

Digital Evidence

Week 1 – Introduction to Legal Concepts and Terminology

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Intro

- Who am I?
- Who are you?
 - Name, something interesting about you, where you currently work, any legal experience
- Course Structure / Syllabus Review
- Computer Forensics vs E-Discovery

Overview

1. Introduction to Law
2. Types & Classifications of Law
3. Assignment 1: Research Paper Topics
4. The Constitution
5. The Court System

Learning Objectives

- Understand and define legal concepts and terminology
- Give examples of the different types of laws
- Discuss the parts of the U.S. Constitution
- Distinguish between the different U.S. court systems

Part I

Introduction to Law

What is Law?

- A system or body of rules that must be followed in order to avoid legal penalties
- Law is dynamic and always changing in response to issues within society
- What are a few examples of laws that you are aware of (federal or state)?

Changes in the Law

- What are some reasons a law may change?
 - Technology changes
 - Dating site laws, online privacy laws, biometrics, GPS, human cloning
 - Societal values change
 - Abortion, environmental, marijuana, smoking indoors, immigration, gun control, same-sex marriage, regulation vs deregulation, Jim Crow
 - Community awareness
 - Online privacy, data breaches, online bullying
 - Changing public expectation of legal system
 - Old – Regulate people's behavior
 - New – Uphold individual rights/protect people from harm
- Examples of each?

Who Creates Our Laws?

1. English Source of U.S. Law
2. State & Federal Legislators
3. Executive Branch
4. Administrative Agencies
5. Cities & Counties
6. Courts
7. People

1. English Source of U.S. Law

- Customs and statutes brought by first settlers
- U.S. adopted entire body of English common law after Revolutionary War
- Still used today throughout US (aside from Louisiana whose laws are based on Roman civil law used in France)

2. State & Federal (Congress) Legislators

- Both consist of two chambers:
 - House of Representatives (Lower)
 - Senate (Upper)
- Both are equal partners in that legislation can't be enacted unless both chambers consent

State & Federal (Congress) Legislators (Cont.)

- Proposes bills that if passed become written laws called **statutes** that are compiled into topics called **codes**
 - Penal (criminal) code
 - Vehicle code
- IL State Compiled Statutes:
 - <http://www.ilga.gov/legislation/ilcs/ilcs.asp>
- U.S. Federal Code
 - <https://uscode.house.gov>

State & Federal (Congress) Legislators (Cont.)

- Example:
- IL State Compiled Statutes:
 - <http://www.ilga.gov/legislation/ilcs/ilcs.asp>
- Find the Credit Card Marketing Act of 2009 under “Higher Education” (Scroll down)
 - What does it prevent?
 - Who enforces it?

3. Executive Branch

- Federal, State, and Local levels
 - Ex: President, Governor, Mayor, etc.
- Can veto bills which are proposed as statutes
 - Bill = draft law, Statute = enacted law
 - Legislature can overturn vetoes usually with 2/3 majority

3. Executive Branch (Cont.)

- The U.S. President may issue an executive order which has the force of law and doesn't need congressional approval
 - Must follow constitution
 - Subject to judicial review
 - Can be revoked by next President

4. Administrative Agencies

- Agencies can create laws called **regulations** which are usually authorized by a statute
 - IRS, FTC, FCC, DHS, etc
- Supreme court recognizes administrative agencies as being about to make rules that have the same binding effect as congressional statutes
- There are state level administrative agencies as well

5. Cities & Counties

- Create *written* laws called **ordinances** that are grouped into a **municipal code**
 - Chicago municipal code:
 - <https://www.chicityclerk.com/about-city-government-chicago-city-council/municipal-code>
- ***Unwritten* law is based on case law which is law as established by the outcome of former cases**

6. Courts

- Courts are where legal disputes are heard and decided
- Judges preside over a court and issue a judgment at the end of a case

6. Courts (Cont.)

- A judge may apply a new rule of common law for cases that are first of their kind in a jurisdiction
- A higher court such as an appellate or supreme court may review a rule and render an opinion—which all other lower courts in that jurisdiction will have to follow

7. People

- Many states authorize citizens to propose new laws on ballots called **initiatives** that are voted on by the people if:
 - The proposer obtains a certain number of signatures from registered voters
- Initiatives must also pass the test of constitutionality

