

Topic 3: The Court System

Overview

This chapter discusses the purpose, design, and members of the judicial system. We review the structure of the state and federal system. Understanding the function of the court system is instrumental in later understanding the role of the court in enforcing and developing individual rights under the law.

1. What is the authority for the federal and state judicial systems in the United States?

As discussed previously, the authority for the federal and state judicial system is found in the U.S. and State Constitutions. Below is a breakdown of the courts as authorized under Articles I, II, and III of the U.S. Constitution. State constitutions are modeled after the U.S. Constitution and generally establish a similar state-court structure.

Federal System

- Article III - “The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.” The U.S. Supreme Court is the only court specifically established by the Constitution. Congress has created several subordinate courts below the Supreme Court., which include the federal district courts, federal circuit courts, and numerous ancillary courts that have special jurisdiction (e.g., court of international trade). Pursuant to Article II, all members of Article III courts and tribunals are appointed by the President and are confirmed by the Senate. As such, the President of the United States must nominate individuals to the federal bench and the Senate must vote to approve their appointment.
 - *Discussion:* Can you think of any reasons why Congress decided to create numerous courts that are subordinate to the Supreme Court? How do you feel about the right of the President to nominate judges? How do you feel about the requirement that judicial nominees be approved by the Senate? Can you recall any instances where the Senate has refused to confirm a Presidential nominee to a federal court?
 - *Practice Question:*
 - *Resource Video:* <http://thebusinessprofessor.com/article-iii-courts/>
- Article II - Article II of the Constitution creates the legislative branch of the federal government. Pursuant to the authorization of Article III, Congress has a limited ability to delegate law-making authority to other branches. The Supreme Court has ruled that

Congress does have latitude to delegate regulatory powers to executive agencies as long as it provides an "intelligible principle" which governs the agency's exercise of the delegated regulatory authority. As such, Congress often passes a statute and delegates much of the responsibility for formulating regulations to support the statute to the administrative agencies. These federal regulations have the purpose effectuating and expanding upon the statute. As such, these agencies, under the supervision of the executive branch, establish administrative courts to adjudicate disputes arising pursuant to agency regulations.

- *Discussion:* How do you feel about Congress' ability to delegate law-making authority? Have you ever thought about who drafts regulations surrounding a statute?
- *Practice Question:*
- *Resource Video:*
- Article I - Article I of the Constitution establishes the executive branch. It grants the President the authority to preside over certain administrative agencies and legislative courts created by Congress. Legislative courts are courts of special jurisdiction created by Congress to hear special matters. As discussed above, many administrative agencies create special courts for the adjudication of disputes arising under its jurisdiction or within its regulatory authority. These administrative courts are known as "Article I courts". Examples of Article I courts include bankruptcy, military, tax, and immigration courts. Appeals from these special courts go to Article III courts.
 - *Discussion:* How do you feel about administrative agencies establishing their own courts? How do you feel about the Executive branch overseeing administrative courts? Does the ability to appeal administrative decisions to an Article III court provide sufficient check on the executive branch's authority?
 - *Practice Question:*
 - *Resource Video:* <http://thebusinessprofessor.com/authority-for-administrative-courts-executive-supervision/>
- Article IV - Article IV courts are U.S. Territorial Courts, such as those of Guam, Northern Mariana Islands, and the U.S. Virgin Islands, established under the Territory Clause of Article IV.
 - *Discussion:* Think about the formation of courts in these jurisdictions. These are not states and, therefore, Congress must act to establish courts with jurisdiction

over these protectorates. How do you feel about territories of the United States that are not represented in the Federal Government, but are subject to federal jurisdiction?

- *Practice Question:*
- *Resource Video:* <http://thebusinessprofessor.com/article-iv-territorial-courts/>

State System

- The U.S. Constitution establishes a system providing for both federal and state governments. The U.S. Constitution provides authority for federal courts. Likewise, state constitutions provide for state courts. Generally state constitutions follow a model that is very similar to that of the US Constitution, in which there are both judicial and legislative courts.

2. What types of courts exist in the federal judicial system?

Article III Federal Courts

- U.S. Supreme Court - The Supreme Court is directly authorized by Article III of the Constitution and is the highest court in the land. It has original jurisdiction over certain matters, but serves almost entirely as an appellate court. It provides appellate review of highest State court decisions and decisions from all Federal Appellate or trial courts.
- Federal Appellate Courts - These are the Federal Circuit Courts of Appeals. These courts serve as the appellate courts for matters decided by judge or jury in the District Court. There are 13 Federal Courts of Appeal: 11 enumerated U.S. Circuit Courts of Appeal, the District of Columbia Circuit, and the Federal Circuit.
- Ancillary Federal Courts - These are federal courts with special authority pursuant to Article III of the Constitution. They are vested with specific jurisdiction by Congress. These ancillary courts include: U.S. Foreign Intelligence Surveillance Court of Review; U.S. Foreign Intelligence Surveillance Court; U.S. Court of International Trade, U.S. Alien Terrorist Removal Court.
- District Courts - These are the trial courts for the federal system. There are approximately 94 district courts spread throughout the United States. They are so-named district courts, because they do not follow state boundaries; rather, they are positioned within pre-established federal jurisdictions.

- *Discussion:*
- *Practice Question:*
- *Resource Video:* <http://thebusinessprofessor.com/authority-for-judicial-system-article-iii/>

Article I Federal Courts

Article I federal courts include Legislative Courts & Administrative Courts. Legislative courts are those created by Congress pursuant to authority granted under Article I to handle special jurisdictional matters. Administrative courts are those created to adjudicate disputes of a particular administrative agency under the Executive's authority.

