

1 ☐ Course resources

■ CD-ROM with textbook

- Look at learning objectives
- Take chapter quizzes
- Look over case studies for tips on briefing a case. There are examples included.
- Link to on-line site at McGraw Hill.
 - More quizzes and resources.

2 ☐ American Legal System:

A primer

3 ☐ Objectives

- The rationales of why we have law.
- The varied sources of law, their roles and how they are related to one another.
- An appreciation of the judicial system in the U.S., including the different types of courts and their respective responsibilities.
- The role of the U.S. Supreme Court and the process by which it hears and rules upon cases.
- The general differences between civil and criminal law and related litigation.
- Basic legal terminology.

4 ☐ Vocabulary

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- Precedent
- Stare decisis
- Judicial decree
- Statute
- Statutory construction
- Appellant/appellee
- Appellate court
- Writ of certiorari (cert.)

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- Oral argument
- Majority opinion
- Concurring opinion
- Dissenting opinion
- Per curiam
- En banc
- De novo
- Pleading
- Arraignment

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■ Law is not an exact science

■ Law- set of rules that attempt to guide human conduct and a set of formal, governmental sanctions that are applied when those rules are violated

■ Law- social engineering?

6 ☐ Sources of Law

- 1) Common Law
- 2) Law of Equity
- 3) Statutory Law
- 4) Administrative Law
- 5) Constitutional Law

7 ☐ Common Law

- Earliest source of Anglo American law
- “Discovered law”
- Solve problems not abstract theory
- Stare decisis/precedent
- Judge can: accept/modify/distinguish/overrule
- Jurisdiction important

8 ☐ Law of Equity

- Origins: 14th & 15th century Britain
- Originally supplement to common law but now lines are blurred.
- Equity law can be preventive or remedial - common law is only remedial (damages paid after harm is done).
- Special court where problems (not resolved through the common law) could be arbitrated on the basis of fairness or justice.
- No jury, precedent could play role, but judges are free to decide (through judicial decrees) on the basis of what is fair. (restraining orders, injunctions)

9 ☐ Statutory Law

- Legislation - from Congress, state legislatures, city & county gov't's.
- Legislatures are popularly elected and have the ability to pass laws.
- Statutory law became common after about 1825.

10 ☐ Statutory v. Common law

- Statutes deal with problem affecting society
- Statutory law can anticipate problems
- Criminal laws are statutory
- Statutory law comes from codes instead of court decisions.
- Courts can interpret statutes - statutory construction - invalidate a statute:
 - Conflict with constitution
 - Conflicts with other statutes
 - Conflicts with well-established common law

11 ☐ Administrative Law

- More recent form of law
- Bring expertise to legislation

- Created by administrative agencies
- Own specialized judicial system
- Benefit of allowing experts to deal with complex issues
- Drawback is that experts are not elected

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- Regular judges are hesitant to overturn administrative law:
 - Unless agency exceeds authority
 - Violates Constitution
 - Violates its own rules
 - No evidentiary basis to support law

13 ☐ **Constitutional Law**

- Constitution unique to this country
- Intended to be broad, long-lasting and fundamental
- U.S. Constitution signed in 1787, ratified in 1788.
- Oldest continuously active written document of its kind.

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- Establishes powers, responsibilities and restrictions of three branches of gov't.
- Outlines the fundamental rights of individuals
- Relationship of federal gov't with voters and state gov'ts.
- Est. system of checks and balances
- Supremacy of constitutional law est. in 1803 Marbury v. Madison decision. There the SCOTUS determined that its role of interpreting the constitution included overruling bad legislation

15 ☐ **Constitutional Amendments**

- Only 17 amendments in 205 years since the Bill of Rights
- Many amendments have fallen short:
 - ERA
 - Flag desecration controversy?

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- Two cases clarified relationship between federal constitution and other laws:
 - Gitlow v. N.Y., 268 U.S. 652 (1925)
 - Due process clause of 14th Amendment prohibits states from infringing on First Amendment rights of citizens.
 - U.S. v. Carolene Products, 304 U.S. 144 (1938).
 - Footnote in this milk regulation case said rights spelled out in the federal constitution had preference over other rights not specifically mentioned in the Constitution. Tipped scales in favor of free speech when not competing with other constitutional rights such as 14th Amendment.

17 ☐ Unconstitutional?

