

### TOPIC 3: COURT SYSTEM

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#### Overview

This chapter discusses the purpose, design, and members of the state and federal court systems (collectively, “court system”). It explores the authority for the court system under the Constitution; the authority of the court to hear types of disputes; the ability to exercise control over individuals; and the role of administrative, trial, and appellate courts. Understanding these aspects of the court system is foundational to internalizing how laws are developed and enforced against those governed. Recognizing the authority for state and federal administrative and judicial courts, aside from relating valuable civic knowledge, provides an understanding of the systemic approach developed to administer laws as they affect business practice. Further, understanding the structure of the court system allows for strategic decision-making by businesses manages to avoid legal violations and enforce their legal rights.

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#### VIDEO LESSON - INTRODUCTION



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### TOPIC 3: COURT SYSTEM - QUESTIONS & ANSWERS

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

The authority for the federal and state judicial systems is found in the US and state Constitutions. Below is a breakdown of the courts as authorized under Articles I, II, and III of the US Constitution. State constitutions are modeled after the US 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 US 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. Pursuant to Articles I and II, all members of Article III courts and tribunals are appointed by the President and are confirmed by vote of the Senate.

- **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 the Senate approve judicial nominees? Can you recall any instances where the Senate has refused to confirm a Presidential nominee to a federal court?
- **Practice Question:** At the end of the year, it is expected that there will be approximately 150 federal judgeships open. The President of the United States has assembled a list of nominees for the positions. His list is very well planned and all of the candidates have the appropriate credentials for the position. Can the President rest assured that all of his nominees will receive the nominated judicial position?
- **Resource Video:** <http://thebusinessprofessor.com/article-iii-courts/>

- **Article I** - Article I of the Constitution creates the legislative branch of the Federal Government. Pursuant to the authorization of Article I, Congress has the authority to create inferior courts under the US Supreme Court. Also, Congress has the authority to create legislative courts and a limited ability to delegate law-making authority to other branches. The Supreme Court has ruled that Congress has the latitude to delegate regulatory powers to executive agencies as long as it provides an "intelligible principle" to govern the agency's exercise of the delegated authority. As such, Congress delegates to the administrative agencies the responsibility for formulating regulations to effectuate and expand upon the statutes passed by Congress. 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:** Congress passes a federal act easing the restrictions on the sale of securities by private companies. Congress outlines the specific purposes of the Act, but fails to provide any procedural mechanisms for carrying out its function. Congress, in the Act, direct the Securities and Exchange Commission (an Independent Federal Agency), to create regulations sufficient to carry out the statutory provisions. Where does Congress receive the authority to make this delegation and what statutory level of guidance is required to make this delegation constitutional?
- **Resource Video:** <http://thebusinessprofessor.com/authority-for-judiciary-article-i-of-us-constitution/>

- **Article II** - Article II of the Constitution establishes the executive branch. It grants the President authority to preside over certain administrative agencies and legislative courts created by Congress. 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” based upon their authorization. Legislative courts are courts of special jurisdiction created by Congress to hear special matters.
  - **Example:** 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:** The Internal Revenue Service (IRS) is an executive agency under the purview of the President of the United States. John receives a letter from the IRS explaining that he has income tax liability far beyond what John believes is accurate. After disputing the IRS’s tax assessment, John decides to bring a legal action in the United States Tax Court challenging the tax amount. What is the authority of the US Tax Court and does it have authority to hear the matter of John’s tax assessment?
- **Resource Video:** <http://thebusinessprofessor.com/authority-for-judiciary-article-ii/>

- **Article IV** - Article IV courts are US Territorial Courts, such as those of Guam, Northern Mariana Islands, and the US 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:** In the US Territory of Guam, Hanna is the victim of a crime when someone steals her automobile. What laws would be effected in this scenario and how would this situation differ from a similar occurrence in California?

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

### *State System*

- The US Constitution, pursuant to the 10<sup>th</sup> Amendment, provides for both federal and state governments. While the US Constitution provides the authority for federal courts, a state's constitution provides the authority for state courts. Generally state constitutions follow a model that is very similar to that of the US Constitution and allow for judicial, legislative, and administrative courts.