- *Note:* Examples of Legislative or administrative courts include: D.C. judiciary, D.C. Court of Appeals, D.C. Superior Court, U.S. Court of Appeals for Armed Forces, (Several Military courts of Appeal), U.S. Court of Appeals for Military Claims, Armed Services Board of Contract Appeals, Civilian Board of Contract Appeals, Board of Immigration Appeals, U.S. Immigration Courts, Board of Patent Appeals and Interferences, Trademark Trial and Appeal Board, U.S. Postal Service Board of Contract Appeals, U.S. Court of Federal Claims, U.S. Tax Court, U.S. Bankruptcy Courts, Social Security Administration Office of Disability Adjudication and Review, U.S. Merit Systems Protection Board, Board of Veterans' Appeals, U.S. Courts-Martial, Guantanamo Military Commissions, and U.S. Court of Military Commission Review.
- *Practice Question:*
- *Resource Video:* <http://thebusinessprofessor.com/authority-for-administrative-courts/>

Article IV Courts

These are territorial courts specially created to act as the court of federal jurisdiction in select jurisdictions. These courts have jurisdictions similar to that of federal courts in federal districts. However, they also exercise local jurisdiction common to state and local courts in other jurisdictions. The Virgin Islands district court falls under the 3rd Judicial Circuit Court of Appeals, while the district courts of Guam and the Mariana Islands fall under the 9th Circuit Court of Appeals.

3. What types of courts exist in the state judicial system?

- *Resource Video:* <http://thebusinessprofessor.com/state-supreme-courts/>

Article III State Courts

- *Supreme Court* - The State Supreme Court is generally the highest court in the state. In some states there is a different naming convention. In New York, for example, the highest court is the Court of Appeals. Nonetheless, the purpose of the highest state court is the same across all states. They review cases generally for the correct or appropriate application of law - in accordance with the State Constitution. Cases generally go before the Supreme Ct via a Writ of Certiorari or pursuant to request for appeal by a losing party. This is similar to the U.S. Supreme Court. Some state cases have automatic appeal rights to the State Supreme Court. This is the case for all capital murder cases.
- *Appellate Court* - Many state judicial systems have an intermediate court of review. These courts generally consist of 3-5 appellate judges. Not every state is big enough to have an intermediate appeals court. As such, appeals must go directly to the State Supreme Court. The function of the intermediate state court of appeals is similar to that of the Federal Circuit Court of Appeals. It reviews the decisions of lower courts based on their interpretation and application of law to the facts of the case – as determined by the finding of the jury or judge and present in the record of trial.
- *Superior Courts* - This is generally the naming convention for the highest level of trial court in the state. That is, the superior trial court is the court with general jurisdiction to hear any matter of state law. It is the trial court for the most serious offenses (criminal and civil). It will hear any cases falling outside of the limited jurisdiction of the smaller state courts of limited jurisdiction (discussed below). This is the fact-finding court, where juries are utilized as triers of fact.
- *Intermediate Trial Court* - Nearly all states have an intermediate trial court that has limited jurisdiction over certain types of cases. The court will generally hear criminal cases involving charges that have a specified limit in the potential sentence if found guilty. Further, it will generally hear civil lawsuits that have a specific limit in the dollar amount in dispute or in controversy. These court often have special limitations, such as no right to jury trial, special court rules, etc. The geographic jurisdiction of the court is generally broken down by county or district.
- *Courts of Limited or Special Jurisdiction* - Most states designate special courts to hear cases of particular subject matter. This frees up the intermediate and superior trial courts to focus on criminal and civil trials that meet their jurisdictional requirements. Common examples of courts of limited jurisdiction include:
 - *Municipal Court* - Municipal courts are courts of limited jurisdiction to handle local ordinance violations. For example, tickets given out based on speeding or noise violations are common municipal court cases. The jurisdiction is generally limited to within the city or town limits.

- *Magistrate Court* (Often called Small Claims Court) - This is a special court of limited jurisdiction to hear minor criminal offenses and small civil disputes. Magistrate court is important for small businesses. It handles much of the litigation between businesses or between businesses and customers that fall within the jurisdictional limit (commonly \$10-20K). The benefits of the magistrate court is that it generally has very informal court procedures and low court costs (filing fees).
- *Probate Courts* - Probate courts handle matters involving death and estate administration. Specifically, the word probate signifies the process of administering an individual's estate. The court may also hear matters of child welfare and related family matters, such as guardianship, adoption, etc.
- *Family Courts* - Some states have a designated court to handle family law matters. The primary subject-matter jurisdiction for these courts includes divorce, annulments, and spousal and child support disputes.
- *Courts of Equity* - Some states designate special equity courts that operate based on principles of fairness. Most states have unified courts of law and equity and do not designate stand-alone courts of equity. Equity courts often hear civil disputes that do not involve the commission of a tort (such a mortgage default). They often act as a special form of mediator to certain disputes between individuals and businesses. States that have courts of equity include: Delaware, New Jersey, Mississippi, South Carolina, and Tennessee.

Article I State Courts

All state constitutions allow for administrative state agencies to handle regulatory issues between citizens and the state government. These courts are structurally and operationally similar in nature to federal administrative courts. They fall under the State Executive Branch's authority. Examples of State Administrative Courts include: Revenue (taxation), Licensing, Disability, Employment Law, etc.

- **Practice Question:**

4. What is Subject-Matter Jurisdiction?

Subject-matter jurisdiction refers to the types of cases (subject matter of the case) that a court can hear (preside over). For example, a superior court in a state may not be able to hear a family, probate, or taxation matter. Similarly, a federal district court may not hear bankruptcy or immigration cases. Subject-matter jurisdiction is particularly important between federal and state courts. In some instances, a state may not be able to hear certain federal matters, and vice versa.

For example, money laundering is a federal crime. A state generally cannot hear a case solely involving money, as it is outside of federal subject-matter jurisdiction. On the other hand, assault is a state law crime that is generally outside of the jurisdiction of the Federal District Court.

