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THE AMERICAN LEGAL SYSTEM

This thing—this Constitution—is the most important thing in the life of every person living in the United States.

—Floyd C. Cullop[1]

The U.S. Constitution. It guarantees us numerous freedoms, including freedom of speech and freedom of the press, both found in the First Amendment. Those of us studying or working in the electronic media often talk about our "Constitutional rights" or our "First Amendment rights." However, as we will see throughout this book, these rights are not absolute rights. The government and the courts often place limits on these freedoms.

Laws and regulations governing the electronic media are frequently evolving. That is because the electronic media are ever changing. As a result, it is often a challenge for those in electronic media to keep pace with new laws and regulations. However, before we can discuss these laws, it is important to get a basic grounding in how our entire legal system operates.

This text is not written for lawyers or for students in law school. It is designed for students studying electronic media, specifically broadcasting and cable. It is also designed for professionals who work in the broadcasting and cable industries. A prior knowledge of law and broadcast regulation is not assumed.

THE AMERICAN LEGAL SYSTEM

Like any civilized country, the United States is a nation governed by laws. Before looking at the setup of the American court system, we must first gain a basic understanding of the various types of law that are fundamental to our legal system. Let's start at the top with that "thing" called the U.S. Constitution.

[1]Cullop, F. G. (1984). *The Constitution of the United States.* New York: Mentor. p. vi.

Constitutional Law

On March 4, 1789, the U.S. Constitution became the cornerstone of the American legal system. It is the oldest written constitution still in use in the world.[2] It includes an introduction called the "Preamble," a main body of text, and 26 amendments. The Constitution outlines the basic structure for the federal government (the executive, legislative, judicial branches). It lays out what powers are given to state and local governments and what powers fall under federal jurisdiction. If any law conflicts with the Constitution, that law is invalid.

However, interpreting the Constitution's meaning can be a challenge for the courts. Look at the wording of the First Amendment. The language is absolute: *Congress shall make NO law . . . abridging freedom of speech.* The courts, though, often do not take an absolutist view of the First Amendment. There are many types of speech that the courts say are *not* protected by the Constitution—shouting "Fire!" in a crowded theater, libel, obscenity, perjury, threats of violence—and the list goes on.

The courts say they are simply striking a balance and that the Constitution must be applied with other concerns in mind. For example, shouting "Fire!" in a crowded theater could lead to panic, and the person who shouted "Fire!" may be held liable for any resulting deaths or injuries. In this instance, the courts have ruled that public safety concerns outweigh the First Amendment rights of the speaker. This demonstrates that the principles outlined in the Constitution are flexible. The Founding Fathers knew that the Constitution would be useless if it were too rigid.

That is why the Constitution is considered one of the finest governmental doctrines ever written. It was designed to be "easily understood and leave no room for mistaken ideas about what it contained. It is no accident that our Constitution has been amended (added to or changed) only 26 times in . . . 200 years."[2] It has stood the test of time.

Amending the Constitution

The first ten amendments are called the Bill of Rights. These amendments were added in 1791, when the states noticed that the Constitution did not address many individual rights and liberties, such as freedom of speech and religion, the right to a speedy and public trial, the right to bear arms, and prohibitions against cruel and unusual punishment.

Passing amendments is difficult.

1. It takes a *two thirds vote in both the House and Senate* just to *propose* an amendment. (The Constitution also says amendments may be proposed by special conventions called by Congress at the request of two thirds of the state legislatures. This has never happened, though.)

2. The proposed amendment must be approved or ratified *by three fourths of the state legislatures.* This is how amendments are usually passed. However, amendments may also be approved by *special conventions in three fourths of the states.* Special conventions have only been used once. In 1919, the 18th Amendment ushered in the era of prohibition, during which time alcohol was outlawed. Then, in 1933, state conventions ratified the 21st Amendment, which repealed the 18th Amendment, and alcohol was once again legal.