- Direct violation of Constitution
- Vague
- Overbroad

18 ☐ Examples

- Examples below show where issues are *generally* addressed:
 - Constitutional Law: Free speech challenges
 - Common Law: Libel and invasion of privacy
 - Statutory Law: Obscenity
 - Administrative Law: Regulation of broadcasting and advertising

19 ☐ Criminal v. Civil Law

- Criminal case:
 - Person is accused of committing an act against society as a whole. Society brings charges. Taxpayers pay the “peoples” lawyer (D.A.) and may also pay for defendant’s attorney
 - Prosecution must prove guilt beyond a reasonable doubt (high standard)

20 ☐ Criminal Terms

- Criminal prosecution
- Grand jury indictment
- Information
- Arraignment
- Pretrial hearing

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- Civil Law:
 - One party (plaintiff) claims injury by another party (defendant). Not necessarily a crime against society, rather a dispute between two parties.
 - Plaintiff files a civil complaint or pleading that details the charges and remedy sought
 - Court is a neutral forum to hear dispute
 - Burden of proof is lower: preponderance of evidence.
 - Some cases are both civil and criminal:
 - O.J. Simpson faced both

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- Torts:
 - Most civil cases that are not a breach of contract are torts - a civil wrong that creates the right for the victim to sue.
 - Torts related to media: libel, slander, invasion of privacy, unfair competition.
 - To win a tort:
 - Plaintiff has to show that there was a wrongful act on the part of the defendant (negligent or malicious intent)
 - Plaintiff has to show she suffered some kind of damages (although the Court sometimes presumes damages. Ex.: Copyright)

23 ☐ Terms for Civil Suits

- Plaintiff
- Defendant
- Pleading or civil complaint
- Demurrer
- Judicial instructions
- Verdict
- Judgment of the court
- Appellant
- Appellee/respondent

24 ☐ Damages

- General damages:
 - Monetary compensation for losses where the plaintiff can't identify a specific dollar amount.
 - Pain and suffering.
 - Embarrassment and loss of reputation
- Special damages:
 - Plaintiff must prove out of pocket expenses.
 - Bills
 - Loss of work
 - Also called actual or compensatory damages

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- Punitive damages:
 - Not based on tangible loss. Intended to punish the person who commits the wrong.
 - Plaintiff has to prove malice (ill will or evil intentions). (Libel defines malice differently)
- Presumed damages
 - Court assumes these occurred without proof.
 - Copyright cases- court may award statutory damages without proof of tangible loss because award is based on legal rules set forth in statutory copyright law.
 - Federal antitrust, advertising law - treble damages are awarded as disincentive

26 ☐ Court Structure

- Common to all 52 judicial systems (Federal, D.C. and 50 states) is the distinction between trial and appellate courts.
- Trial Court:
 - Fact finding (although can review law)
 - Juries

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- Appellate Court:
 - Law reviewing
 - Take facts from trial court and determine if facts were properly considered

- Determine if trial court applied law properly
- Determine if there were procedural errors in trial court.
- If new evidence surfaces appellate court can order a new trial

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30 State Court Structure

■ Some differences among states

■ Most have two trial courts

- Limited jurisdiction i.e. traffic courts
- Court of general jurisdiction.
 - Juries common
 - First court to hear most civil suits for libel, invasion of privacy or obscenity
 - denovo

■ Most states have one or two appellate courts. The name varies. Uses small groups of judges - no juries

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■ Cases without a federal question go no further than the state supreme court. In fact, the SCOTUS cannot tell a state supreme court what the *state* constitution means.

■ Most state judges are elected. Adds an interesting dynamic to judicial objectivity/bias.

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33 Federal Court Structure

■ Hear the following cases:

- **Cases that arise under the U.S. Constitution, U.S. Law and U.S. Treaties**
- **Cases that involve controversies between citizens of different states**
- Cases that involve controversies between two or more states
- Cases that involve controversies between a state and a citizen of another state.
- Cases that involve controversies when the U.S. is party to the suit
- Cases that involve ambassadors and ministers of foreign countries
- Cases that involve admiralty and maritime law

34 SCOTUS

■ Oldest federal court (1789)

■ Only court created by the Constitution and can't be abolished by Congress

■ Number of justices on court has varied, but currently there are eight associate justices and a chief justice of the United States

35 Federal judges

■ All federal judges are appointed by the president and confirmed by the Senate

■ Politics are important in the process - Senate can reject a nomination

(Reagan/Bork)