- *General Subject-Matter Jurisdiction* - Some state courts have general subject-matter jurisdiction. This means that the state court has the authority to hear any type of case involving state law.
 - *Example:* The state superior court typically has authority to hear cases that are generally heard in lower-level courts. The reverse, however, is not true. Lower level courts (such as a municipal court) cannot hear cases that are outside of its limited, subject-matter jurisdiction. Likewise, a federal trial court cannot hear matters of immigration or bankruptcy, which are reserved to other federal courts of special jurisdiction.
- *Limited Subject-Matter Jurisdiction* - Often state courts divide jurisdiction based on the following:
 - The subject matter of a case,
 - The amount in controversy (or possible penalty for a crime), or
 - where individuals are located or reside.

Every state in the US has at least one court of general, subject-matter jurisdiction. Likewise, every state has some form of court with limited subject-matter jurisdiction.

- *Discussion:* As stated above, the state superior court typically has general, subject-matter jurisdiction within the state. Unlike some state superior courts, all federal trial courts are courts of limited jurisdiction. Why do you think that there is no federal trial court with general jurisdiction? Do you believe it is important to have state courts of general jurisdiction? Why are courts of limited jurisdiction necessary?
- *Practice Question:*
- *Resource Video:* <http://thebusinessprofessor.com/subject-matter-jurisdiction-in-courts/>

5. What is the Federal Court's Subject-Matter Jurisdiction?

As previously discussed, if a case falls under federal subject-matter jurisdiction, it means that a federal court may hear the case. There are generally two methods of establishing federal subject-matter jurisdiction in a case:

Federal Question Jurisdiction

- Federal-question jurisdiction is based upon, or arises out of, a federal law or the U.S. Constitution. For a federal district court to have subject-matter jurisdiction, the parties must demonstrate that the case regards a dispute or charge based in federal law. For example, a bank robbery is a federal crime that can be prosecuted in federal court, while robbing a convenient store is a state crime tried in a state court. Suing someone under a federal law, such as discrimination under the Fair Housing Act, would be a federal court action. Special federal courts, such as legislative and administrative courts, have special subject-matter jurisdiction. The court cannot hear matters beyond the scope of that jurisdiction. For example, a Bankruptcy court cannot adjudicate a securities dispute. This applies in both civil and criminal cases.

Federal Jurisdiction when the U.S. is a Party

- Federal courts have exclusive subject-matter jurisdiction in civil or criminal law suits against the United States or its representatives. That is, any case in which the U.S. Government is Plaintiff or Defendant, the matter can only be heard by a federal court. To illustrate, the federal district court would have subject-matter jurisdiction over a case in which a plaintiff sues the federal government for passing an allegedly discriminatory law. In such a case, this would also fall under federal-question jurisdiction, as the plaintiff is alleging that the action by the federal government is unconstitutional.

Suits Between States

- The federal government has subject-matter jurisdictions over civil or criminal allegations between state governments. This most often arises when one state sues to enjoin (stop) another state from taking actions that unduly discriminates against another state or its citizens. For example, State A may sue State B in federal court contesting State B's higher sales tax rates on its citizens or businesses.

Diversity Suits between Citizens of Different States (Civil Cases)

- Federal courts have exclusive subject-matter jurisdiction in civil lawsuits between citizens of different states, if certain conditions are met. Basically, federal subject-matter jurisdiction is available to prevent an unfair advantage by being subject to another state's judiciary. This rule allows citizens of different states to go to trial in federal court, even if the claims are state law claims. The special conditions for this type of jurisdiction are as follows:
 - *Requirement of Diversity of Citizenship* - Some federal diversity suits require "complete diversity," while others require "minimum diversity". In complete diversity cases, all plaintiffs must be citizens of different states from all defendants. In minimum diversity cases, only one plaintiff must be from a

different state from one defendant. Minimum diversity is common requirement in class actions.

- *Jurisdictional Amount* - Diversity suits must involve a controversy between the plaintiff and defendant valued at \$75,000 or more. In cases with multiple plaintiffs, all plaintiffs' claims combined must amount to \$75,000 or more. For example, the court may aggregate 3 plaintiffs with \$25,000 claims to establish the \$75,000 amount in controversy requirement. If the dispute is for less than this amount, the federal court cannot hear the suit.
- *Discussion:* Do you think there is a valid justification for allowing individuals from different states to bring an action or remove an action to federal court? Does the federal court forum really mitigate any of the bias concerns with the jury? Do you think the amount in controversy of \$75,000 is justified? Should plaintiff's be able to aggregate their claims to reach the \$75,000 threshold? Does this create an issue if one of many plaintiffs happens to be located in the same state as the defendant?
- *Practice Question:*
- *Resource Video:* <http://thebusinessprofessor.com/federal-subject-matter-jurisdiction/>

6. What is the State Court's Subject-matter Jurisdiction?

As previously discussed, general subject-matter jurisdiction means the state court may hear any type of case under state law. A state court of general jurisdiction has subject-matter jurisdiction in either of the following situations:

- the criminal or civil case involves a state law, or
- the case involves one of its citizens.
- *Example:* Tom is from Texas and Kay is from Kansas. Tom sues Kay in a Kansas court for a breach of contract that took place in Texas. Even though the breach of contract did not happen in Kansas, the court has subject-matter jurisdiction in the case based upon its personal jurisdiction over Kay as a citizen.

A state court with limited jurisdiction can only hear cases expressly allowed by the law creating the special court. In most states the state legislature will authorize special courts of limited jurisdiction. These courts are commonly limited by the type of case that it can hear or based upon the dollar amount in controversy. Magistrate court in Georgia, for example, cannot hear a lawsuit alleging \$10,000 in damages because the amount exceeds the limits of its jurisdiction. Further, many jurisdictions will establish a special circuit for family law or business law.