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[2] *Ibid.*, p. 24

It is the U.S. Supreme Court that makes the final determination about whether a law violates the U.S. Constitution. However, lower courts may also make determinations about the constitutionality of laws. Our nation's highest court rules on any conflicts that arise between state constitutions and the U.S. Constitution. As will be seen throughout this text, decisions handed down by courts determine constitutional law.

All 50 states also have constitutions, and they operate on the same basic principle as the federal constitution. No state law can stand if it violates that state's constitution, and state supreme courts ultimately determine whether a law is unconstitutional for that state. It is also easier to amend a state constitution, which is often done through a direct public vote.

Statutory Law

Members of the U.S. Congress, state legislatures, and local legislative bodies are called lawmakers. They write laws. A law passed by such elected officials is also called a *statute.* Laws or statutes are passed to maintain order within a society. There are laws against everything from murder to jaywalking.

In Article 1, section 8, the U.S. Constitution grants the House and Senate the "Power to make any laws necessary and proper for seeing that the powers given to Congress, to the United States government, and to any department or officer of the United States government are carried out." State constitutions give the same power to state legislatures. However, federal laws always have precedence over state laws. (This concept comes from the "supremacy clause" in Article VI of the U.S. Constitution.) If you need to find the text of a federal statute, it can be found in either *Statutes at Large* or the *United States Code.*

Legislative bodies are not the sole caretakers of the law. At the federal level, Congress may pass a law, but the president may choose to veto it. Even if the president signs a bill into law, the courts can still step in and declare the law unconstitutional. If Congress is unhappy with the court's ruling, lawmakers may pass another law in an attempt to override the court decision. It is all a part of the system of "checks and balances" that the Founding Fathers incorporated into our Constitution.

Administrative Law

This type of law comes from regulations and rules passed by administrative bureaus and agencies known as *independent regulatory agencies*. At the federal level, this includes the Federal Communications Commission (FCC) and the Federal Trade Commission (FTC). The texts of these rulings can be found in the *Code of Federal Regulations* and the *Federal Register.* The rulings may also be found in specific agency publications, such as the *FCC Record.*

Although regulations passed by such agencies are not considered laws in the truest sense, these regulations still carry the power of law. Consider the Federal Communications Commission. Like other federal agencies, it has the power of *rule making.* It also has the power to enforce its rules through various forms of punishment, including monetary fines. However, the FCC does not always have the final say. As will be seen throughout this text, the FCC is sometimes taken to court over its rulings. To expedite matters, such appeals are taken directly to the U.S. Court of Appeals in Washington, DC, and sometimes all the way to the U.S. Supreme Court. It is important to note here that legal matters involving nonregulatory but broadcast-related matters may be decided in federal courts other than the Washington, DC, Court of Appeals.

Agencies such as the FCC also have the power to *adjudicate.* This means federal agencies are given the legal authority to settle disputes between parties involving matters directly related to that agency's authority.

Common Law

Common law involves rules and principles of law that are developed and modified through court decisions and not by legislatures. Common law is often called "case law" or "judge-made" law.[3] It is law that is developed through an accumulation of court decisions over time. Therefore, it is not the type of law that you can find in one place or in one case. It evolves. It is law that often can be traced through hundreds of court cases. It has its roots in English law and is considered the oldest form of law.

Most common law is state law, not federal. The Supreme Court, in fact, has declared that common law does not exist at the federal level. Instead, common law is developed and established in the various state courts.

In common law, judges follow *precedents* established in previous court cases. This concept is known as *stare decisis* or "let previous decisions stand." As a result, each new court ruling adds another concept or nuance to the common law established in previous rulings. Judges rarely overturn precedents. In fact, higher courts will often overturn a judge's ruling if it includes the breaking of a precedent.

It is important to remember that statutory law and constitutional law have more power than common law. Common law applies only when there is no applicable statute or constitutional law on a given matter.

