (e.g “clear and present danger” that has been outlined)
  + When writing a legal argument, *cite the relevant authority*
    - If it is off the Constitution, cite the Constitution
    - If it is a case, cite the case
      * The Holding: the pithy statement of what the case actually said – “clear and present danger” is the holding
        + Obergefell v Hodges: “violates the 14th Amendment” is the holding
    - Reasoning by analogy:
      * Case looks similar to something else, so use precedent and therefore you should side with us
      * If the facts are basically the same, then the decision should be too
  + Why do we care about the reasoning of the case?
    - Ex: A house is a dwelling if you live there for a significant period of time
      * What’s a significant period of time if Case A says 3 days and Case B says 30 days?
        + Case A says 3 days isn’t significant as vacation time is that
  + Keep It Simple, Stupid
    - Keep it concise and do not overwhelm with flowery prose (e.g Kagan)
* Case Brief:
  + Summary of the case that can be used for quick reference
  + Includes key facts, procedural posture, holding, and other major takeaways
  + One brief per case, and there not necessarily a right or wrong answer
  + So first – Name of the case and the key facts
    - Date and year
    - What facts are legally relevant? Track the facts that affect the OUTCOME OF THE CASE
    - This can be hard to determine until you’ve read it fully
    - Ex: Masses Publishing Co. v. Patten (SDNY 1917)
      * Who the claimant is? Masses
      * Who is Patten? The postmaster general of NY
    - Masses Publishing Co. (P) produced the revolutionary journal “The Masses” which includes satire and political commentary
      * Procedure (posture): What courts has it been through, what did the lower courts decide and on what basis, what kind of relief has been granted, what is the plaintiff asking for (fine, jail time)
        + Wanted to forbid the D from refusing to accept the August issue from mailing
        + D wanted to say that “The Masses” violated Espionage Act of 1917
      * Issues and Holding:
        + Factual and legal issues that the court has to decide, and what was the essential holding?
        + Masses: Was P entitled to a preliminary injunction so it could mail its August issue, or did D have authority to prohibit it?
        + Should hostile criticism ever be tolerated in government?
        + Holding (Hand): YES, as P is not prohibited by Espionage Act
      * Reasoning and dissents/concurrences: How and why it was decided, why did people dissent or concur?
        + Masses Reasoning: Arousing antiwar sentiment may cause insubordination, BUT a broad reading of the Act to prohibit political agitation would suppress ALL hostile criticism
        + But MAY NOT ADVISE others to violate the law as it stands – paper did not DIRECTLY advocate insubordination or resistance to the draft
      * Aftermath: Hand’s opinion was reversed on appeal in the 2nd circuit, and the Masses was driven out of business and editors were prosecuted under Espionage Act. However, Hand influenced many free speech cases to come
* What constrains a Judge from making a decision? Stare Decisis (let it stand) and binding authority of Higher Courts vs Lower Courts
  + Citations: Am. Geophysical Union v. Texaco, Inc., 60F.3d913, 915 (2d Cir. 1994)
    - Plaintiff comes first (Am. Geo) and Defendant (Texaco) is responding
    - 60: Volume No.
    - F.3d: Reporter Abbreviation
    - 913: 1st Page of Case
    - 915: Pinpoint (page on which you ACTUALLY refer to)
    - 2d Cir: Court
    - 1994: Year of Decision
* Readings: Whitney v CA, Dennis v US, Brandenburg v. OH
  + FSC: Ch2, Ch10