Part II

Types and Classifications of Law

Federal vs State Law

- Federal law:
 - Applies to nation and all states
- State law:
 - Apply to, and are in effect for, a particular state
- Conflicts:
 - Constitution has clause with pre-emption that states the federal government wins if state and federal legislation conflict
 - You can follow a state law but if it conflicts with a federal law, the federal govt. can take action against you

Federal vs State Law

- Note: Federal Code can have a clause that doesn't allow the federal government to preempt the state if they choose
- Example: TCPA

(f) Effect on State law

(1) State law not preempted

Except for the standards prescribed under subsection (d) and subject to paragraph (2) of this subsection, nothing in this section or in the regulations prescribed under this section shall preempt any State law that imposes more restrictive intrastate requirements or regulations on, or which prohibits-

- (A) the use of telephone facsimile machines or other electronic devices to send unsolicited advertisements;
- (B) the use of automatic telephone dialing systems;
- (C) the use of artificial or prerecorded voice messages; or
- (D) the making of telephone solicitations.

Federal vs State Law (Cont.)

- Can you think of an example of a conflict???
 - Distribution and possession of Marijuana is a federal crime
 - Some states have passed laws legalizing medical or recreational use
 - Initially feds could prosecute dispensaries
 - Rohrabacher-Farr amendment stopped that
 - Feds can still prosecute buyers but generally only go after large growing operations

Civil vs Criminal Law

- Civil law
 - Federal or state and pertains to civil or private rights and is enforced by civil legal actions
 - May result in monetary damages and/or injunctive relief
- Criminal law
 - Federal or state statutory law that determines what conduct is criminal
 - Penalties could be monetary, jail/prison, death

Question

- Can you be charged criminal and civilly for the same case???
 - Yes
- Can you provide an example?
 - O.J. Simpson
 - Acquitted by jury for criminal case of murder charge
 - Jury found him guilty for wrongful death and liable for monetary damages
- Not all criminal acts can result in civil liability

Private Law

- Rights and duties between private people
 - Contract law
 - Obligations and rights when entering into contracts
 - Tort law
 - Rights, obligations, and remedies for someone who has been wronged or harmed by others
 - Property law
 - Property ownership, tenant issues, etc.
 - Succession law
 - Transfer of an estate
 - Family law
 - Family related and domestic related issues
 - Etc.

Public Law

- Concerns rights and obligations of the public
- Includes:
 - Criminal law
 - Constitutional law
 - Rights provided by federal and state level constitutions
 - Administrative law
 - Government protecting consumers and public from abuses by private businesses
 - International law
 - How governments interact
 - Terms enforced with treaties or conventions

Procedural and Substantive Law

- Procedural law
 - Procedures and rules for processing criminal and civil matters through either a federal or state court system
 - Rules for administrative law hearings as well
- Substantive law
 - Defines duties, establishes rights, and prohibits wrongs by governing how members of a society should behave
 - Ex: Prohibits assault, requires stockbroker to be licensed, requires license plate registration, etc.

Case Law

- Keep in mind, the prior types of law were all written law
- Case law is unwritten law that we discussed earlier and is based on a judge applying a new rule for common law based on the first case of its type within that judge's jurisdiction

Part III

Assignment 1: Research Paper Topics

Research Paper Topics

- Review assignment on Canvas
- Federal Laws:
 - <https://www.congress.gov/advanced-search/legislation>
- State Laws:
 - Each state's legislature website generally has a search tool to view permanent laws/statutes
 - If there is an option—choose “Consolidated”
 - Example for New York:
 - <http://public.leginfo.state.ny.us/lawssrch.cgi?NVLWO:>

Part IV

The Constitution

What is a Constitution?

- Webster Definition:
 - “The basic principles and laws of a nation, state, or social group that determine the powers and duties of the government and guarantee certain rights to the people in it.”
- U.S. Constitution provides national rules of government, fundamental laws, and established basic rights and principals of justice for citizens

U.S. Constitution – Signed Sept 17, 1787

- Contains 7 articles:
 - Established three branches of federal govt. (Executive, Legislative, and Judicial) as well as checks and balances between them
 - Rules and powers for States, Congress, President, etc.
 - Process for amendments
 - Defines Constitution as supreme law of the U.S.