- **Discussion:** Why do you think state constitutions follow a structure that closely resembles that of the US Constitution? Is there any requirement for state judiciaries to function similarly to federal courts?

## **2. What is the authority for Article III & Article I federal courts?**

### *Article III Federal Courts*

- **US Supreme Court** - Article III of the Constitution establishes the US Supreme Court as 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 the decisions of the highest state court and decisions from all federal appellate courts.
- **Federal Appellate Courts** - These courts serve as the appellate courts for matters decided by judge or jury in the District Court. There are 13 federal appellate courts consisting of 11 enumerated US Circuit Courts of Appeal, the District of Columbia Circuit, and the Federal Circuit.
- **Ancillary Federal Courts** - These are Article III federal courts with special authority and vested with specific jurisdiction by Congress. These ancillary courts include: US Foreign Intelligence Surveillance Court of Review; US Foreign Intelligence Surveillance Court; US Court of International Trade, US Alien Terrorist Removal Court.
- **District Courts** - These are the Article III trial courts for the federal system. There are approximately 94 district courts spread throughout the United States. They do not follow state boundaries; rather, they are positioned within pre-established federal jurisdictions. There are also courts of limited jurisdiction, known as federal magistrate courts, which exist in support of the federal district courts.

- **Discussion:** Why do you think that there are such fewer federal trial and appellate courts than in the state court systems? How many cases does the US Supreme Court hear in a year? Does this number surprise you? Why or why not? What do you think is the reasoning behind the creation of special ancillary courts?
- **Practice Question:** Meredith is involved in a civil trial in the US District Court located in the state of Maryland. At the conclusion of the trial, she appeals the court's decision to the appropriate appellate court. Which Circuit Court of Appeals would be charged with reviewing Meredith's request for appeal?

- **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 II to handle special jurisdictional matters. Administrative courts are those created to adjudicate disputes of a particular administrative agency.

- **Note:** Examples of legislative and administrative courts include: D.C. judiciary, D.C. Court of Appeals, D.C. Superior Court, US Court of Appeals for Armed Forces, (Several Military courts of Appeal), US Court of Appeals for Military Claims, Armed Services Board of Contract Appeals, Civilian Board of Contract Appeals, Board of Immigration Appeals, US Immigration Courts, Board of Patent Appeals and Interferences, Trademark Trial and Appeal Board, US Postal Service Board of Contract Appeals, US Court of Federal Claims, US Tax Court, US Bankruptcy Courts, Social Security Administration Office of Disability Adjudication and Review, US Merit Systems Protection Board, Board of Veterans’ Appeals, US Courts-Martial, Guantanamo Military Commissions, and US Court of Military Commission Review.
- **Practice Question:** Lawrence, a member of the US Army, is charged with deserting his unit at Fort Campbell, Kentucky. He is later apprehended by state police and extradited back to military control. The military decides to bring charges against him for the crime of desertion under the military code of justice. What is the authority for bringing criminal charges against Lawrence and who oversees the process?
- **Resource Video:** <http://thebusinessprofessor.com/article-i-federal-courts/>

### Article IV Courts

These are territorial courts specially created to act as the court of general jurisdiction in select federal jurisdictions. These courts have jurisdictions similar to that of a federal district courts; however, they also exercise subject-matter jurisdiction over matters typically reserved to state and local courts in a jurisdiction. These courts are designated to a specific circuit court of appeals for all appeals from the trial court.

- **Example:** With regard to appellate matters, the Virgin Islands district court falls under the 3<sup>rd</sup> Judicial Circuit Court of Appeals, while the district courts of Guam and the Mariana Islands fall under the 9<sup>th</sup> Circuit Court of Appeals.
- **Discussion:** State governments generally create laws pursuant to its police power. The Federal Government generally creates laws pursuant to the Commerce Clause or Taxing and Spending Power under the US Constitution. How do you feel about the creation of federal courts to hear matters traditionally controlled under state law?

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

State governments establish courts pursuant to Articles III and I of their respective state constitutions. The general structure for the state court system is outlined below.