Equity Law

Historically, equity law has its roots in common law. Equity law is a means of settling disputes between parties. However, this is not the same as civil lawsuits in which some people sue others for monetary damages. Such civil cases are heard by juries. In equity cases, a judge settles disputes between parties based on equity or "fairness." Examples include divorce proceedings and disputes over child custody.

In equity cases, a judge may order an *injunction* to prevent injury or harm. A good example is when a court orders a magazine not to publish information that could be damaging to national security. In essence, the judge in such cases is looking for the fairest solution to a problem.

Executive Powers

Along with legislatures and government agencies, executive officers, such as presidents and governors, are important in the lawmaking process. Article II, Section 3 of the Constitution says the president is responsible for making sure that "laws be faithfully executed." Much of the president's power in lawmaking comes through the power to nominate justices to the U.S. Supreme Court as well as nominating judges for federal courts. The president also makes appointments to several important federal agencies, including the

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[3]Wren, C. G., & Wren, J. R. (1986). *The legal research manual* (2nd ed.). Madison, WI: Adams and Ambrose. pp. 221-222.

Federal Communications Commission and the Federal Trade Commission. This can give a president the ability to "stack" the courts and federal agencies with judges and commissioners who reflect the president's legal and political philosophies. For example, in the 1980s, President Reagan appointed commissioners to the FCC who championed Reagan's philosophy of broadcast deregulation.

The Courts

There are more than 50 judicial systems in America. Each state and the District of Columbia have individual court systems, as do the territories of Puerto Rico, the U.S. Virgin Islands, and Guam. There is also the federal court system, which is made up of district courts, appellate courts, and the U.S. Supreme Court. The federal setup is very similar to court systems at the state level (see Figure 1.1).

The judiciary is the third branch of government, along with the legislative and executive branches. The hierarchy and the roles of the different courts are established by the U.S. Constitution and the various state constitutions. Each branch of government has its own important role in the lawmaking process: The *legislative branch* writes the laws; the *executive branch* enforces the laws; the *judicial branch* interprets the laws.

Trial Courts and District Courts

The job of a trial court at both the state and federal level is to "find the facts" and determine the major issues in a case. Most cases start in trial courts.

At the federal level, a district court can be thought of as a federal trial court. There is at least one U.S. district court in each state, each U.S. territory, and the District of Columbia. Larger states may have several district courts. Our most populous state, California, has four district courts; smaller states, such as Rhode Island, have one. District courts include a judge and jury who hear testimony from witnesses. The jury then hands down a verdict based on the facts and on testimony.

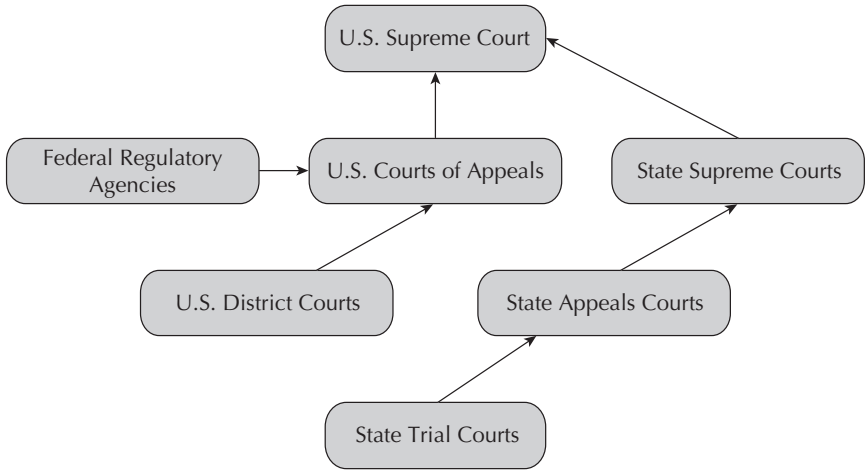

Figure 1.1 Court Hierarchy

Sometimes trials result in *hung juries* or *mistrials.* A hung jury is a situation in which jury members cannot reach a unanimous verdict. The judge will then declare a mistrial, which means the proceedings are canceled. A mistrial may also be declared when a judge determines that there are "prejudicial" factors that may prevent one or both sides from receiving a fair trial. In either case, another trial may be ordered.