U.S. Constitution Amendments

- Currently consists of 27 amendments
 - Only 25 are functioning
 - Prohibition and repeal of prohibition are not
- First 10 are called the Bill of Rights

U.S. Constitution Amendments

- New amendments are proposed by Congress with $2/3^{\text{rds}}$ majority votes in both the House and the Senate, or
- By a constitutional convention of $2/3^{\text{rds}}$ of the State legislatures (which has never happened)
- President not involved in process
- New amendment only becomes part of U.S. Constitution if it is ratified by $3/4^{\text{ths}}$ of the U.S. States

U.S. Constitution Amendments

- Answers questions such as:
 - Abortion rights
 - Right to bear arms
 - Search and Seizure
 - Slavery
 - Voting rights
 - Federal Income tax
 - Rights for free speech
 - Etc.

U.S. Constitution

- Let's review the Bill of Rights amendments
- What is the 4th amendment?
 - Bars the government from unreasonable search and seizure of an individual or their private property
- Nice summary:
 - <https://www.archives.gov/founding-docs/bill-of-rights/what-does-it-say>

Constitutional Law

- Interpretation and implementation of the U.S. Constitution
- Looks at fundamentals of how the federal government exercises its authority
- Judicial review allows U.S. Supreme Court to nullify any federal or state statute that violates the U.S. Constitution

Part V

The Court System

Courts

- Courts are publicly accessible facilities where legal disputes are heard for individuals, businesses, and government agencies
- U.S. Constitution created the judicial branch and established as well as defined the jurisdiction of the Supreme Court and lower federal courts

Court Personnel and Guests

- Judge:
 - Presides over a court
- Clerk:
 - Maintains court records, administers oaths to witnesses and juries, maintains exhibits
- Parties in dispute:
 - Criminal Case: Government & Defendant
 - Civil Case: Plaintiff & Defendant
- Attorneys:
 - Criminal Case: Government Prosecutor & Defense attorney
 - Civil Case: Government Attorney or Plaintiff attorney & Defense attorney

Court Personnel and Guests (Cont.)

- Witnesses
 - Fact Witnesses:
 - An eyewitness or person providing facts without particular expertise
 - Expert Witnesses:
 - Professionals in their fields that testify about the legal matter in question
 - Character Witnesses:
 - Testify about the character of the person on trial
 - Generally used by defense in criminal trials
 - Hostile Witnesses:
 - Is openly antagonistic towards party that called them
 - Attorney can get permission from judge to treat their own witness as hostile and can then ask them leading questions

Court Personnel and Guests (Cont.)

- Court Reporter:
 - Records the proceedings of the court
- Public
 - Except for juvenile hearings, most adult hearings are open to the public
- Media
 - Media may or may not be allowed in court and have to request additional permission from a judge to use a camera or video camera

Types of Courts (Federal and State)

1. Trial Court
2. Appellate Court
3. Supreme Court

1. Trial Court

- Used to handle initial proceedings of a legal dispute for the following purposes:
 - Determine facts at issue
 - Determine which rules of law should be applied to the facts
 - Apply those rules to the facts
- Outcome of trial based on:
 - Facts
 - Applicable laws
 - Decision of judge or a jury (if a jury trial is requested)

Types of Trial Court Disputes

- Civil Case:
 - Private dispute between parties
 - Plaintiff files lawsuit against defendant
 - Judge or jury determines if defendant is liable for damages or not
- Criminal Case:
 - Government files criminal charges against a defendant in violation of a penal statute on behalf of the public
 - Judge or jury determines if defendant is innocent or guilty

2. Appellate Court

- The losing party of a trial court's final determination can appeal the decision to an Appellate Court
- Three or more judges called justices review the ruling of the trial judge for potential substantive and procedural errors
- Reviews written briefs by attorneys of both sides regarding how the law was correctly or incorrectly applied