### *Article III State Courts*

- *Supreme Court* - The State Supreme Court is generally the highest court in a 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 to ensure the correct or appropriate application of law - in accordance with the state's constitution. Cases generally go before the Supreme Court *via a Writ of Certiorari* or pursuant to request for appeal by a losing party. This process is similar to that of the federal system. 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. 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 present in the record of trial.
- *Superior Court* - 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 empowered by the state constitution 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 jurisdiction of subordinate trial courts. These courts generally employ juries as triers of fact.
- *Intermediate Trial Court* - Nearly all states have an intermediate trial court that has limited jurisdiction over certain types of cases. This 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 courts often have special limitations, such as no right to jury trial and special court rules. 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 a 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. The geographic jurisdiction is generally limited to within the city or town limits.
    - *Example:* Common municipal court cases include citations (tickets) based on speeding or noise violations.
  - *Magistrate Court* (“Small Claims Court”) - This is a special court of limited jurisdiction to empowered to hear minor criminal offenses and small civil disputes. Magistrate court is important for small businesses. It handles much of the litigation between businesses and customers that falls within a jurisdictional limit (commonly \$10-20K or less). The benefits of the magistrate court are that it generally has very informal

court procedures and low court costs.

- *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. These courts apply "equitable maxims", rather than statutes, to reach a fair and just result. 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 may act as a special form of mediator to certain disputes between individuals and businesses.
  - *Example:* States that have courts of equity include: Delaware, New Jersey, Mississippi, South Carolina, and Tennessee.
- *Business Courts* - States increasingly create a separate court or docket within the trial system to hear business law matters. These courts recognize the need to employ judges who are subject-matter experts in business principles.

### 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, etc.

- **Discussion:** How do you feel about state's developing such extensive courts of special jurisdiction? Do these special courts provide any advantages or disadvantages for parties appearing before them?
- **Resource Video:** <http://thebusinessprofessor.com/state-supreme-courts/>

### 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 federal money-laundering charges, as it falls outside of its 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.
  - *Note:* Federal District Courts are trial courts of general jurisdiction.
  - *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.
- *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. Do you believe it is important to have state courts of general jurisdiction? Why are courts of limited jurisdiction necessary?
- **Practice Question:** Michelle hires Winston as a general contractor to build her home. Winston does a very sloppy job, which leads to Michelle suing him in state court for breach of contract and damages of \$25,000. She sues in an intermediate trial court with a jurisdictional limit of \$25,000. The court does not allow for a jury trial. Winston is not happy with the judge serving as trier of fact in the case. What may or should Winston do in this situation?
- **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 federal court has subject-matter jurisdiction over a case, it means that the 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 US 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, suing someone for trespass is a state-law tort generally 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 to the extent of the legislative or executive authority applicable to the court's subject matter. The court cannot hear matters beyond the scope of that jurisdiction. For example, a bankruptcy court cannot adjudicate a securities law dispute.

*Federal Jurisdiction when the US is a Party*

- Federal courts have exclusive subject-matter jurisdiction in civil or criminal lawsuits against the United States or its representatives. That is, any case in which the US Government is plaintiff or defendant, the matter can only be heard by a federal court. To illustrate, a 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 action, the matter would also fall under federal-question jurisdiction, as the plaintiff is alleging that the action by the Federal Government is unconstitutional.

*Suits Between States*

- Federal courts have exclusive 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 discriminate 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 foreign citizens or businesses.

*Diversity Suits between Citizens of Different States (Civil Cases)*

- Federal courts have non-exclusive subject-matter jurisdiction in civil lawsuits between citizens of different states, if certain conditions are met. In this situation, allowing for federal subject-matter jurisdiction prevents one party from having an unfair advantage by being subject to another state's judiciary. It allows citizens of different states to go to trial in federal court, even if the claims are pursuant to state law. The special conditions for this type of jurisdiction are as follows:
  - *Diversity of Citizenship* - Parties must be from different states at the time of filing the action. 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 a 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 plaintiffs 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:** Milton enters into a contract to Cara to purchase a private jet. The jet is valued at \$7 million dollars in the contract. The terms of the contract state that Cara warrants that the aircraft meets all federal aviation

standards. Two months after the sale of the aircraft, Milton learns that the inspections records and mechanical function tests prescribed by the Federal Aviation Administration have been falsified. Milton is exploring his options for suing Cara in state and federal court. Cara is from Florida and Milton is from Mississippi. What subject-matter jurisdiction considerations exist for bringing an action against Cara in state or federal court?