Appeals Courts

The law provides that each party that loses a case in a trial court has the right to appeal that decision. The person bringing the appeal is called the *appellant* and the other person is the *respondent.* It is the role of appeals courts to hear these appeals. Appeals courts are called *appellate courts* and, at the federal level, *circuit courts.* Unlike district courts, appeals courts do not usually analyze the facts in the case. Instead, appeals courts analyze whether the trial court or district court applied the law properly in the case and whether proper procedures were followed in reaching the verdict. There are no juries at the appeals court level. Federal district courts must follow all decisions handed down by federal appellate courts that are within their jurisdiction. There are 13 federal appeals courts in the United States that serve different *circuits* or geographic areas. The first 11 circuits cover the 50 states and U.S. territories:

First Circuit: Maine, Massachusetts, New Hampshire, Puerto Rico, Rhode Island

Second Circuit: Connecticut, New York, Vermont

Third Circuit: Delaware, New Jersey, Pennsylvania, Virgin Islands

Fourth Circuit: Maryland, North Carolina, South Carolina, Virginia, West Virginia

Fifth Circuit: Louisiana, Mississippi, Texas

Sixth Circuit: Kentucky, Michigan, Ohio, Tennessee

Seventh Circuit: Illinois, Indiana, Wisconsin

Eighth Circuit: Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota

Ninth Circuit: Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Northern Mariana Islands, Oregon, Washington

Tenth Circuit: Colorado, Kansas, New Mexico, Utah, Oklahoma, Wyoming

Eleventh Circuit: Alabama, Florida, Georgia

Each of these circuit courts rules independently, and no circuit court is obligated to follow rulings from appeals courts in other circuits. The number of judges in each circuit varies and is established in Title 28 of the U.S. Code, Section 44. For example, the First Circuit is the smallest, with six judgeships, and the Ninth Circuit has 28. Usually a panel of only three judges will hear each case. When a case is of major legal significance, a court will sit *en banc:* This usually means that all judges in the circuit will participate in the proceedings. (There are exceptions for larger circuits. For example, the Ninth Circuit, with its 28 judges, will have an en banc panel of 11 judges.)

The 12th and 13th circuits are not known by numbers. The "12th" is the U.S. Court of Appeals for the District of Columbia (or the DC Circuit Court of Appeals). The DC court hears appeals involving federal regulatory agencies such as the FCC and FTC.

Congress created a "13th circuit" in 1982, which became the court of appeals for the federal circuit. It handles specialized areas of law, including appeals from district courts on such issues as trademarks and patents. It also hears appeals from specialized federal agencies, such as the U.S. Court of International Trade and the U.S. Claims Court.

The U.S. Supreme Court

This is the highest court in the United States. It is the oldest federal court, established by the Constitution in 1789. There are nine justices that preside on the Supreme Court, and a chief justice is chosen by the president. (The official title for this position is Chief Justice of the United States, not Chief Justice of the Supreme Court.) All justices serve on the court for life or until retirement. This court has the final say for all cases, and all lower courts must abide by the rulings handed down by the Supreme Court. A lower court cannot overturn a Supreme Court decision.

It is very difficult to reverse a Supreme Court decision. Future Supreme Court rulings can overturn a previous ruling, or Congress and the states can pass a constitutional amendment. In the 1803 case of *Marbury v. Madison,*[4] the Supreme Court granted itself a great deal of power by ruling that it had the authority to overturn laws passed by Congress.

Supreme Court justices are nominated by the president and approved by the Senate.