2. Appellate Court

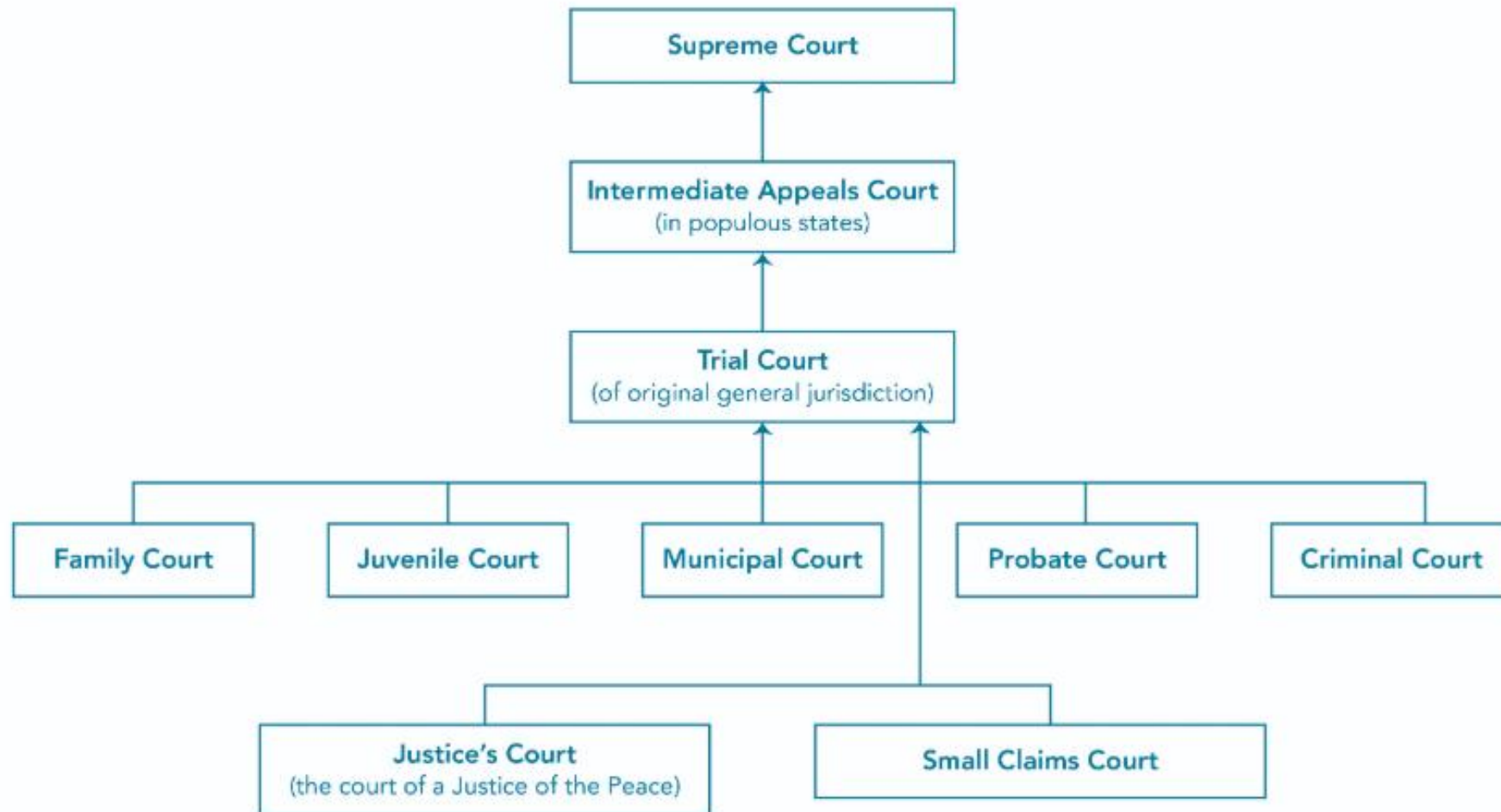
- If justices determine trial court made serious errors and incorrectly applied or interpreted the law, the appellate court may either:
 - Modify or reverse the decision
 - Remand (return) the case back to the trial court for a new trial or other proceedings

3. Supreme Court

- Highest court of last resort
 - U.S. Supreme Court – Federal level
 - IL Supreme Court – State level
- Parties can request a Supreme Court to appeal an Appellate Court decision
 - Supreme court decides if it wants to hear the case or not
- If accepted, the Supreme Court Justices issue a writ of certiorari hear and vote on the decision and majority rules