- Appointment is for life unless impeached (happened 9 times)
- Judges sometimes change their ideology while on the bench

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- SCOTUS can be both an original (fact-finding) and appellate court (much more common role).
- Cases come before SCOTUS in two ways:
 - Direct appeal (litigant may have a right via federal statute for an appeal to SCOTUS)
 - Writ of certiorari- there is no right to cert.
 - The SCOTUS grants cert. if it feels that an important legal issue has been raised.
 - State and federal litigants can apply but they need to have exhausted all other remedies. (one exception is a case started in Federal District Court and refused review at the Federal Appellate Court level can be appealed to the SCOTUS).

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- Granting cert:
 - 4 justices agreement needed to grant cert
 - Orders lower court to send up records for review
 - Most petitions are rejected for workload reasons
 - Once accepted, attorneys for both sides submit legal briefs for the justices to study before the hearing.
 - Then the justices hear oral arguments
 - Friend of the Courts may also submit briefs (amici curiae)
 - Oral arguments are open to the public

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- Justices meet alone and comment on the case (seniority system). Take a tentative vote.
- Someone in the majority writes the opinion (reasons and rationales for the decision)
- Drafts circulate. Opportunity for adding concurring and dissenting opinions.
- Dissenting opinions can be important in close cases - future challenges may draw on these.
- Vote is final when decision is announced.
- Enforcement rests with the executive branch

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- Alternative to opinions:
 - Per curium opinion
 - Unsigned opinion drafted by one or more members of the majority and published as the Court's opinion.
 - Memorandum/order
 - Announces a vote without giving an opinion (may just cite and earlier SCOTUS case as rationale)
- If there is a justice absent and the decision is a tie, then the lower court

opinion stands. There is no opinion and it is as if the case was never heard.

40 ☐ District Courts

- Created by Congress (1789)
- Handles most federal business
- Every state has at least one (94 courts)
- Named for 6 geographical regions
- Each district court is in a circuit

41 ☐ Court of Appeals

- Intermediate court - used to be called the Circuit Court of Appeals
- Created by Congress in 1789
- We are in the 9th Circuit
- 13 Court of Appeals, last 2 are unnumbered:
 - Court of Appeals for D.C. (administrative agencies)
 - Court of Appeals for Federal Circuit - patents, trademarks and other special stuff

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- Each circuit has nine judges but three typically hear a case.
- Important cases might have all nine judges present - en banc hearing
- 95% of cases stop here
- One circuit need not follow the rulings of another circuit but must follow their own

43 ☐ Judicial Review

- Most powerful power of court
- Ability of court to declare any law or gov't action invalid because it violates the Constitution (happened less than 200 times at the federal level and 1200 times at the state level)

44 ☐ Finding Law

- SCOTUS:
 - N. Y. Times v. Sullivan, 376 U.S. 254 (1964)
 - Name reflects parties involved. Plaintiff/appellant listed first.
 - U.S. is abbreviation for U.S. Supreme Court Reports. That is the *government* publication where the opinion is published. There are also private publishers and Lexis/Nexis.
 - 376 refers to the volume of U.S. Reports. They are in the library stacks numerically)
 - 254 refers to the page in the volume where the decision begins.
 - Often before the actual printed decision, there are some explanatory notes.

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- Other federal court citations:
 - Similar structure to SCOTUS citations
 - Federal Reporter (F.)

- Court of Appeals, District Courts and special courts until 1929
- Federal Reporter 2d (F.2d)
 - Court of Appeals and special appellate courts 1929 - 1993)
- Federal Reporter 3d (F.3d)
 - 1993- court of appeals and special appellate courts
- Federal Supplement (F. Supp.)
 - District Courts and other special trial courts 1932 to present.

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■ Examples of federal citations:

- Rosemont Enterprises v. Random House, 366 F.2d 303 (2nd Cir. 1966).
- New York Times v. Sullivan, 376 U.S. 254, 84 S. Ct. 710, 11 L.Ed.2d 66 (1964).
- Walt Disney Prods. v. Air Pirates, 581 F.2d 751 (9th Cir. 1978), cert. denied, 493 U.S. 1132 (1979)
- MLK, Jr. Center for Social Change, Inc. v. American Heritage Prods., 508 F. Supp. 854 (N.D. Ga. 1981)