- **Resource Video:** <http://thebusinessprofessor.com/federal-subject-matter-jurisdiction/>

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

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:

- an act violates a state criminal law and was committed within the state;
- a civil dispute involves a state law, or
- a citizen of the state is a party to a civil action.
  - *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.

- *Example:* Magistrate court in Georgia, for example, cannot hear a lawsuit alleging more than \$15,000 in damages because the amount exceeds the limits of its jurisdiction. South Carolina has a special circuit for family law cases.

- **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:** Lilly is from Texas. While in Arizona, she gets into a physical altercation with Mitchel. She is the aggressor and injures Mitchel very badly. Lilly leaves Arizona and returns to Texas. Mitchel presses criminal charges against Lilly in Arizona. Further, he seeks to sue her in civil court to recover damages for the injuries he suffered. What are the grounds for the Arizona court exercising subject-matter jurisdiction over the criminal and civil law actions?
- **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. 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 or bankruptcy. Likewise, a federal trial court may hear a state-law case under certain circumstances. For a federal court to hear a state matter and vice versa, courts must have subject-matter jurisdiction over some legal issue in the case. This generally occurs in two circumstances: 1) the case may involve a mixture of state and federal law, or 2) the the case is a “diversity action”. If a case involving federal law also involves issues of state law, the federal court may 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. Lastly, a federal court has subject-matter jurisdiction over diversity cases that involve only state law. The federal court will apply the substantive law of the state in which the court is located. The court will apply federal procedural law unless the federal procedural law would likely change the outcome of the case or is “outcome determinative”. In such event, the state procedural law will apply. These rules are known collectively as the “Erie Doctrine”.

- **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 a good argument to allow greater ability of state and federal courts to hear issues solely involving the other’s law?
- **Practice Question:** Zora hires Isabelle as a contractor to design and manufacture a new baby product. Zora files and successfully prosecutes a utility patent on the product. In the contract with Isabelle, she agrees not to copy, trade, or otherwise employ the patented work. Isabelle later takes Zora’s design and begins producing a knock-off version of the product. Zora brings a legal action against Isabelle for patent infringement. Patent law is exclusively federal and preempts all state law. Zora also sues Isabelle breach of contract under New York Law. What are the subject-matter jurisdiction issues if Zora sues Isabelle in federal district court? What are the issues if Zora sues in state court?
- **Resource Video:** <http://thebusinessprofessor.com/can-state-courts-hear-federal-matters-and-vice-versa/>

### *Appellate Courts*

Federal trial court decisions are appealed to the Federal Circuit Court of Appeals or *via* special writ to the US Supreme Court. Federal District Courts and Courts of Appeal cannot review decisions from state court cases. Also, state trial or appellate courts can never undertake appellate review of decisions from federal 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 US Supreme court may review decisions of state supreme courts. If the court’s decision appears to conflict with federal law, (such as a statute, treaty, or the US Constitution). US Supreme Court review of state supreme court decisions is most common when the state court upholds a state law that could potentially violate the appellant’s constitutional rights. In such a case, the US Supreme Court may issue a *writ of certiorari* or accept a request for appeal of the state Supreme Court’s decision by the losing party.

- **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 US 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:** Nancy brings an action against the Georgia State Department of Revenue by suing the Commissioner Andrea. Andrea wins the civil lawsuit based upon an award of summary judgment. Nancy, unhappy with the result, believes that she lost the case because the court showed favor to Andrea as a state official. She does not believe that appealing the decision would do any good, so she files a request for appeal to the Federal Circuit court seeking to overturn the state court's decision. Is this appeal procedure possible? Why or why not?
- **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, along with the complaint, 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 differ between state and federal courts and are discussed 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:** Clarence lives in California. While he was visiting South Carolina, he was driving while intoxicated and crashed his vehicle. The wreck injured a bystander, Devon. Clarence, afraid that he would be arrested, quickly fled the scene of the accident. The next day he returned to California. What are the personal jurisdiction issues if the prosecutor's office in South Carolina seeks to bring criminal charges against Clarence for driving under the influence and leaving the scene of an accident? What are the personal jurisdiction issues if

Devon wishes to sue Clarence?