- *Discussion:* Do you think it is important for a state to always have a court of general jurisdiction? Why do you think that states create courts of limited jurisdiction? Do these limited courts imply a lack of seriousness or professionalism in those courts? Does a court of general jurisdiction (particularly the judge) have the expertise to preside over all cases without a court of special jurisdiction?
- *Practice Question:*
- *Resource Video:* <http://thebusinessprofessor.com/state-subject-matter-jurisdiction/>

7. Can federal courts hear matters of state law? And vice versa?

Trial Courts

It depends. A state trial court may hear a case involving a federal question under certain circumstances. Additionally, a federal trial court may hear a state-law case under certain circumstances. To do so, the federal and state courts must have subject-matter jurisdiction over some legal issue in the case. For example, the case may involve a mixture of state and federal law. If a case involving federal law involves issues of state law, then the federal court may also adjudicate the state law issues arising in that case. Likewise, a state court hearing issues of state law case may apply federal law to adjudicate a federal law issue. Further, a federal court has subject-matter jurisdiction over diversity cases that involve only state law. There are, however, certain types of cases that a state court cannot hear. Those cases involve a legal situation in which the applicable federal law preempts the entire area of law, such as immigration, bankruptcy, antitrust, etc.

- *Discussion:* Why do you think it is important to limit the ability of state courts to hear federal law issues and vice versa? Is there are good argument to allow greater ability of state and federal courts to hear issues solely involving the other's law?
- *Practice Question:*
- *Resource Video:* <http://thebusinessprofessor.com/can-state-courts-hear-federal-matters-and-vice-versa/>

Appellate Courts

State trial or appellate courts can never undertake appellate review of decisions from federal court cases. Federal trial court decisions are appealed to the Federal Circuit Court of Appeals or via special writ to the U.S. Supreme Court. Generally, Federal District Courts and Courts of Appeal cannot review decisions from state court cases. State trial court decisions are appealed to

the state intermediate court of appeals or the state's supreme court. There is, however, one exception to this rule. The U.S. Supreme court may review certain decisions of state supreme courts. The U.S. Supreme Court will only get involved if a state supreme court's decision appears to conflict with federal law, (such as a statute, treaty, or the U.S. Constitution). U.S. Supreme Court review of state supreme court decisions is most common when the state supreme court upholds a state law that could potentially violate the appellant's constitutional rights. In such a case, the U.S. Supreme Court may issue a writ of certiorari or accept a request for appeal of the state supreme court's decision.

- *Discussion:* Why is it important that state appellate courts not hear appeals from federal trial courts? Why is it important to limit the ability of federal appellate courts from hearing appeals from state trial courts? Why is it important the the U.S. Supreme Court be able to hear appeals from state supreme courts? Is there an argument for expanding the review authority of any of these courts?
- *Practice Question:*
- *Resource Video:* <http://thebusinessprofessor.com/can-state-courts-hear-federal-matters-and-vice-versa-2/>

8. What is Personal Jurisdiction?

A court must have both subject-matter jurisdiction and personal jurisdiction in every case. While subject-matter jurisdiction regards the court's authority to hear a certain type of case, personal jurisdiction regards the authority for a court to exercise jurisdiction over an individual. That is, the court must have the legal authority to adjudicate the matter involving the specific individual. Determining whether a court has personal jurisdiction over an individual is different for criminal and civil cases.

- *Criminal Case* - In a criminal case, a court has personal jurisdiction over the defendant if the defendant committed the alleged criminal conduct within the court's geographic jurisdiction. A federal court will have personal jurisdiction over a defendant committing any criminal activity within the United States. A state court will have personal jurisdiction over a defendant committing any criminal activity within that state's borders.
- *Civil Case* - Establishing personal jurisdiction in civil cases requires that the court serve the defendant with a summons (or otherwise provide sufficient legal notice of the proceeding), also known as service of process. A summons gives a defendant legal notice of the allegations against her and directs her to appear before the court on a given date. The legal requirements for serving a summons on someone differs between state and federal courts and is discussed further below.

In a criminal case, personal jurisdiction is generally not an issue. An individual would assert a

defense to the alleged crime rather than assert a lack of personal jurisdiction. In a civil case, however, personal jurisdiction is a hotly debated topic. This is particularly true for businesses that place products into the market for sale. There is a great deal of uncertainty as to what amount of sales activity in a state will subject the business to personal jurisdiction in that state's courts.

- *Discussion:* Why are the requirements for personal jurisdiction different for criminal cases versus civil cases? Is there an argument for extending a state's personal jurisdiction over alleged criminal activity carried on outside of the state's jurisdiction? Would it be fair to subject
- *Practice Question:*
- *Resource Video:* <http://thebusinessprofessor.com/personal-jurisdiction-2/>

9. How does a federal court get personal jurisdiction over someone in a civil case?

Personal jurisdiction in the federal courts is governed by Rule 4 of the Federal Rules of Civil Procedure. Rule 4 directs every federal district court to follow the law governing personal jurisdiction that is in force in the state courts where the federal court is located. In this situation, the federal court adopts the state's procedural law for purposes of establishing personal jurisdiction over the civil defendant. For example, the federal court will use the state's procedural rules for serving process on individuals within the state's borders and may also use the state's long-arm statutes to reach defendants outside of the state's geographic boundary. As discussed further below, the long-arm statute is a special statute allowing the state to serve a summons on a defendant who is not physically located in the state.

- *Note:* In cases that may be brought only in a federal court, such as lawsuits involving federal securities and antitrust laws, federal courts may exercise personal jurisdiction over a defendant regardless of where the defendant is found. That is, the federal court is not limited by the state's service of process rules. Federal procedure allows for service of process anywhere in the United States and territories.
- *Discussion:* Why do you think that federal district courts use the procedural rules for service of process of the state in which the court is located? Is there an argument that federal courts should have their own uniform rules for service of process?
- *Practice Question:*
- *Resource Video:* <http://thebusinessprofessor.com/federal-personal-jurisdiction/>

10. How does a state court get personal jurisdiction over someone in a civil case?

Service of process means providing an individual with a summons (or other authorized method of notification), which gives notice to the individual that she is being called before the court. Personal jurisdiction in state courts is governed by the individual state's law concerning service of process. Service of process must generally take place (i.e., the summons must be delivered) while the defendant is physically present within that state. The exception to this rule is that every state has a law creating an exception to the requirement that a defendant be served while physically present within the state. The law is known as a long-arm statute.

