Hi students, this is Professor Faith, and I am recording this lecture for my business law students. I wanted to work with you on some material regarding the court system.

In particular, we're really talking about the civil side. We'll discuss criminal law in a couple of weeks, but most business law matters are civil, so that's primarily where we're focused here. For the agenda, I have three different learning objectives related to these materials:

1. To be able to identify various jurisdictional rules.
2. To describe how trials typically proceed in terms of the various procedures before, during, and after trial.
3. To look at alternatives to litigation and compare these with the litigation options available to people.

There are some things I'm trying to figure out during this lecture about the court system:
- Why there is one
- Why there are separate federal and state court systems
- Why there are different levels of courts within these respective court systems
- Overall, how does it work? What do they do? How do they do it?

To some extent, the answers to these questions really start long before any of us were around and long before the United States was the United States. Courts have probably been around in all of recorded history in various places.

Different sorts of people have decided disputes, but ultimately, the purpose is to provide remedies to people who have been wronged in some way by somebody else. Courts provide a forum to do this. When you think about it, if you had a dispute with somebody, you'd want someone outside of the dispute to decide what's the fair resolution. Courts are a neutral forum in the sense that the person deciding doesn't really have a vested interest either way in terms of the outcome. Hopefully, they're trying to resolve the dispute in a fair manner for the people involved in it.

Our idea of common law, which you probably read about and we talked a little bit about, is also not an invention of the United States. It's actually an idea we've borrowed from British practice, which itself originates a thousand years ago when the French originally conquered Britain in 1066 and developed this idea of common law courts. Rather than disparate courts independent of each other that make decisions in the moment, the idea of common law was that there would be precedent and consistency in terms of the results of similar cases across different parts of the kingdom.

If you look at the 11th and 12th centuries, you start to see the development of this consistency, this consistent body of law, and the sharing of information. Again, a thousand years ago, they didn't have the internet, railroads, or planes, so their sharing was much more limited. Nonetheless, there was this desire for consistency in resolutions of decisions between parties that had disputes.

We have that practice today because we started as British colonies in the 1600s. The original colonies were founded, and the practices of the British were brought to the new world and implemented within the colonies. Until last year, Maryland, which was a colony, had what was called the Court of Appeals, which was the highest court of Maryland. We just changed its name to the Supreme Court of Maryland, but the point is that court has been around for hundreds of years. It actually predates Maryland as a state; it's really something that existed during the colonial period.

The idea of why things are the way they are is, in part, because of a long-standing history of our ancestors and how we founded the nation and organized the country. Practices that were used by people in other times and other countries really inform how we do things today. So if it doesn't make sense initially, part of it is because long-dead people actually decided that this was a good idea.

When you look at British practice just before the Revolution in the United States, there were a variety of courts that had been organized over time. The common law courts are the law courts, and that practice existed in Britain at the time and in the colonies. But in the Middle Ages, the law courts didn't provide complete relief, and there were a lot of people who petitioned the king or local lord for redress when they weren't able to get a satisfactory resolution in law courts.

Eventually, that started the equity courts, which you might have heard about in the textbook. The idea of "fair" courts - you might think, well, why are the law courts not fair? The equity courts were created as a parallel court system to pick up cases and resolve them that the law courts weren't able to fairly resolve, for a variety of historical reasons.

The colonies also had equity courts. Interestingly, until 1984 in Maryland, we actually had a separate equity court. There was a circuit court, so there was a law court and an equity court. They got merged in 1984, so you go to the same court for both now. The point is that the idea of parallel civil court systems is again a British practice.

The one thing that we really don't have much history of are ecclesiastical courts. These do exist; for example, if you're a Methodist and you're accused of violating Methodist practices, there are actually Methodist courts. But they're private, religious courts, not civil courts.

Historically, the British crown was essentially the pope, and there was a state religion in Britain after the great schism with the Catholic church. This happened because Henry VIII wanted to get divorced, and the pope wouldn't let him, so he resolved that by becoming

pope of his own church, which adopted mostly Catholic practices. But the head of the church was not a foreign pope; it was the local king.

As a result, the state actually exercised ecclesiastical jurisdiction, so there was a separate court system but part of the overall authority of the monarch. The church that arose had its own courts, its own taxes, its own complexity. Maryland today doesn't have ecclesiastical courts that are civil courts, but again, historically, there's a reason why things are the way they are and what we came from.

The other thing is, historically, the states came first. The Revolutionary War was fought by the 13 colonies, and when they won, they were really independent of each other. They weren't abolished by the revolution; they continued on. The governments of those colonies became what are now states. They were confederates for a few years in between, but they're the ones that are ceding power to the federal government that ultimately was created by our current U.S. Constitution.