Politics often plays a key role because presidents often appoint potential justices based on "judicial philosophy." In recent decades, some Senate confirmation hearings of Supreme Court nominees have shown just how political the process can become. In 1991, President George H. W. Bush nominated Clarence Thomas to replace Justice Thurgood Marshall. The confirmation hearings became a media spectacle when Anita Hill appeared before the Senate and testified that Thomas had sexually harassed her a decade earlier when the two worked together in a government office. Also, liberals in the Senate opposed Thomas because of his conservative views on issues such as abortion and civil rights. However, the Senate went on to confirm Thomas by a narrow margin.

In 1987, the Senate rejected President Reagan's nomination of Robert Bork to the high court. Senate liberals garnered enough votes to reject Bork's nomination, mainly because of Bork's conservative views on legal and social issues. Conservatives have not forgotten Bork's rejection. Today, if a conservative judge is rejected for nomination based on his political views, conservatives will say that judge has been "Borked."

The Supreme Court hears roughly 100 cases per year. The court will usually only hear cases for three reasons: when there are significant legal or constitutional issues involved, when the case deals with new areas of law, or when a lower court erred in issuing a ruling. The Supreme Court usually hears cases that come from a federal appellate court or from a state supreme court that ruled a federal law unconstitutional.

How a Case Makes Its Way to the Supreme Court

The Petition

The Supreme Court frequently hears cases based on a *writ of certiorari*. Certiorari is a Latin word that means a court is willing to review a case. Usually an attorney will file a written argument with the court asking for a review of a ruling by a state supreme court or

[4]*Marbury v. Madison,* 5 U.S. 137 (1803)

a federal court. This is known as a *petition of certiorari.* All nine justices will review the petition, and four justices must then vote to approve this request to grant a writ of certiorari (commonly called "granting cert"), thus placing the case on the court's calendar. When the court grants cert to a case, the lower court must send all records from that case to the Supreme Court. However, the Supreme Court rejects the vast majority of petitions of certiorari. This is also known as "denying cert."

If the Supreme Court denies cert and refuses to hear a case, the lower court decision stands. There are no legal options left. It is important to note that denying cert does not mean that the Supreme Court has upheld a lower court's opinion. It just means that the Supreme Court could not find a legitimate legal reason for hearing the case. Still, the lower court decision will stand.

Preparing the Case

Once the Supreme Court has agreed to accept a case, a date is set for oral arguments to take place before it. Lawyers on both sides will then submit their legal arguments, known as *legal briefs,* to the court so the justices may analyze each side's case before oral arguments begin.

The Oral Arguments

Lawyers on each side are given time limits—often no longer than an hour—when presenting their arguments. For cases dealing with substantial constitutional issues, the lawyers may solicit the help of "friends" to help argue the case. This is known as *amicus curiae,* or "friend of the court," briefs. For example, in major broadcasting cases, groups such as the National Association of Broadcasters may be allowed to submit amicus curiae briefs and present arguments to protect their interests in a matter before the court.

Making a Ruling

Within a few days after oral arguments, the nine justices gather in seclusion to discuss the case. No one else is allowed in the room during these deliberations. The chief justice determines the key issues to be discussed in each case and may limit discussion time for each justice. The discussion is followed by a secret ballot vote so each justice's decision will be based on his or her own legal reasoning and not by the "peer pressure" of how other justices are voting. The votes are then tallied.

Writing the Court's Opinion

If the chief justice voted with the majority, he or she will then appoint a justice who voted with the majority to write the *court's opinion.* This opinion will explain why the court ruled the way it did. If the chief justice is in the minority, then the most senior justice in the majority makes the appointment. Of course, the chief justice or senior justice can always appoint him- or herself to write the opinion.

Once the opinion is written, all justices are then allowed to review it. The opinion is then usually rewritten to reflect comments or concerns of fellow justices.

Justices in the majority may also write *concurring opinions.* This is done when a justice agrees in general with the ruling but wants to make important points or arguments not mentioned in the court's opinion.