- *Note:* There are limited circumstances where a state will allow a court to exercise jurisdiction over an individual without delivering a summons. For example, a court may exercise jurisdiction over an individual in a family matter (such a divorce), if that individual is a resident of the state and cannot be found after diligent search. Another situation is that a court may exercise jurisdiction over an individual's real estate that is located in the state without delivering a summons to that individual if all attempts to locate the individual fail and notice is posted on the property.
- *Discussion:* Why do you think that states place such importance on delivering notice to establish personal jurisdiction? Do you feel like serving an individual with a summons while she is within the state justifies the court exercising jurisdiction over that person? Do you think it is justifiable in any circumstance to exercise jurisdiction over someone without delivering a summons?
- *Practice Question:*
- *Resource Video:* <http://thebusinessprofessor.com/personal-jurisdiction-in-state-court/>

11. What is a state long-arm statute?

A state's long-arm statute allows service of process on defendants who are physically located outside of state. A state's long-arm statute must, however, comply with the 14th Amendment's Due Process protections. This means that, to pass constitutional muster, a state's long-arm statute will only allow for service of process on individual outside of the state's borders if the defendant has sufficient contact with the state to make it reasonable to call the person into court there. More precisely, the defendant must have "minimum contacts with the state" sufficient to not offend notions of "fair play and substantial justice". Examples of situations where a defendant has minimum contacts with the state to allow the state to serve process via its long-arm statute include situations when the defendant is a resident of the state, owns property of the state that is the subject of the controversy, or committed the controversial activity in the state. A business entity is subject to jurisdiction in the carries on business regularly in the state or is organized in or registered to do business in the state. All of these situations involve a sufficient level of contact with the state so that service of process outside of the state's geographic borders doesn't offend notions of fair play and substantial justice.

- *Note:* The Federal Court uses the law of the state in which it is located for serving process on defendants. This includes using the state's long-arm statute when a defendant is not physically located within the state.
- *Discussion:* How much contact with a state do you feel is sufficient for a court to exercise jurisdiction over the person without offending the due process requirements of the U.S. Constitution? Is there any situation where you believe a slight amount of contact with the state still justifies exercising jurisdiction? How do you feel about exercising jurisdiction over businesses that regularly ship products to customers in a state but do not have a physical presence in the state and is not registered to do business?
- *Practice Question:*
- *Resource Video:* <http://thebusinessprofessor.com/state-long-arm-statute/>

12. What is a Venue?

Venue is the physical location (within the state or federal circuit) where the trial is conducted. A state may contain more than one physical courthouses to hear federal cases. Further, every state has one or more courthouses located in every county, district, or precinct within the state. Once the court establishes subject-matter jurisdiction over the type of case and personal jurisdiction over the defendant, there is a question as to the appropriate venue for the trial or hearing. The appropriate venue is the court located in the county, district, or precinct that is most closely related to the matter in controversy. This could be the location where the controversial activity (e.g., the tort or breach of contract) took place. Alternatively, it could be the locale where the plaintiff and defendant reside. If the parties live in different towns, then the place where the activity in controversy occurred or the defendant's locality is generally the appropriate court.

A court may transfer venue to another court in the state if mutually requested by both parties or other equities require a transfer. The reason for transferring the venue of a trial or hearing to another court in the state are to avoid one party having a home-field advantage or one party being subject to a biased jury pool. For example, one party's home locality may be more likely to find in her favor at trial. Similarly, an individual accused of a horrible crime in a community may be subject to undue bias by prospective jurors.

- *Discussion:* Can you think of any famous trials where venue was transferred to another court? Do you think that parties to a contract should be able to choose the venue where any controversies must be litigated?
- *Practice Question:*

- Resource Video: <http://thebusinessprofessor.com/venue/>

13. Who are the primary players in the judicial system?

The legal system has a number of diverse contributors. Each plays a unique role in a quite intricate system. The primary players discussed in this chapter include:

- Judges
- Jurors
- Prosecutors
- Lawyers and their staff

14. What types of judges are part of the judiciary?

There are many types of judges in the legal system.

Federal System

- *Federal District Court Judges* - Judges for the federal trial court.
- *Federal Magistrate Judges* - Special federal court judges who hear certain pre-trial and post-trial matters.
- *Federal Circuit Court Judges* - Appellate judges on the appellate courts for all of the district courts within its geographic jurisdiction (judicial circuit).
- *U.S. Supreme Court Justices* - Justices (judges) who sit on the highest appellate court in the US legal system.
- *Judges for Special Article I Courts:*
 - *Federal Administrative Judges* - Judges that preside over the various legislative (administrative) courts established by congress, such as the Tax Court.
 - *Specialty Court Judges* - Judges that preside over the various special courts designed by Congress under Congress, such as bankruptcy courts and courts-martial.

State Judicial System

- *Local Municipal Court Judges* - Judges presiding over municipal hearings to enforce city or municipal ordinances.

- *State Magistrate Judges* - Specialty court judges who preside over county or small claims courts. They also serve the function of granting warrants, probably cause hearings, and presiding over initial appearances.
- *Intermediate State Court Trial Judges* - Judges who preside over special trial courts of limited jurisdiction.
- *Superior Court Judges* - Judges who preside over trial courts of general jurisdiction.
- *State Appellate Court Judges* - Appellate judges who hear appeals from trial courts within its geographic jurisdiction.
- *State Supreme Court Justices* - Appellate judges sitting in the highest appellate court in the state.
- *State Administrative Judges* - Judges presiding over the administrative agencies created by the state legislature.
- *Specialty Court Judges* - Judges presiding over special courts designated by the state constitution or legislature. Special court judges may include: family court judges, probate court judges, and masters in equity.

Some jurisdictions may have special names, designations, qualifications, etc., for judges presiding over a specific court.