This creates complexity because you have the states, and we've used this roadmap since the 13 original states. We have obviously 50 states today; the newly admitted ones follow the same pattern as the original 13. They created their own state government, had their own state constitution, and had their own court system. All states have something like divided government where they have multiple branches of government responsible for different things, and all of them have a judiciary of some sort.

As a result, you have the 50 states with their state governments, which include their judiciaries, and then you have the federal government, which under Article 3 created a federal judiciary. This creates far more complexity because those systems are interconnected. There's no replacement of one for another; there's sort of an overlay and an interaction at some level across judiciaries within the United States. But they're still independent, and so some states travel in one direction while other states travel in a completely different one on this large interconnected highway network system that we have today.

Today, there are about 100 million cases filed across all these different court systems within the United States every year. That's a tremendous amount of activity going on, most of it being civil as opposed to criminal. So there are many, many civil actions filed for all different kinds of things across all different kinds of judiciaries within the supposedly United States.

This leads us to the issue of jurisdiction. What do I mean by that? Well, what I mean is: what really is the power of a particular court to hear and resolve a dispute and bind the parties to whatever it decides is supposed to be the outcome? That's the problem. You have many, many courts, so which one has authority to decide this particular dispute?

Let's say, for example, just hypothetically, you have a dispute with a contractor, and you need to file a lawsuit because you paid the deposit, but the contractor never started the project to fix your kitchen or renovate your bathroom, or whatever the scope of the project was. The question is, what do you do? Where do you resolve this dispute because the contractor won't resolve it for you?

What you realize when you do a little bit of research is you seem to have a lot of options. If you're here in Maryland, there's a state district court, a state circuit court, an appellate court, a Supreme Court of Maryland, a federal district court (by the way, there are two branches of it, one here in Baltimore and another in Greenbelt), there might be some other state court (for example, there's this thing called the Orphans' Court), you have the Fourth Circuit Court of Appeals, you have the U.S. Supreme Court, you have potential mediation, maybe you have arbitration, maybe you resolve it privately. It seems like there are just too many choices.

There are some practical things to consider when you're thinking about how to figure this out. One of the problems is cost. Let's say it was a $10,000 project, and you put $3,000 in. What's it going to cost for you to get $3,000 back? It's going to cost you something to file a lawsuit. Is it worth it? And it depends on what court you go to for that dispute.

How quickly is it going to get resolved? Different courts work at different cycles. What's the likelihood you're going to win? To some extent, that's a question of where your starting point is. What can you prove when you go to court?

All these jurisdictional rules are legal rules that say which courts are available to you based on a variety of different considerations: subject matter, personal jurisdiction over the defendant, whether you need an original jurisdiction court or an appellate court, whether you need to go to federal court or state court. All those are potential problems that you have to figure out.

There's a question of access and convenience. Where do you have to go in order to get a remedy? Going further away might be harder for you; it might be less accessible. So perhaps there's a preference not just of cost but also of access to a court.

And of course, do you have any evidence? Do you have a written contract? Do you have evidence of the payment? What are the things that you have? Those are all good substantive elements of the case. As we work through this semester, we'll talk about different kinds of substantive actions, like breach of contract or a tort case or something else, and what you have to prove in order to be able to prevail.

On the jurisdictional dimensions, I have at the top of my chart some of the different courts that I mentioned a couple slides ago: whether you go to the Maryland District Court or Circuit Court, or you go to Federal District Court, you go through a private settlement process, or you want to mediate or arbitrate the dispute, or you want to go into the

Maryland Court appellate system. I could have another column for the federal appellate court system as well, which has different rules.

Along the other axis, or the rows, you have the different kinds of jurisdictional dimensions. Whether the court can exercise personal jurisdiction over the defendant - you can see that there are different sets of rules potentially that might apply depending on what court you're in.

Which court is the appropriate venue? As you learn if you look a little, there's a district court in every county, and actually, Baltimore County has three different branches of the district court here in the state court system. You also have the circuit courts in Maryland, which are one in every county, separate from the district court. Ours in Baltimore County is in Towson, in a different building than the one that's down the street in Towson for the district court. And then you have the federal district court, which has different venue rules. There's one in every state, potentially multiples like Maryland has two. So which one of those should you go to? And then, if you want to privately settle or mediate, you have different sets of rules depending on which court in terms of which location of which court is appropriate for your dispute.

Then there's a question of subject matter jurisdiction. What's your case about? Not all courts are open to all types of cases, and there are another set of rules or within your private agreement with the other party about which court is available to you based on the subject matter of your case.