Concurring opinions may also result in something called a *plurality opinion.* A plurality opinion is one that has the most justices "signed on," but it does not have a majority of justices. For example, consider a 6-3 ruling for which the chief justice writes the court's opinion but only three other justices agree to sign it. The two other majority justices write separate concurring opinions. Thus, the court's opinion written by the chief justice is called a plurality opinion.

Justices in the minority may also write *dissenting opinions.* Here, justices present arguments for their belief that the majority opinion is wrong. Dissenting opinions play a valuable role in our legal system. Throughout this text, you will see examples in which dissenting opinions helped to establish important legal precedents for future cases.

State Courts

All 50 states have court systems that are, often, similar to the federal system. There are trial courts, which can be at the county or state level. Like federal district courts, these trial courts have juries. Most states also have one or two levels of appeals courts.

Each state also has its own "supreme court" or highest court. These state supreme courts have the final say unless the U.S. Supreme Court accepts an appeal of one of their rulings and overturns it. However, the state supreme court has the ultimate power to interpret that state's constitution. The U.S. Supreme Court cannot tell a state supreme court how to interpret its own state's constitution.

Although judges for federal courts are appointed, many judges at state levels are elected. Many states also use a system in which judges are nominated by the governor and approved by a judicial commission, or vice versa. The approved judges then serve for an appointed term and go up for reelection by the public during the next general election.

Criminal and Civil Law

Criminal Law

Criminal law involves an offense against society, such as murder, robbery, or assault. For example, in the famous O. J. Simpson case, the former National Football League (NFL) star faced criminal charges for murder and was found not guilty by a jury. In a criminal case, a state or federal government brings formal charges against the accused person, who is also called the *defendant.* Such formal charges are known as *indictments.*

In the federal courts, a *grand jury* (typically containing 23 people) is responsible for bringing indictments. If indicted, a defendant must then appear at an *arraignment,* at which the charges are read publicly and the defendant is advised of his or her constitutional right to a court or jury trial. The defendant at this time may enter a plea of guilty or not guilty. If the plea is *guilty*, the court formally accepts the plea and announces the verdict. The judge may issue a sentence at that time or set a future date for sentencing.

If the plea is *not guilty*, a trial date is set. If the defendant cannot afford an attorney, the court will appoint a *public defender* to represent the defendant at trial. The judge may order the defendant to be held in jail until the trial is concluded. The judge may also allow the defendant to be released on *bail*. Bail means that the defendant pays money to the court in lieu of being placed in jail. (Bail may also be paid by a defendant's friends or family.) Bail is designed as an "insurance policy" that the defendant will show up for the trial. If the defendant fails to appear for trial, the court keeps the bail money. Such a failure to appear is also known as *jumping bail.* As a result, bail amounts vary and are much higher for more

serious crimes or where there is likelihood the defendant might jump bail. However, for crimes such as murder, bail is often not even an option.

Before the trial begins, though, there is something called a *preliminary hearing* ("prelim") or *probable cause hearing.* The prosecutor presents evidence or witnesses to convince a judge that there is adequate evidence to go to trial. The defendant may also bring forth witnesses and evidence. The burden of proof, though, is much less than it would be for an actual trial. If probable cause is determined, then the defendant is "bound over" for trial. However, if probable cause is not established, the judge may reduce the charges to a misdemeanor or dismiss the charges altogether.

Civil Law

A civil lawsuit is also called a *tort.* Tort law is personal injury law. Simply put, civil law involves *lawsuits,* or disputes between two parties. This may include a citizen suing another citizen, a citizen suing the government, or the government suing a corporation. In any of these instances, one party sues another for monetary damages. Unlike criminal law, however, civil law does not involve "crimes against society." As a result, the burden of proof in a civil trial is much lower. In criminal cases, a person must be found guilty *beyond a reasonable doubt.* In civil cases, a person must prove his or her case by a *preponderance of the evidence.*

Lawsuits have become an increasingly popular form of litigation in the United States. One of the more famous civil lawsuits in recent memory was settled in 1994 after a 79-year-old Albuquerque woman spilled a cup of hot McDonald's coffee in her lap and suffered third-degree burns. She sued the restaurant chain and won, arguing that McDonald's was knowingly distributing a dangerous product by making its coffee too hot.