- *Discussion:* How do you feel about the distinct roles of judges in different courts? Do you think should be distinct qualifications (i.e., education and training) for judges presiding over a particular court?
- *Practice Question:*

15. What are the duties of trial judges in the legal system?

The trial judge plays the following roles in the judicial process:

- *Applying Procedural Law* - The judge marshals the proceeding and presentation of evidence in accordance with procedural law. In this capacity, he observes and applies constitutional limitations and guarantees of due process of law. This includes determining the law regarding the admission of evidence at trial and the procedural law applied at trial.
- *Applying Substantive Law* - As for substantive law, the judge identifies applicable rules of law to apply in each case. In essence, the judge tells the jury what is the law that it should

apply when trying the defendant's conduct. This is commonly known as instructing or charging the jury.

- *Role as Fact-Finder* - In some cases, the parties are not entitled to a jury trial. As such, the trial judges may also serve the role of a jury and act as the finder of fact. A judge often assumes the role of the jury in lower level courts or when the defendant requests that the judge act as jury. For example, the judge assumes the role of the jury in traffic or small claims courts.

To give a practical explanation, the trial judge serves a role similar to a referee in a sports game.

- *Discussion:* Some analogies compare the trial judge to a referee in a sporting match. Why do you think this is an adequate or inadequate comparison? Why do you think that some defendants will request that a judge serve as fact finder in a given case?
- *Practice Question:*
- *Resource Video:* <http://thebusinessprofessor.com/trial-court-judges/>

16. What are the duties of appellate court judges or justices?

The duties of an appellate court judge are distinct from those of a trial judge. Specifically, the appellate court serves as legal reviewer of trial court decisions. The appellate court does not generally review the facts of the case, except in special circumstances (known as “de novo review”); rather, the court reviews the case based on the facts as found by the trial court and present in the trial record. That is, the appellate court accepts the jury's findings of fact as true. As an example, if the jury finds that an individual was driving the car that hit the plaintiff, then the appellate court must assume that is true. The appellate court judge reviews the case for legal inadequacy and serves the following functions.

- *Resource Video:* <http://thebusinessprofessor.com/appellate-judges-justices/>

Application of the Law (Procedural and Substantive)

- In reviewing a case, the appellate judges determine if the law was applied correctly to the case. This process includes reviewing the application of procedural and substantive law. If the procedural law is found to have been applied incorrectly, the judges look to determine if the error was prejudicial to the losing party. If so, the case may be overturned in whole or in part and remanded to the trial court for further proceedings. If the substantive law is applied incorrectly, the case is generally overturned and remanded. The court's determination of whether the substantive law was applied correctly is generally based on the plain meaning of the statute and legislative intent in passing the

statute. In making this assessment, the appellate judge will look at the legislative notes, prior appellate court opinions on the law, or other indications of how and why the legislature passed the law. If the law, as applied, does not comply with the legislature's intent, then the appellate court has the ability to overturn the decision (verdict) and remand the case for re-trial. The court may overturn the entire case or just the charge or cause of action negatively affected by erroneous application of law.

- *Discussion:* Do you think a procedural error justifies overturning a case? How prejudicial do you believe a procedural error must be to justify overturning the case? Do you think that overturning part of a jury finding and upholding the another party is fair and just? Should the case always be overturned in the event of a substantive error? Do you feel that the entire case should be overturned if the court finds a substantive error?
- *Practice Question:*

Constitutionality of the Law

- Appellate judges are responsible for determining whether the law or government action, as applied, is consistent with and does not violate the constitution. Appellate judges are charged with the power of interpreting laws and determining if the law is unconstitutional. Any law or government action that violates the constitutional rights of an individual is void and unenforceable. Additionally, if the law in question violates a superior law it will receive a limiting interpretation or be overturned entirely. The appellate judges' have the power to overturn the law is part of the checks and balances system. As a result, the legislators who passed the law must start over and pass another law to achieve their intended purpose.
 - *Discussion:* Think of the role of the Supreme Court in reviewing the major cases and determining whether the law involved is constitutional. For example, consider The Affordable Care Act, Same-Sex marriage, Immigration Laws, Marijuana laws, etc. What has been or will be the role of the US Supreme Court in evaluating this laws?
 - *Practice Question:*

Developing the Common Law

- Appellate judges render decisions when reviewing a case. Along with these decisions, the court writes an opinion on how the law was applied in the case. The appellate judge's written opinion ultimately becomes part of the common law and serves as precedent for lower judges to apply in future cases. In this way, they are like legislators – interpreting

and creating the manner in which the law should be applied.

- *Discussion:* The power of judicial review, arguably, makes the judiciary the most powerful branch of Government. How do you feel about the ability of the judiciary to develop law through the interpretation of the law as applied in a given case? Can you think of an example where judicial review overturned a lower court's decision?
- *Practice Question:*

17. How do cases arrive before the appellate courts?

The method by which a case arrives before an appellate court varies based on the type of appellate court.

- *U.S. Courts of Appeals* - The U.S. Courts of Appeal hear cases appealed from the Federal District Courts, which are the federal trial courts. Like all appellate courts, the Court of Appeals reviews cases to determine 1) whether the correct law was applied, 2) whether it was applied correctly, and 3) whether the law, as applied, violates rights provided by the U.S. Constitution. Generally, appeals come pursuant to a request by the losing party at trial. In some cases, however, a party may make an interlocutory appeal, which is an appeal of a single issue before the case has been decided. This is only allowed, however, when the issue is extremely important or would effectively decide the case. The losing party generally requests permission to file an appeal with the Court of Appeals. The Court will either grant the request or deny it – making final the decision on the appealed issue.
 - *Discussion:* Do you think that interlocutory appeals should be allowed? What are some good arguments for allowing such appeals? Arguments against them?
 - *Practice Question:*
 - *Resource Video:* <http://thebusinessprofessor.com/appeal-to-us-federal-circuit-court/>
- *U.S. Supreme Court* - The U.S. Supreme Court accepts cases via two primary methods. The first method is the *Writ of Certiorari*. This is a written demand issued by the court for the case to be transferred to the court for review. Procedurally, 4 of 9 Justices must agree to accept the writ and review the case. The second method of appealing to the Supreme Court is pursuant to appeal by any party to a case. Generally, the Court will only accept appeals of issues have important and broad impact. Further, the issues on appeal generally involve issues of constitutionality. The Supreme Court may use this authority to

review decisions by the highest court in any state and decisions by any federal court. As the highest appellate court, decisions by U.S. Supreme Court are final. That is, their decisions cannot be appealed further. Also, their decisions provide precedent for all inferior courts. This means that all lower courts (state and federal) must follow, interpret, and apply the law consistently with the interpretation of the Supreme Court. The court's interpretation of the law actually becomes part of the law and forms the common law surrounding the statute.