The next line after that, the row says "original," and I have an X in the courts that have original jurisdiction. The ones that don't are not courts, or they have appellate jurisdiction. So you have that complexity: do I need an original jurisdiction court for my dispute, or do I need an appellate court?

Then I have a sort of rough guideline of the cost and complexity. Going to the state district court has low complexity and relative cost versus going to the Circuit or Federal District Court, which has much more complexity and potentially a lot more expense. Whereas if you can privately settle it, that might be quite inexpensive if you can reach a fair resolution. But if you have to go to an appellate court, it's a very high expense, and potentially somewhere in the middle for mediation or arbitration, depending on the case complexity and so on.

There's a lot of complexity to this in terms of the jurisdictional rules, but that's the nature of our system. Not all courts across the country are open to hear all disputes. There is a routing system, if you will, that says that some disputes have to be resolved in specific courts, and there may be only one option for a particular kind of dispute, whereas for other cases, maybe there are multiple options, multiple right answers potentially in terms of resolving the dispute.

One of the other things you have to take into account is the mechanism that the court uses to resolve disputes - its procedures. In general, all courts have some process that you go through for resolving the dispute, and it's designed so that all parties should be able to participate and have their say. The court strongly prefers when all parties get to participate and have their say so the court can hear from appropriate parties and witnesses about whatever the case is about. There's a process for that to try and resolve disputes.

The procedures vary depending on the court. For example, the state district court system has a unified set of rules in Title 3 of the Maryland Rules of Procedure. They're a simpler kind of mechanism for court procedure. But if you want to go to the Maryland Circuit Court, all the circuit courts follow the same rules in Title 2, but those procedures are more complicated. They have more steps to them; there are more things that happen on the circuit court side.

If you go to arbitration, there are rules depending on the Arbitration Association that are somewhat different, somewhat maybe simplified compared to a circuit court in Maryland. If you go to a mediator, the mediator usually has some informal rules and process, though much simpler than any of the other ones we talked about.

If you go on appeal, if you don't have the right outcome from your point of view of a trial or a dispositive motion, the appellate courts in Maryland have a unified set of rules for the two levels of appeal. That's also true for the Fourth Circuit, which is our appellate court for the federal court system of our region, and then the U.S. Supreme Court has its own rules in its own rulebook.

You have all these different procedures on how things are supposed to proceed, but they vary across the court systems of the country. They all are in charge of their own procedures, so they have different procedures from each other.

This chart is attempting to give you a high-level view of how it might be the same or different when you're dealing with before you go to trial, when you go to trial, after you go to trial, and whether you appeal. I have just four different rows here to compare them.

For the Maryland District Court, pre-trial, you have to file pleadings, you have a certain amount of discovery, and a certain amount of motions practice. All that stuff is pretty limited in the district court. Trials are generally scheduled pretty promptly; it's generally 60 days from when you file your complaint, but it may go to 90 or 120 days. But generally, you're going to get to trial relatively quickly in the district court system, and so there's a limit on how much can happen before trial. It's designed to be expedited.

When you get to trial, this part people probably natively understand because there's an injured party and the party that injured them as the two people in the room, and there's a judge. There's a process for listening to witnesses testify about what they know and then to be cross-examined potentially by the other party to ask them hard questions about their

testimony. You have evidence beyond testimony, like written documents or written contracts or emails or other things that might be admissible. And then you have a certain amount of motions practice, a motion for judgment potentially. At the district court, again, not a lot of that motions practice is relatively truncated.

After trial, you can file certain motions to amend or alter the judgment, or get a new trial, or potentially enforce the judgment against the defendant, or do post-judgment enforcement like garnishing wages if you get a judgment, or garnishing checking accounts and things like that.

You also have a right of appeal. In Maryland, the district court cases go to the Circuit Court, which is also kind of weird, but the Circuit Court actually has an appellate docket for cases that were decided by the district court. So you're really going to what normally would be a trial court; you go to it as an appeals court from your District Court decision. And then you have a right to petition the Supreme Court of Maryland to hear the case after that. They generally turn you down; the odds of getting them to hear a case are about 20 percent. There aren't actually that many cases appealed to them in the first place, but of the cases that are petitioned to them, they have the right to turn them down. They don't have to take every case that's appealed to them on a petition. Nevertheless, you have that final stop potentially to the Supreme Court of Maryland.