In this case, the woman was the *plaintiff,* or the one bringing the charges. A good way to remember this is that the *plaint*iff is the person who has a com*plaint.* McDonald's was the *defendant,* or the party that has to *defend* itself against the charges.

Keep in mind that civil law is very different from criminal law. The O. J. Simpson case provides a good contrast. As mentioned, Simpson was acquitted of *criminal* murder charges, for which he could have spent time in prison. However, he still had to face a *civil* trial, in which the families of the victims sued him for the "wrongful deaths" of their loved ones. The families won the case, and the court ordered Simpson to pay millions of dollars in damages to the families. In a civil trial, a defendant is not found guilty or not guilty, as in a criminal trial, and there is no threat of imprisonment. Instead, the court holds the person "legally responsible"—and financially responsible—for his or her actions.

Civil damages or awards come in two forms, and the McDonald's case provides good examples of both. A court awarded the woman *compensatory damages* in the amount of $160,000 to *compensate* her for such things as medical expenses, as well as pain and suffering. A court or jury may also award *punitive damages,* which are meant to *punish* the defendants for their actions and to encourage the defendants to correct bad behaviors. In the McDonald's coffee case, the court eventually awarded the woman $480,000 in punitive damages. Did McDonald's correct its behavior? After the verdict, various news media discovered that McDonald's restaurants in Albuquerque had lowered the temperature of their coffee to 158°F. Before the lawsuit, McDonald's had served their coffee at between 180° and 190°.[5]

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[5]Consumer Attorneys of California. (2004). Know the facts: The McDonald's coffee case. *Consumer Resources: Know the Facts.* Retrieved November 10, 2004, from http://caoc.com/facts.htm

This text deals with civil or tort law in many areas, including libel, invasion of privacy, negligence, and infliction of emotional distress. You will see that most communication cases involve civil law, not criminal law.

The Civil Lawsuit Process

How the Process Works. A plaintiff contacts a lawyer and files a *legal complaint* against a defendant. This complaint includes a demand for a specific amount of money for damages. Once this has been done, a court then issues a *summons,* which requires the defendant to appear in the court. Failure to appear can result in contempt of court charges. It also can result in the judge ruling in favor of the plaintiff by default. The judge can also award damages at this time.

If the defendant responds to the summons, the court will set a *hearing* date. At the hearing, each side presents its arguments, which are also known as *pleadings*. At this point, there are several *pretrial motions* that can result in a case being dismissed without a trial: (a) A plaintiff or defendant may wish to avoid a potentially costly and lengthy trial and *settle out of court.* In such an instance, each side agrees on a money settlement, and the case is over. (b) Each side may also ask the judge to issue a *summary judgment.* This is when the judge determines that there are no disputes about the facts in a case, and the judge then makes a ruling for one side or the other. The case does not proceed to trial. (Note: A summary judgment cannot be granted if there are any disputes about facts that are material [or vital] to the case.) (c) Defendants may also ask the judge for a *motion to dismiss,* or a *demurrer.* In such an instance, the defendant argues that although all of the facts in the complaint may be true, the defendant did not actually break any law. If the judge agrees, the case is dismissed or dropped.

If the case proceeds, each side engages in *discovery* before the trial. Discovery is the gathering of information about the other side's arguments and evidence. Each side may also request that the judge issue a *subpoena,* which requires that a particular person testify in court or hand over evidence essential to the trial. Later in this text, you will read about journalists receiving subpoenas that require them to divulge the names of confidential sources from news stories. Failure to obey a subpoena can result in contempt of court charges and even jail time.