- *Discussion:* How do you feel about the U.S. Supreme Court's ability to demand that any appellate case be transferred to the court for review? Is there are good argument that appeals to the Supreme Court should only happen pursuant to petition of the parties?
- *Practice Question:*
- *Resource Video:* <http://thebusinessprofessor.com/appeal-to-us-supreme-court/>
- *Appeals from Legislative and Administrative Courts* - In general, legislative courts have direct rights of appeal to Article III Courts (District or Circuit Courts). The ability to appeal, however, is not generally immediate. First, a party wishing to appeal a legislative court's decision must appeal to an internal administrative board within the agency. Once this is complete, if this does not remedy the issue, the parties may appeal to the Federal District Court. The District Court will act as an appellate court for the matter in question. In certain cases, the parties may appeal directly to the Circuit Court and skip review by the District Court. The important thing to remember is that Article I courts must still have access to appeal the decision to an Article III appellate court. Otherwise, cutting off access to an Article III court may be unconstitutional.
 - *Discussion:* Do you believe that the appeals procedure described above adequately protects the appellant's constitutional right to due process? How do you feel about the requirement of having to first appeal to an internal, agency board before being able to appeal to an Article III court? Can you think of any good reasons for adding this requirement?
 - *Practice Question:*
 - *Resource Video:* <http://thebusinessprofessor.com/appeal-from-administrative-courts/>
- *Appeals in the State Court System* - The appeals procedure in state court is similar to that of the federal system. Decisions from the trial court go to the intermediate court of appeals, unless the state does not have an intermediate court of appeal or state statute

requires appeal directly to the state supreme court.

- *Discussion:* Do you think that state trial court decisions should ever be allowed to be appealed to a federal district court or a federal circuit court? Are there any good arguments for or against this hypothetical appellate process?
- *Practice Question:*
- *Resource Video:* <http://thebusinessprofessor.com/appeal-of-state-court-decisions/>

18. What is the role of jurors in the judicial system?

The 6th and 7th Amendments to the Constitution guarantee the right to trial by jury in criminal and civil cases, with certain exceptions. Notably, the right to trial by a jury varies between criminal and civil cases.

- *Civil Cases* - The 6th and 7th Amendments do not guarantee a right to a jury trial in every trial. In civil cases, the right to a jury trial is linked to a dollar amount in controversy between the parties. States may have courts of special jurisdiction that have an amount-in-controversy limit and does not allow for a jury trial. If the parties want a jury trial, either party has the option of filing the case in a superior court of general jurisdiction, where a jury trial is an option. In this way, each party's access to a jury trial is not limited. Parties may also enter into contracts that forgo the right to a jury trial in the event of dispute.
- *Criminal Cases* - Due process requires that criminal cases in which a party faces imprisonment afford the defendant a jury trial. Very minor criminal infractions that involve a fine and no potential incarceration often do not allow for a jury trial. For example, speeding tickets may not entitle a party to a jury trial.

In criminal cases the defendant may elect to forgo a jury trial and have the judge act as fact finder. In civil cases, if the right to jury trial exists, both parties must consent to forgo the right to a jury trial.

- *Discussion:* Do you believe that every civil and criminal case should be entitled to a jury trial? Is there a good justification for tying the right to a jury trial to an amount in controversy or incarceration?
- *Practice Question:*
- *Resource Video:* <http://thebusinessprofessor.com/right-to-jury-trial-under-6th-and-7th-amendments/>

19. How many jurors and juror votes are required to find someone guilty in a criminal case or liable in a civil case?

The number of jurors and the number of juror votes required for a finding of guilt or civil liability varies depending upon the type of case (criminal or civil) and the court (state or federal).

- *Number of Jurors* - Not all court cases involve a jury trial. When a jury trial is warranted, the number of jurors required is known as “Petit Jury”. Rule 48 of FRCP states that, a “Court shall seat a jury of not fewer than six and not more than twelve members.” Most cases do not have 12 jurors; however, most states require that murder cases have 12 jurors.
- *Unanimous Vote* - In criminal cases, most courts (state and federal) require unanimous vote by the jury to find the defendant guilty in a criminal case. Currently, only two states allow for conviction of a defendant *via* non-unanimous voting, and those are generally minor charges. Federal courts-martial still allow for a non-unanimous finding of guilty in certain cases.
- *Majority Vote* - In civil cases, many states have eliminated the unanimity requirement to find a defendant liable. This means that many states allow for a finding of civil liability with a simple majority of jurors voting to find the defendant liable.
- *Jury Findings* - In general, juries do not need to give reasons for their votes in a civil or criminal case. The jury will provide a simple verdict (e.g., guilty/not guilty or liable/not liable) and do not have to explain their reasoning in the matter. Some special verdicts, however, require jurors to answer a series of questions to ascertain their understanding of the law and procedure. Further, the jury may have to indicate whether they found aggravating circumstances, which may be a legal requirement for a certain finding. Even in these cases, the juror does not have to explain why they found facts to be convincing or no.

As previously stated, the specific rules applicable to jurors, juror votes, and findings will vary slightly depending upon the case and the court system.