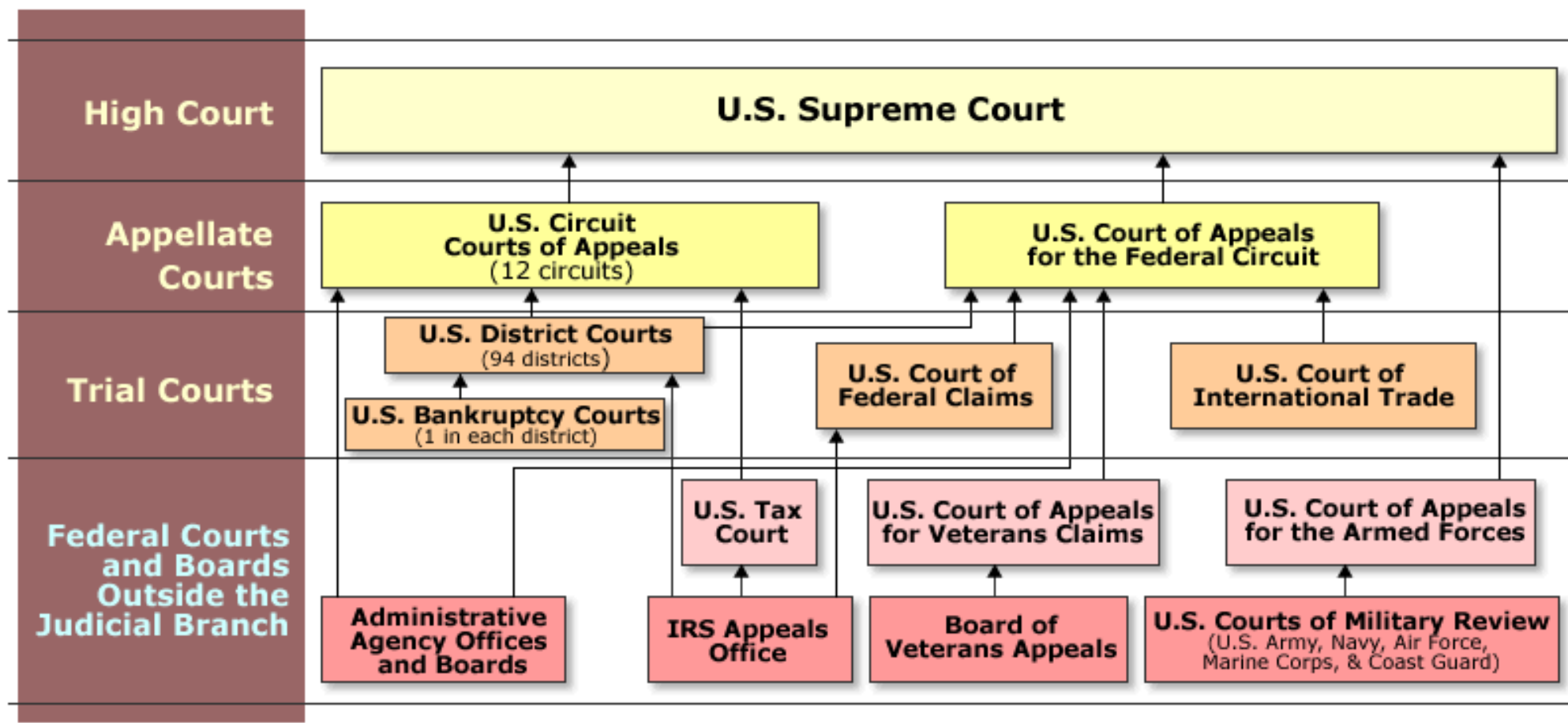
State Court Systems

A Typical State Court System



Federal Court Systems

STRUCTURE OF THE FEDERAL COURTS



Jurisdiction

- Geographic area or persons/subject matter a court has the power to make legally binding decisions over
- Plaintiff in civil case will make strategic decision as to where to bring a case
 - Federal or State Court
 - What district, etc.
- Government files civil and criminal cases in their jurisdictions where crime occurred

Text References

- McKinsey, J., & Burke, D. (2015). Carper's Understanding the Law (7th ed.). Stamford, CT: Cengage Learning.
- Feinman, J. (2018). Law 101 (5th ed.). New York, NY: Oxford University Press.

After Class

- Review and understand this slide deck on Canvas
- I will send out directions shortly about your research paper topics that are **due before our next in-person class on 1/26**
 - No in person class next week due to MLK, Jr. Day
- I will post a video next week that continues today's lecture. Please review prior to our next in-person class on 1/26
 - Read Chapter 1 of the course textbook prior to next class on 1/26

Questions???