- **Resource Video:** <http://thebusinessprofessor.com/personal-jurisdiction-2/>

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

Rule 4 of the Federal Rules of Civil Procedure lays out the process for a federal court establishing personal jurisdiction over a defendant. In summary, the federal court must employ the state law governing personal jurisdiction that is applicable in the state in which the federal court is located. The federal court adopting the state's procedural law must subject the defendant to the same procedures as if the case were in state court. That is, 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 statute 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:* If the subject-matter of the case is exclusively federal, the Federal Rules of Civil Procedure allow the federal court to exercise personal jurisdiction over the defendant regardless of where she is located. 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 its 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:** Lindsay, a Florida resident, entered into a services contract with Rachel, a Georgia resident. Rachel later failed to perform and breached the agreement. As a result of Rachel's breach, Lindsay claims to have suffered damages in the amount of \$100,000. Lindsay plans to bring a civil action against Rachel in the Federal District court located in Georgia. At the time, Florida allowed process servers to deliver service of process, but Georgia required service of process to be carried out by the local Sheriff's office. Lindsay hired a Florida process server to deliver service of process to Rachel. What is the personal jurisdiction issue in this case?
- **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 court is governed by the individual state's law concerning service of process. Service of process must generally take place (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, known as a "long-arm statute", allowing service of process on defendants outside of the state.

- *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 in 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:** Quinton decides to sue Maria for failing scratching his new car in the parking lot of the grocery store. Quinton files a court action and pays a process server to deliver the summons and complaint to Maria. The process server tries for weeks to locate Maria but is unsuccessful. Will Quinton be able to sue Maria if he cannot deliver the summons and complaint?
- **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 the state. A state’s long-arm statute must, however, comply with the 14<sup>th</sup> 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 her 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 on a defendant *via* its long-arm statute include when: she is a resident of the state; she owns property in the state that is the subject of the controversy; or she committed the controversial activity in the state. A business entity is subject to jurisdiction if it 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 does not offend notions of fair play and substantial justice.

- **Note:** Recall, federal courts use the law of the state in which it is located for serving process on a defendant. 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 US 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 a business that regularly ships products to customers in a state but does not have a physical presence in the state and is not registered to do business?
- **Practice Question:** Elena lives in Vermont and has a small business that manufactures a product for pets and sells it to retail establishments throughout the United States. She takes orders on her website and ships her product through a third-party logistics company. Gary, one of her retailers in Montana, is not happy with the quality of her product and demands a refund. When Elena refuses to refund Gary’s money, he sues her in Montana court. The Montana long-arm statute allows for service of process on a civil defendant in any state if the defendant is a business entity and ships any products into the state of Montana. What constitutional argument could Elena make

to defend against being served with process and called into court in Montana?

- **Resource Video:** <http://thebusinessprofessor.com/state-long-arm-statute/>

## 12. What is “Venue”?

Venue is the physical location (within the state or federal circuit) where the trial is conducted. A state may contain more than one federal courthouse. Further, states generally have 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 generally the courthouse 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 (such as the tort or breach of contract) took place. Alternatively, it could be the locale where the plaintiff or defendant resides. If the parties live in different towns, 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 reasons for transferring the venue of a trial 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 in which 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:** Beth is a resident of Sonoma County in Northern California. Samantha is a resident of San Diego County in Southern California. Last month, while visiting Disney Land, which is located in Orange County in Southern California, Samantha accidentally hit Beth with her car when she was crossing the parking lot. Beth suffered some injuries and decides to sue Samantha in the Sonoma County Superior Court for damages. What is the likely result if Samantha disputes venue for the court proceeding?
- **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
- Private and Public Lawyers (and their staff)

These individuals are primary members of the judicial system based upon an individual’s Constitutional rights. The 6<sup>th</sup> and 7<sup>th</sup> Amendments grant an individual charged with a crime or subject to a civil penalty of \$75 or more the right to trial by a jury of her peers. Articles I and III account for the authority to create a federal court system under the direction of judicial

officers or judges. Due Process rights allow an individual the right to representation in a judicial proceeding. The distinct roles played by judges, jurors, and attorneys are discussed individually in separate sections.