- *Discussion:* How do you feel about the requirement in civil cases that a majority of jurors find liability? Is there good arguments for or against requiring unanimous jury findings in civil trials? What do you think about only requiring six jurors when determining guilt or innocence in criminal trial (other than capital trials)? Should jurors be required to give their reasonings behind finding guilt or innocence?
- *Practice Question:*
- *Resource Video:* <http://thebusinessprofessor.com/jury-votes-required-for-finding-guilt-or->

[liability/](#)

20. What do attorneys do?

Areas of Practice - There are dozens of areas of law practice that are largely, if not completely, separate and unrelated. Very few attorneys are experts in more than a couple of legal areas. Below are some common areas of legal practice: Criminal Law, Civil Action (Tort Lawyers), Insurance Litigation, Secured Transactions, Administrative law, Contract law, Consumer Law, International shipping and trade, Immigration law, Antitrust law, Securities law, Banking and Finance Law, Corporate Governments, Environmental law, Land and Property, Labor and Employment, Social Security & Disability, Elder Law, Estate Planning, Worker's Compensation, Family law, Human Rights, Election law, etc.

Duties to Clients - Attorneys are counselors, advocates, and public servants. More specifically, they are fiduciaries and advocates for their clients' interests and officers of the court. The attorney's oath of office subjects the attorney to a professional code of ethics that governs all of their professional practice activities. The attorney is generally trained to navigate the legal system. As previously discussed, there are numerous areas of legal practice. Several of these practice areas involve working within the courtroom. Below are some universal truths about lawyers in general and those who practice in the courtroom.

- *Fiduciaries* - Attorneys have a duty of trust, confidentiality, and loyalty to their client. This means that, absent certain exceptions, attorney cannot disclose confidences related to them by their clients. This relationship requires a high degree of professional and ethical conduct. Lawyers are subject to sanction (or even disbarment) for failure to live up to high ethical standards.
- *Court Representation* - Individuals may represent themselves or hire a licensed attorney to counsel and represent them before the court. Attorneys must be licensed and by admitted to a court's bar to represent clients before that body.
- *Officers of Court* - Attorneys are officers of the court and are required to seek justice and to try cases on the merits only. While attorneys represent their clients, they have ethical obligations to the court to promote and seek justice. The system is not designed to be a battle of wits, but rather a presentation of evidence for a just decision.

Not all attorneys practice law in a courtroom; however, these standards apply equally to attorneys who provide legal services outside of the courtroom.

- *Discussion:* Do you think that the majority of the public realized all of the specialties that exist in legal practice? Why do you think that there are so many specialty areas of legal practice? Do all of these specialties call into question the professional competence of general practitioners? Do you find any conflict of interest for attorneys who are expected

to be officers of the court as well as zealous advocate for their clients?

- *Practice Question:*
- *Resource Video:*

21. Who are some of the other players in the court system?

The court system can be large and complicated. To run properly, it requires a number of individuals to carry out specific functions. Some of the primary actors are as follows:

- *Process Servers* - Process servers deliver legal documents (serve process) to individuals being called into court. Some jurisdictions allow private parties to serve process for the court. Other jurisdictions require police authorities to serve process.
- *Clerks of Court* - Clerks of court run the office that manages all publicly filed court documents for that jurisdiction. All court documents are first filed with the Clerk of Court. The Clerk of Court may also manage the process for service of process.
- *Court Reporter* - The court reporter records and transcribes the official record of the court. This record is used in appellate review.
- *Bailiff* - The bailiff control security in the courtroom and carries out orders of the court. This includes executing contempt orders.
- *Paralegals & Law Clerks* - Paralegals and law clerks carry out many of the administrative tasks that support the court and trial process. This includes conducting research for attorneys, companies, government bodies, judges, or justices.
- *Staff Attorneys* - Legislative and administrative bodies employ staff attorneys. These attorneys research issues and serve as the primary architects and scribes of laws proposed by the bodies they serve. For example, staff attorneys write the majority of the laws proposed by members of the legislative branch.
- *Prosecutors & Public Defendants* - These are the government attorneys employed to represent the government in prosecuting alleged crimes and representing the defendants subjected to prosecution.
- *Law Professors* - Educate training attorneys and act as contributors to the body of legal thought. Researching professors write about specific areas of law and provide analysis and insight for use by practitioners, legislators, and the court.

- *Law Journals* - Law journals review, edit, and publish works of original thought that add to the intellectual body of law. These published works serve as influential sources for use by practitioners, legislators, and the court.
- *Bar Associations* - Bar associations are federal, state, and local groups of attorneys. These organizations can be very influential in shaping the development of law and the legal system.

The above list of contributors to the court system is by-no-means exhaustive.

- *Practice Question:*
- *Resource Video:*

22. What are the theoretical (political) views toward judicial review?

As previously discussed, appellate courts have the power of judicial review. This the the power to review laws passed by the legislative body and actions by the executive and to declare them to be unconstitutional and void. Two primary views exist regarding the role of the judiciary in executing its authority, as follows:

- *Judicial Restraint* - Proponents of judicial restraint believe that the judiciary's power or review should not be used except in unusual cases. They specifically believe that review of laws that has the effect of expanding or limiting the understanding of constitutional rights are too important to be decided by courts unless absolutely necessary. As such, any case that requires analysis of and interpretation as to the extent of rights afforded under the Constitution are to be avoided if there is another legal basis for a decision. Proponents of judicial restraint also believe that litigation is not the appropriate technique for bringing about social, political, and economic change. That is, social, political, and economic change should only result from the passage of laws by the legislative branch of the federal or state government.
- *Judicial Activism* - Proponents of judicial activism support the use of the judiciary's power of review. They believe that judicial interpretation of laws is the appropriate vehicle for developing legal standards and should used whenever justified by the needs of society or public sentiment. Proponents of judicial activism also believe that constitutional issues must be decided within the context of contemporary society. They adopt the view that the meaning of the Constitution is relative to the collective beliefs, sentiments, and values of society at the time in which the law is being interpreted.

These views of the role of appellate courts has become largely a political issue.

- *Discussion:* What are the major arguments in favor of or against judicial restraint?

Judicial Activism? How do these points of view align with the beliefs of major political parties within the United States?

- *Practice Question:*
- *Resource Video:* <http://thebusinessprofessor.com/judicial-restraint-vs-activism/>