

1: INTRO TO US LAW

- *statute*: law
- civil law
 - relies mainly on comprehensive codes of extensively-written laws
 - based on scholarly interpretations of law (rather than judges' & courts' opinions)
 - judges' & courts' decisions don't necessarily set precedence that future cases must follow
 - applies in Louisiana only
- common law
 - there are basic statutes/laws, but precedents set in prior cases is main component
 - main body of law is derived from court decisions
 - foundation of US legal system
 - based on England's system of law
 - doctrine of stare decisis:
 - principle that lower courts must follow precedents set by higher courts
 - if courts rule differently than precedents, need to have strong reason why
 - *mandatory/binding authority*: authority or law that a court **must** follow
 - *persuasive authority*: authority that a court is not required to follow (ex: other jurisdiction; discussion in a legal treatise)
 - *synthesis*:
 - combining several rulings from various authorities into a new rule of law that is applied to a new legal problem or case
 - uses sources like:
 - existing laws
 - prior cases that involved interpreting those laws
 - prior cases that set legal precedence
 - *threshold cases*: cases for which there is no precedent or law that directly applies
 - landmark cases relating to ins
 - Paul v. Virginia: ins to be governed by **state** law
 - South-Eastern Underwriting (SEUA) case: **federal** law still applies to ins in **some** cases, under the commerce clause of the US Constitution
 - McCarran-Ferguson Act:
 - reversed the applicability of SEUA
 - allows ins cos to be generally exempt from **federal** anti-trust laws
 - still allows federal law to override state law if:
 - state law is not specifically relating to regulation or taxation of ins industry
 - federal law is specifically relating to ins industry
 - Gramm-Leach-Bliley (GLB) Act:
 - allows companies to offer bank, insurance and securities products within the same corporate structure
 - reinstates some **federal** power for regulatory oversight
 - promotes uniform producer licensing laws
 - provides framework to determine what financial products are banking/security (regulated at federal level) vs ins (regulated at state level)

- *equity court*:
 - offers solutions beyond traditional legal remedies of monetary compensation
 - traditional courts just require defendant to pay money
 - equity court may order defendant to take a specific action if that is more fair
 - (ex: buyer suing for breach of antiques sale contract can't be completely remedied w/ money if antique can't be purchased elsewhere, so court of equity might force seller to sell)
- 3 ways to classify US law
 - criminal vs. civil
 - criminal law:
 - imposes penalties for wrongs against society
 - focus is on defendant's bad actions, rather than results of his actions (ex: if you steal car but return it w/ no dmg, you are still guilty of stealing)
 - govt is plaintiff, and responsible for prosecuting & punishing
 - functions of law:
 - defines offenses
 - regulates investigation, charging & trying of accused offenders
 - establishes punishments
 - *felony*: major crime
 - *misdemeanor*: minor crime
 - *summary offenses*: neither felonies or misdemeanors (usually results in fine but not jail)
 - civil law:
 - (differs from *civil law* as described earlier)
 - protects rights & provides remedies for breaches of duties owed to others
 - focus is on loss that victim suffered, and purpose of lawsuit is to get compensated
 - if there is no dmg suffered, you can't initiate a civil suit
 - burden of proof is **less** strict than criminal law
 - supporting evidence just needs to be more than evidence to the contrary
 - "more likely than less likely"
 - (as opposed to *beyond a reasonable doubt* for criminal law)
 - by subject matter (ex: criminal, tort, agency, prop, etc.)
 - substantive vs. procedural
 - substantive law
 - creates/defines/regulates each party's rights/duties/powers
 - i.e., theories, definitions, principles
 - ex: defining a crime
 - procedural law
 - related to steps/processes/procedures for enforcing substantive law
 - ex: deadline for filing a suit
- 5 sources of US law (both at federal and state level)
 - 1) constitution
 - specifies govt's powers, and limitations on those powers
 - highest priority of law
 - constitution is the highest law
 - US Constitution overrides state constitution
 - any law that violates US constitution is void
 - each state has its own constitution too