- **Resource Video:** <http://thebusinessprofessor.com/primary-players-in-judicial-system/>

#### 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).
- *US 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, holding probable 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 (Justices) 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 (education and training) for judges presiding over a particular court?
- **Practice Question:** Given what you know about the federal and state legal systems, what are the similarities and differences between the types of judges in the state and federal system?
- **Resource Video:** <http://thebusinessprofessor.com/types-of-judges-in-state-and-federal-judiciary/>

## 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, she observes and applies constitutional limitations and guarantees of due process of law. This includes applying procedural law, such as the admission of evidence at trial.
- *Applying Substantive Law* - The judge identifies applicable rules of law to apply in each case. In essence, the judge tells the jury what law to 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 judge may also serve as the finder of fact (the typical role of the jury). A judge often assumes this role in lower-level courts or when the defendant requests trial by judge alone. For example, the judge assumes the role of fact finder in traffic or small claims courts.
- *Applying Equity* - Equity is the inherent power of a judge to act in accordance with principles of fairness or justice when the law does not provide an adequate remedy through money damages. Equity allows the judge to order parties to take actions to achieve a fair and just result.

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:** Lisa is a superior court judge in Alabama. In a criminal trial, the defendant requests a trial by

judge alone and agrees to forego her right to a jury trial. Lisa is concerned that serving as fact-finder in the case would cause issues for appeal and denies the defendant's request. During the trial, the defense counsel makes a motion to exclude from evidence a confession signed by the defendant. Lisa overrules the motion and allows introduction of the confession to the jury. At the end of the presentation of evidence, Lisa rejects the defense counsel's proposed jury instruction and delivers to the jury her own explanation of the substantive law to be applied to the facts. Explain how these activities fit within the core functions of a trial court judge.

- **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. It does not generally make determinations about 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, the appellate court must assume that is true. The appellate court judges review the case for legal inadequacy and serve 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, 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, 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 the 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 another part 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:** Lisa is a superior court judge in Alabama. In a criminal trial, the Defendant request for a trial by judge alone and agrees to forego his right to a jury trial. Lisa is concerned that serving as fact-

finder in the case would cause issues for appeal and denies the Defendant's request. During the criminal trial, defense counsel makes a motion to exclude from evidence a confession signed by the defendant. Lisa overrules the motion and allows introduction of the confession to the jury at trial. At the end of presentation of evidence, Lisa instructs rejects defense counsel's proposed jury instruction and delivers to the jury her own explanation of the substantive law to be applied in the case. On appeal, what legal issues will the appellate court review in this situation?

### *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. That is, they 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. Appellate judges' power to overturn the law is a critical piece of the checks and balances system. As a result, the legislators who passed the law must start over if they wish to pass another law to achieve their intended purpose.

- **Discussion:** What do you 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 law?
- **Practice Question:** The US Congress passes a law requiring all individuals in the United States to apply for a driver's license, regardless of whether the individual ever intends to drive a vehicle. Applying for the license takes time and costs money. Any individual who fails to apply for the license will face an income tax penalty. Proceeds from these penalties will be used to fund federal highway construction projects. Helen is not happy about the new law and files a federal court action against the director of the Federal Highway Administration (FHWA). The trial court grants summary judgment to the FHWA Commissioner; so, Helen appeals to the Circuit Court of Appeals. In this scenario, what legal issues will the appellate court review?

### *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 or should have been 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, appellate judges 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:** Adam lives in rural Louisiana. One day, he navigates his small fishing boat through a series of small creeks that eventually open up to a lake. While fishing on the lake, the local game warden approaches Adam and issues him a citation. Adam is now facing charges for trespass for unlawful entrance on a state-controlled lake and illegal fishing. The citation is based upon a Louisiana statute authorizing state-controlled wildlife areas and the restriction of those areas to public use. Adam, a savvy business student, begins researching the state statute and its legal history. He finds a state appellate court opinion stating that the Louisiana statute cannot lawfully prohibit access to the water resources that are accessible by a navigable waterway. Navigable waterways are controlled by federal law, and any state law in conflict is preempted. If Adam presents this case to the trial court, would it potentially have an effect upon the outcome of the trial? Why or why not?