When you look at the Circuit Court in Maryland, it has a little bit of a difference to it in terms of the process. There is a pre-trial, trial, post-trial, appeal, but you have broader discovery. You have more motions; there's often a variety of motions about evidence being admissible or about being entitled to summary judgment, or for sanctions, or discovery. All kinds of activity are going on, and so circuit court cases usually take longer to get to trial because of that. There's usually some work between the parties and the court to try and decide when this case will have a trial, and it may be years from when you file a complaint to get to a trial at the Circuit Court. Part of the reason for that is there's way more going on to get ready for trial at the circuit court level than there would be at the district court. And why would that be? Well, probably this is a more complicated case; that's probably why you're in the Circuit Court in the first place. So the procedures sort of permit more activity before you get to trial.

The trial itself may be the same. It's still plaintiff and defendant presenting their sides, presenting their witnesses, presenting their evidence. It's probably a lot more evidence, so potentially a more complicated case, but the same kind of idea as a district court. You still have a judge that's going to listen, or potentially a jury at the circuit court level, that listens to the evidence of the witnesses and the testimony and then makes a decision on how the law applies to the dispute.

We also have post-trial proceedings with the circuit courts to alter or amend a judgment, to enforce the judgment, and so on. The rules are a little bit different, but the idea is the same. You can still ask the Circuit Court to do something post-trial. And then if you don't like the

outcome of that, you have a right to appeal to the Appellate Court of Maryland from the Circuit Court, and then you have a final right to petition the Supreme Court of Maryland to hear that case too if you don't like what the Appellate Court does.

Federal District Court is very similar. I think the rules are different; it's the Federal Rules of Civil Procedure that apply to the federal district court, but very similar otherwise to how circuit courts in Maryland work. That's a complex case; there's a lot more evidence going back and forth and other things that happen. But interestingly, a lot of federal district court cases get resolved sooner, and often it's prior to trial. Actually, federal district courts are often deciding cases on a motion for summary judgment or dismissal earlier on in the litigation. They do have trials, but they are scheduled sooner typically than circuit courts in Maryland. But again, you're dealing otherwise with relatively complex litigation between parties.

Then you have a right of appeal to our Fourth Circuit from here. There are numbered circuits throughout the country that have different regions, so depending on where you start determines the Circuit Court you would go to. And then you have the U.S. Supreme Court at the top of the federal system that again can turn down and turns down most of the cases that come to it. I think they only hear about five percent or less of the cases petitioned to them. Of the five or six thousand petitions that are filed, they hear maybe 150 of those cases or so every year. But again, you have that final right to petition them to try and take your case as well. So it's a slightly different path and really a different court system, though in some ways similar to how Maryland's state court system works with circuit courts.

Then finally, there's arbitration. It's private dispute resolution where you have a private judge, and if you have an agreement with another party to arbitrate, then the person agreed generally files a demand for arbitration, and that sort of triggers the process. They have this idea of discovery where people share documents and information as you would in a district or circuit court, but their rules are more narrow. There's less of that typically, and arbitrations are often much quicker. You probably are going to get to an arbitration hearing in several months as opposed to years when you're dealing with a civil court system.

The actual trial is probably similar. It still involves testimony and witnesses and evidence and stuff like that. But when you get to post-trial and appeal, well, there isn't really an appellate process at all. Whatever the arbitrator decides is probably what it's going to be in terms of the result. Really, the only thing that's going on post-trial is some kind of enforcement of whatever the award was, assuming the parties don't just voluntarily pay it. There's some kind of enforcement proceedings, and you can actually go to a state circuit court or the federal district court potentially to enforce the award.

People try and get out of the awards then and try and attack them and get the court to do it all over again, but you're very likely to succeed at that point. Once an arbitration is decided, it's very difficult to do anything other than to obey the award after that. So it's a truncated process. Where the appeals process can go on for years after - there are cases I've been

involved in that go up and back and forth for a decade or more. A colleague of mine said at the beginning of his practice, which was 30 or 40 years ago, there was a case that went on on and off in the court system for a long, long time. Arbitrations can't be like that; there just really isn't much post-award litigation that can happen in terms of the procedures.

So the last thing is, what are the alternatives to this? What are the alternatives to litigation, which I've talked a little bit about? One of the things that you see on my list is to just privately resolve it, and the truth of the matter is that's probably what happens 99 times out of 100. Very few people go any further than that. Part of it is because it's just so costly. To go to court, even in the district court, you have all the filing fees. You have to have service of process, and you had to fill out the form and file it and get it served, and that costs some money. Maybe $100 or less, but you know, you've got to pay for that. And then you might have to hire a lawyer, and lawyers are expensive. District Court litigation is less expensive. Maybe you don't need an attorney; in some cases, a lot of people represent themselves actually. But it takes your time; you've got to show up, you've got to deal with it.