- key provisions relevant to ins
 - delegation of powers to Congress
 - establishes **express** powers of Congress
 - regulate commerce
 - levy/collect taxes
 - borrow money
 - establish uniform laws of bankruptcy
 - **implied** powers given to Congress to pass laws necessary to use express powers
 - delegates to **states** any powers aren't specifically reserved for fed govt
 - Commerce Clause
 - gives Congress power to regulate trade w/ other countries & trade btwn multiple states (*interstate*)
 - any state law/action that interferes w/ interstate commerce is unconstitutional
 - **Due Process**
 - i.e., the right to state your case, if someone brings any action against you
 - **5th Amendment: guarantees notice & hearing before fed govt can deprive a person of life, liberty, property (i.e., put you in jail or make you pay)**
 - **14th Amendment:**
 - extends 5th Amendment protection to state govt actions
 - extends 5th Amendment protection to corporations
 - **(ex: ins co can complain to DOI before a rate change is made)**
 - Equal Protection Clause (14th Amendment)
 - prohibits state laws that discriminate; requires equal treatment to all
 - applies to both individuals & corporations
- 2) legislative branch
 - **main power is to pass/enact laws**
 - US Congress
 - is the **federal** legislative branch
 - is *bicameral* (has two chambers: Senate & House of Reps)
 - use of *uniform laws* to minimize conflicts
 - Nat'l Assoc of Ins Commissioners (NAIC)
 - purpose is to coordinate ins regulation activities among various state DOIs
 - helps regulators coordinate responses to changes in ins marketplace
 - develops model laws, regulations, guidelines
- 3) judicial branch (courts)
 - US District Court (trial court for fed crimes)
 - US Circuit Court of Appeals (handles appeals from US District Courts)
 - *jurisdiction*
 - the scope of a particular court's authority
 - usually based on geographical area or type of case
 - diversity jurisdiction:
 - federal cases involving parties from diff states, or btwn one state & foreign country
 - must be over a min dollar amt
 - *appellate jurisdiction courts*: courts that hear appeals from other courts
 - *general jurisdiction*: courts that hear a variety of types of cases

- conflicts of jurisdiction
 - in **tort** cases, law from state where injury occurred usually applies
 - in **contract** cases
 - *center of gravity rule*: law from state w/ most significant relationship to case usually applies
 - many contracts specify which state's laws will apply if a dispute arises
- 4) executive branches (i.e., president & his cabinet)
 - enforce, recommend, approve, or veto laws
 - influences rule makers
 - nominates/appoints important officials (like Supreme Court judges)
- 5) admin agencies (make & enforce regulations)
 - ex: DOI
 - technically part of executive branch [but treated separately in this book]
 - creates/enforces laws & acts as own judicial branch
 - produces the most legislation
 - *administrative law*:
 - statutory laws that grant power to admin agencies to act
 - also includes/refers to laws that are created by admin agencies themselves
 - 3 criteria for admin agency rules to be constitutional:
 - legislation carefully defines scope of delegated power to admin agency
 - agency exercises rulemaking w/i that scope
 - rules are subject to court/judicial review
 - 4 functions
 - 1) rule-making
 - process by which rules are broadcast
 - agency regulations become effective 30 days after publication, or immediately in emergencies
 - 3 types of rules
 - legislative rules
 - a type of **substantive** rule [creates/defines/regulates each party's rights/duties/powers]
 - comes from statutory delegation of authority (i.e., a law granted power to this admin agency)
 - have the same force as legislative or Congressional law
 - interpretive rules
 - interpret statutes to guide staff or regulated parties
 - lack force of law, not binding on individuals
 - procedural rules
 - related to agency operations or adjudication proceedings
 - Model State Administrative Procedure Act (MSAPA)
 - standard procedure for creating rules
 - 3 basic steps
 - publish notice of intent to adopt a regulation
 - provide opportunity for public comment
 - publish final regulation
 - public hearing required if govt agency or 25+ individuals request it