### 17. How do cases arrive before the appellate courts?

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

- *US Circuit Courts of Appeals* - The US Courts of Appeal hear cases appealed from the Federal District Courts. Like all appellate courts, the Courts of Appeal review cases to determine:
  - whether the correct law was applied, and
  - whether it was applied correctly, and
  - whether the law, as applied, violates rights provided by the US Constitution.

Generally, appeals derive from 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:** ABC, Inc., is facing a civil lawsuit in federal district court initiated by one of its employees for allegedly failing to provide the required disclosures about the company-sponsored retirement plans. The applicable federal law lays out numerous standards for plan disclosure and provides that a company that fails to comply will be subject to actual and statutory damages. ABC believes that the law is ambiguous and does not require the disclosures identified by the plaintiff. During trial, ABC moves for the court for a directed verdict in its favor. The court denies the motion. ABC knows that continuing to a jury trial will cost lots of money and that a jury is always likely to find in favor of an employee over an employer. Nonetheless, ABC does not want to settle the case and leave open the question of whether it must comply with this level of disclosure. What are ABC's options regarding appealing any outcome from the trial court?
- **Resource Video:** <http://thebusinessprofessor.com/appeal-to-us-federal-circuit-court/>

- *US Supreme Court* - The US 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 is pursuant to appeal by any party to a case. Generally, the court will only accept appeals of issues that 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 or by any federal court. As the highest appellate court, decisions by US Supreme Court are final. That is, its decisions cannot be appealed further. Also, its 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 US 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:** Gerard, a citizen of State A, does not agree with a state statute allowing state agencies to ask employees about political affiliation as part of a job application. He believes that employers ask political affiliation questions as a subtext for discriminating based upon social belief and the expression of those beliefs. He files a federal action in the US District Court challenging the statute. The court defers action on the case and recommends immediate appeal based upon questions of constitutionality of the statute. At this point, Gerard is confident that his view will prevail in the Circuit Court, because a separate federal circuit court recently ruled on a similar issue in a way that is favorable to or recognizes Gerard's argument. Surprisingly, the local federal circuit rejects Gerard's arguments and holds the statute to be constitutional. Gerard immediately requests appeal to the US Supreme Court. What factors and procedures will affect the Supreme Court decision of whether or not to accept the case?
- **Resource Video:** <http://thebusinessprofessor.com/appeal-to-us-supreme-court/>

- *Appeals from Legislative and Administrative Courts* - In general, parties appearing before legislative courts have direct rights of appeal to Article III Courts (District or Circuit Courts). The ability to appeal, however, is not generally immediate. A party wishing to appeal a legislative court's decision must first appeal to the agency administrator or 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 parties appearing before Article I courts must still have the ability to appeal the court's decision to an Article III court. Otherwise, cutting off access to an Article III court may be unconstitutional as a violation of due process rights.

- **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 administrator or 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:** Meredith wants to file a civil action in federal court against her employer, ABC, Inc., for sex discrimination. She contends that ABC generally provides higher compensation to men than women for the same type of work and that she is a victim of this illegal treatment. She files a claim with the EEOC, the administrative agency charged with investigating claims of sex discrimination under federal law. She does not want to wait on the EEOC to undertake its investigation, so she immediately files a civil action against the employer in the federal district court. What will likely be the result of this situation?
- **Resource Video:** <http://thebusinessprofessor.com/appeal-from-administrative-courts/>

- *Appeals in the State Court System* - The appellate 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 appeals 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:** Wallace is charged with the misdemeanor crime of public intoxication. He contends that he is not guilty, as his intoxication was from a prescribed medicine and was not voluntary. The prosecutor brings the case in an intermediate trial court of limited jurisdiction that does not allow for a jury trial. Wallace is aware that he can ask for a jury trial and the case will be removed to the state's superior courts. He decides to proceed to trial in the court of limited jurisdiction. Ultimately he is convicted and ordered to pay a fine. Wallace believes that he would have prevailed in the case if there had been a jury. What are Wallace's options at this point?
- **Resource Video:** <http://thebusinessprofessor.com/appeal-of-state-court-decisions/>