And then if you've gotten that far and you get a judgment, you've got to then pursue and enforce it. I had a client that came to me years ago who had gotten a judgment against a former roommate, and I spent years chasing the guy around to get him to pay the $1,500 to the client through garnishing wages. He would quit his job, and he was out of the country for a while. Eventually, he paid it off; he voluntarily agreed to pay the balance off. But we spent a lot of time chasing him around. So if you can resolve it up front and get the cash on the barrel head and resolve the dispute that way, then that's a lot quicker and a lot more certain.

Another possibility is to go to a mediator. There are a lot of people that mediate disputes in Maryland today, and there's a process to become a certified mediator and get assigned cases to try and resolve them. What a mediator does is they are independent of the parties and their attorneys. They're not involved in the case, and so they're there to try and talk to the parties and get each party on their own to understand what the other side is trying to do. Is there some middle ground here that we can find?

A lot of mediations last an hour, maybe a few hours in a day. It's pretty informal. It's usually a general meeting of everybody talking about what the dispute is about, and then there's a shuttling. You put the parties in different rooms, the mediator shuttles back and forth with proposals, talks to each party, and says, "Well, you know, what happens if you don't settle and you have to pay your lawyer to go and litigate this? What if you lose and you don't get anything out of this? Maybe it's worth it to try and settle this dispute. You have problems with your case." The other side knows that. Then you go to the other side and say basically the same thing: "Look, if you keep on litigating this case, you might lose. You have to pay them a lot of money, and you might not want to do that. Maybe it's worth it to settle for less now and move on."

The point of the mediation is to try and get the parties to an agreement about the dispute and to resolve it that way through a private agreement. It's just got this neutral person in the middle that's trying to do shuttle diplomacy between the litigants. A lot of cases that go to mediation settle. I think most mediators I've talked to settle upwards of 90% of the cases that get to them. So it's relatively unusual to get to mediation and not get it resolved at that point.

So, you know, the first level of resolution is just to privately resolve it, and a lot of cases get figured out that way. A lot of people's problems, they solve on their own. The next level of resolution is at a mediator. Even if you file a case in Maryland, you're going to get sent to a mediator. Courts will order mediation, and so that may resolve your case. What's left to really litigate is relatively little of the millions of cases that are filed in the country. Most of them do actually result one way or the other privately or through mediation.

Now, the other possibility is to go to an arbitrator. As I said earlier, if you have agreed and the parties have agreed that they want to arbitrate a dispute, then you're going to go before what is a private judge, and they're going to decide the case between the parties. So unlike a mediator, the arbitrator's award is final. That's the resolution of the case. You couldn't figure it out, we'll figure it out, and the arbitrator will issue an award, and you can enforce that award as if it was a judgment by a civil court.

So if they don't pay, which again, most of the time they do - these arbitrations are ended and then they're resolved - the few that don't go that way can then be enforced through normal civil court mechanisms. The one thing, though, about the arbitrator is you've got to pay the judge too. The parties generally split that fee up front, and so it can be quite expensive - ten, twenty, thirty thousand dollars just for the arbitrator's fee up front to take on the case.

And while it's quicker, it may - I don't know, that might be unfair. You think about it, who's the average person that's got that kind of money to go to an arbitration? That seems to be the relatively wealthy, relatively few that can afford that. But what's interesting is in the 20th century, arbitration became far more popular and if you really look carefully almost all credit card agreements that you enter into by using a credit card have an arbitration clause. Banks use them when you open checking accounts and when you're dealing with Investments often there is an arbitration clause with the investment firm that governs how the dispute will be resolved. Employers use them for employment disputes: lots of different areas now have these but they could work an injustice on people that can't afford to go to arbitration so there's a lot of litigation about is that right that I have to arbitrate this dispute. Also there's legislation at the federal level because there was an outcry about sexual harassment and sexual assault cases where the arbitration clauses forced the injured employee into arbitration as opposed to just a regular court proceeding. Congress eventually said “wait a minute we’re going to change the rules so that you can’t force employees to arbitrate these types of claims because its unfair to the employee.”

However, there's been a lot of back and forth as arbitration has become far more popular. This is not just used by Major League Baseball and the League's baseball players or with the football teams the people that have millions of dollars at stake. These contracts can involve ordinary people with a ten dollar dispute with Comcast or with an internet service provider that might be subject to an arbitration clause or you get weird fees charged to you that you think are miscalculated on a credit card bill probably subject to arbitration and you know it might be in South Dakota.

This is not just a consumer problem, as commercial interests often engage in arbitrations between each other for business to business dispute resolution. This has become popular because the process is confidential as opposed to the public court system where it's a public record and the public can find out what happened, what was filed, and how it was decided generally.