- 2) adjudication function
 - process by which agency decides cases & settles disputes btwn two parties
 - due process (giving notice to parties involved)
 - hearing time/place/nature
 - statement of hearing's legal auth & jurisdiction
 - reference to particular statute/rule involved
 - list of matters/issues at hand
 - can impose fines or grant/revoke/suspend licenses
- 3) investigative powers
 - usually used for:
 - rulemaking
 - prosecuting
 - establishing general policy
 - recommending legislation
 - *subpoena ad testificandum* (requiring a witness to testify)
 - *subpoena duces tecum* (requiring documents to be provided)
 - 4th Amendment (protects against unreasonable searches & seizures)
 - 5th Amendment
 - protects against self-incrimination
 - i.e. "you have the right to remain silent"
 - Privacy Act (prohibits govt from releasing info that violates individual privacy)
 - Freedom of Info Act (guarantees public access to govt & agency records)
- 4) judicial review
 - appeals process for complaints against the agency itself
 - plaintiff must have standing to sue (suffered or will suffer an adverse effect from an action)
 - agencies usually given great respect on questions of fact b/c of their expertise
 - 2 requirements for judicial review to occur
 - agency has issued final order (agency's final conclusion at the end of an agency proceeding, ruling on a party's material private right)
 - exhaustion of admin remedies: party has taken case through all poss admin procedures & appeals avenues
 - 5 grounds under which a court can set aside an agency's action
 - arbitrary & irrational, abuse of discretion, or otherwise unlawful
 - unconstitutional
 - violated statutory auth
 - violated agency procedural rules or was result of illegal procedures
 - unsupportable by substantial evidence in the record
- checks & balances
 - executive branch
 - power to appoint judges & admin agency heads
 - veto power
 - legislative branch
 - power to deny/approve executive appointments
 - ability to pass laws that negate judicial opinions
 - judicial branch (can declare laws/acts unconstitutional or unlawful)

- civil trial procedures (the process of a lawsuit)
 - (general vocabulary)
 - *plaintiff*: party who initiates case
 - *defendant*: party who has to defend himself against allegations brought by plaintiff
 - *defense*: if someone raises an allegation/lawsuit against you, point you can raise that justifies your action or exempts you from having to paying dmgs
 - 1) pretrial
 - (NOTE: major goal is for parties to resolve w/o having to go to trial)
 - pleadings
 - formal written statement of the facts & claims of each party in the lawsuit
 - i.e., each party explains what their position will be
 - complaint by plaintiff
 - initiates the lawsuit
 - IDs allegations (claims that plaintiff intends to prove to get judg against defendant)
 - states cause of action (why plaintiff has grounds to sue defendant)
 - IDs requested *remedy* (solution)
 - includes a statement of how this court has jurisdiction to hear case
 - *summons* by court
 - notifies defendant of lawsuit
 - contains copy of complaint
 - sets timeframe for defendant to answer
 - *answer* by defendant
 - states why plaintiff shouldn't win
 - may include counterclaims
 - might only be an *entry of appearance* (where defendant states they'll appear in court for trial, but doesn't admit or deny allegations)
 - *reply* by plaintiff
 - plaintiff responds to defendant's answer
 - usually required if defendant files a counter claim, or if judge orders a reply
 - *pretrial conference*: meeting w/ both parties + judge to encourage pre-trial settlement
 - discovery by both parties
 - a pretrial exchange of relevant information between plaintiff and defendant
 - i.e., gathering evidence from the other side, to prepare for trial
 - purposes:
 - allows parties to know as much as possible before trial
 - if court testimonies contradict evidence from discovery, party can raise that
 - may lead to settlement (if parties decide they don't want to go to trial based on evidence)
 - can take months or years, to examine thousands of records
 - can use *electronic discovery (e-discovery) experts* who apply data science to electronic records to find useful information
 - parties can file motion to compel compliance if someone objects to producing evidence
 - motions:
 - formal request for court to take particular action