## 18. What is the role of “Jurors” in the judicial system?

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

- *Civil Cases* - The 6<sup>th</sup> and 7<sup>th</sup> 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 do not allow for a jury trial. If the parties want a jury trial, however, 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 potential imprisonment afford

her a jury trial. Very minor criminal infractions that involve a fine and no potential for incarceration often do not allow for a jury trial. For example, a citation for speeding 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:** Carla has a dispute with her electrician, Dan, over her bill for electrical work. Carla claims that Dan quoted a price of \$300 for the work and then increased the price to \$750 after the work was completed. She does not want to pay the higher amount. Dan ultimately sues Carla in the local magistrate's court, which does not allow for jury trials. What are Carla's options in this situation?
- **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 vary 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.
  - **Note:** Most states require that all 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. Currently, courts in only two states allow for conviction of a defendant *via* non-unanimous voting, and those are generally reserved for minor charges.
  - **Note:** Federal military courts-martial, a special form of Article I federal court that enforces criminal actions, allows 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 vote by jurors. These statutes may require a minimum number of jurors on the jury.
- **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 (guilty/not guilty or liable/not liable) and does not have to explain its 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 find 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 find 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? Are 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 reasoning behind finding guilt or innocence?
- **Practice Question:** Julie is a law clerk for a mid-sized legal firm. She is assigned to assist firm attorneys on a civil litigation matter in which her firm is defending its client in a contract dispute for \$2 million. The client is a large corporation with a corporate counsel who wants to be apprised of every step of the litigation. Her first assignment is to work on the *voir dire* questions used to identify biases in potential juror candidates. As part of the assignment, she is putting together a one-page explanation of the jury selection process for the client. She begins by laying out the total number of jurors required, votes required to establish liability, and any additional requirements of the jury. Help Julie write this first portion of the strategic plan.
- **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, Intellectual Property 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, Sports 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 her professional practice activities. The attorney is generally trained to navigate the legal system. This may involve working within the courtroom. Below are some universal truths about lawyers 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, an attorney cannot disclose confidences related to her by a client. 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 these 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 by and admitted to a court's bar to represent clients before that body.
- *Officers of the 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 is aware of 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 advocates for their clients?
- **Practice Question:** Grace has her own legal practice where represents corporations in contract law matters. She primarily works with investment banks to develop and memorialize corporate funding arrangements. One of her biggest clients, ABC, Inc., approaches her about suing a competitor, 123, Inc., in state court for anti-competitive behavior. Grace has very little experience in this area, but she decides to undertake some due diligence in order to adequately advise the client on the situation. From her investigation, she learns that there are really no grounds for a lawsuit against 123. More troubling, however, is Grace learns that ABC has been involved in an on-going scheme that could be considered fraudulent to its shareholders. Grace brings this matter to the attention of the CEO of ABC. The CEO tells her to ignore the shareholder matters and, if she wants to continue representing ABC in other matters, to initiate litigation against 123 immediately. What are the duties and ethical considerations that constrain Grace in this situation?
- **Resource Video:** <http://thebusinessprofessor.com/what-do-attorneys-do/>

### 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 controls security in the courtroom and carries out the 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* - These legal scholars and practice experts train 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 through advisory votes and committee proposals.

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

- ***Practice Question:*** Derrick is a new business manager who oversees the corporate collections group. As part of his role, he has to be aware of all legal actions by the corporation for outstanding debts. Derrick recalls some of what he learned in school about the legal process, but is very confused by the whole process. He tries to read legal material online, but realizes he does not have enough time to fully educate himself on the process. He assigns his intern (you) to explain the whole litigation process in two pages. He specifically wants you to begin by explaining the role of everyone involved in the process. Write a memo explaining the role of everyone involved in the litigation process.
- ***Resource Video:*** <http://thebusinessprofessor.com/players-judicial-system/>

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

As previously discussed, appellate courts have the power of judicial review. This includes the power to review laws passed by the legislative body or 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:

- *Judicial Restraint* - Proponents of judicial restraint believe that the judiciary's power of 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 be 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 have 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:** ABC Corporation spends a great deal of money each year lobbying politicians. It contributes tens of millions of dollars of shareholder money to political action committees that support particular political candidates that support policies favorable to ABC. ABC tasks you with researching political candidates to identify which candidates actively endorse the view of judicial restraint? Why do you think this information is relevant and valuable to ABC?
- **Resource Video:** <http://thebusinessprofessor.com/judicial-restraint-vs-activism/>