- 3 types usually filed in hopes of avoiding trial
 - *motion to dismiss*
 - says plaintiff failed to state a claim that this court can grant relief for
 - usually asks for case to be thrown out due to technical violation
 - ex: plaintiff case is over max dollar threshold for this court
 - usually filed by **defendant** before pleadings are done
 - *motion for judgment on pleadings*
 - defendant admits allegations but questions whether law provides remedy
 - i.e., defendant agrees w/ case facts, but thinks law is in his favor
 - usually filed immediately after pleadings
 - *motion for summary judgment*
 - similar to judgment on pleadings
 - usually filed during/after discovery
- 2) trial
 - jury decides all *questions of fact* (what happened in **this specific case?**)
 - judge decides all *questions of law* (how does the law apply **generally, in all cases?**)
 - if jury trial is waived, judge decides all ?s of fact & law
 - 3 rules of evidence (qualities that evidence must possess to be admissible)
 - relevance
 - "helps prove or disprove an element of the case"
 - i.e., does your evidence help prove a fact you are trying to establish?
 - (ex: no ins citation is **not** relevant to proposed fact that driver was at-fault in ax)
 - materiality
 - "whether evidence establishes a particular element of legal significance in clm"
 - i.e., in light of this specific case's situation, is the evidence important?
 - (ex: veh year/make/model is normally **not** material in ax case, but might be if car had recall for brakes)
 - competence
 - "whether a source is reliable & adequate to justify admission in court"
 - i.e. trustworthiness
 - *hearsay*: opinions or repeated statements from parties who don't have personal knowledge about whether they're true
 - trial procedure
 - jury selection
 - swearing-in of jury (jury members take oath)
 - opening statements (each side summarizes what they expect to prove to jury/judge)
 - questioning **plaintiff's** witnesses (to establish allegations)
 - direct examination by plaintiff
 - cross examination by defendant
 - challenge witnesses' testimony
 - bring out evidence favorable to defendant
 - questioning **defendant's** witnesses
 - direct examination by defendant
 - cross examination by plaintiff
 - challenge witnesses' testimony
 - bring out evidence favorable to plaintiff

- closing arguments (each side summarizes what they felt they proved)
- instructions to jury by judge
- deliberation & delivery of verdict
 - general verdict:
 - entails complete finding & single conclusion by jury on all issues
 - typically asks the “bottom-line” question
 - ex: “is the defendant guilty?”
 - special verdict:
 - verdict on specific questions of fact posed by judge, who then applies law to facts that jury has decided
 - typically is a series of questions
 - ex: “did the defendant violate a reasonable standard of care & did that violation result in the plaintiff suffering injury?”
- judge can end trial at any point by declaring:
 - *directed verdict* (judge tells jury what verdict to give if there is only one reasonable outcome)
 - *mistrial* (ends trial b/c of error/event making it impossible for jury to reach fair verdict)
 - *non-suit* (plaintiff failed to present sufficient case, or case didn’t comply w/ court order)
- res judicata (*clm preclusion*):
 - (after a judgment has been reached) bars parties from bringing a second lawsuit on the same claim or on related transactions
 - i.e., you can’t have the **same** plaintiff suing **same** defendant over the **same** incident
- collateral estoppel or *issue preclusion*:
 - bars parties from re-litigating an issue or element of argument on which the court has already ruled, even if ruling was on a different/prior lawsuit
 - (ex: if court held on lawsuit for one loss that mold dmg is excluded on pol, you can’t sue ins co again about mold exclusion if you’re denied cov on a second mold loss)
- 3) appeals
 - purpose is to decide whether law was correctly applied, **not** to have re-trial
 - you can’t file appeal to debate questions of **fact**
 - *appellant*: losing party of original lawsuit who is initiating appeal
 - *appellee*: non-appealing party (usually the party who won original lawsuit)
 - *brief*:
 - atty’s written statement
 - mandatory for appeals
 - outcomes:
 - affirm (uphold orig decision)
 - reverse (reverse orig decision)
 - remand (send case back for retrial)
 - **US Supreme Court reviews at its discretion & is not required to explain reasons choosing cases**
- *alternative dispute resolution (ADR)*
 - other ways to resolve disputes besides trial
 - benefits:
 - cheaper
 - faster
 - less hostility
 - more privacy

- arbitration (arb)
 - a neutral 3rd party hears case & makes **binding** final decision
 - award is filed with the appropriate court & is as enforceable as any court judgment
 - main means of dealing disputes for contracts, labor/mgmt relations, and ins
 - Uniform Arbitration Act & Federal Arbitration Act
 - American Arbitration Assoc (provides arb services, designs arb systems, provides training)
- mediation
 - parties submit dispute to agreed-upon outside mediator
 - neutral 3rd party helps examine issues & consider settlement options
 - **non-binding**
- negotiation
 - *private mini-trial*
 - allows both parties to present evidence/arguments to a neutral panel
 - not binding (only useful in influencing negotiation btwn parties)
 - *court-sponsored mock summary jury trials*
 - allows both parties to present evidence/arguments to a jury
 - parties can elect to accept jury's verdict
 - not binding (only useful in influencing negotiation btwn parties)