A *jury trial* then begins. Evidence is presented from both sides, and the jury reaches a verdict. The jury may also assess damages. However, the judge may overturn a verdict if the jury did not apply the law properly in reaching its decision. A judge may also lessen or throw out jury damages if the judge finds those damages to be excessive.

The losing side has a right to *appeal*. The person who appeals is the *petitioner,* or *appellant,* and the person contesting the appeal is the *respondent*. On appeal, a court may overturn the ruling or lessen jury damages. Damages are never paid out until all appeals have been exhausted.

At this point, it is important to discuss the concept of *double jeopardy*, which is found in the Fifth Amendment. It says that no person may be put on trial two times for the "same offense." The two O. J. Simpson trials may appear to be an instance of double jeopardy, but they are not. Simpson faced criminal charges of murder in the first trial, and he faced civil charges of wrongful death in the second trial. In such cases, courts have ruled that these separate charges constitute separate offenses, and double jeopardy does not apply.

In a criminal proceeding, once a jury finds a person not guilty, prosecutors may not put that person on trial again for that crime. This is meant to protect people from overzealous prosecutors and to keep the courts from being overwhelmed with repeat cases.

However, double jeopardy sometimes seems grossly unfair, such as in one famous Kentucky murder case. Mel Ignatow had been acquitted in 1991 of the sexual torture and murder of Brenda Schaefer. In 1992, a person who had bought Ignatow's house found film hidden under some floorboards. The photographs clearly showed Ignatow torturing and killing Schaefer. Ignatow later confessed to the crime. Even with this overwhelming evidence, the commonwealth of Kentucky could not retry Ignatow for Schaefer's murder because of double jeopardy. However, the commonwealth did successfully prosecute Ignatow for perjury for lies he told federal investigators about Schaefer's disappearance.[6] The Kentucky Court of Appeals in 2003 upheld the perjury conviction. The court ruled the perjury was considered a separate offense and did not constitute double jeopardy.

Names and Citations of Cases

The Name

Whoever initiates a case or an appeal is named first. Therefore, in a civil case called *Smith v. Jones,* it is Smith who is suing Jones. If Jones loses the case and appeals, it is Jones bringing an action against Smith, and the case is called *Jones v. Smith.*

In a criminal case, it is the government that is bringing charges against a person. For example, if a man named Brown had been on trial for killing a federal law officer, the federal government would have filed murder charges against Brown, so the case name would be *U.S. v. Brown (2000).* The date signifies the year a ruling was handed down. If Brown lost and appealed, the appeals case would be *Brown v. U.S. (2002).* If Brown had won that appeal, the federal government might have appealed that decision to the U.S. Supreme Court. If the case was accepted by the high court, the case would have become *U.S. v. Brown (2004).*

In state criminal proceedings, the case name might be something such as *State of Montana v. Johnson* or *Commonwealth of Kentucky v. Brown.*

The Citation

All cases are given names and numbers, which are known as *citations.* Citations also include other information to make it easier to find and research cases.

Consider the following citations:

UMG Recordings, Inc. v. MP3.com, Inc., 92 F. Supp. 2d 349 (S.D.N.Y. 2000)

First, in italics, is the name of the case. "F. Supp." refers to the *Federal Supplement.* This is a collection of volumes containing copies of case decisions from U.S. District Courts. The *Federal Supplement* is an example of a *case reporter.* The number 92 is the volume number. In a library, the *Federal Supplement* is arranged in order according to volume numbers. The subsequent "2d" means this case can be found in the second edition of the *Federal Supplement* series. If the citation has no reference to an edition, such as in 105 F. Supp. 325 (S.D.N.Y. 1952), it means the case can be found in the first edition of the series. The number "349" refers to the page number on which the case begins. Thus, to find this case,

[6]See *Melvin Henry Ignatow v. Commonwealth of Kentucky,* Court of Appeals of Kentucky, No. 1999-CA-0077-OA

you would take volume 92 of the second edition of the *Federal Supplement* and turn to page 349. "S.D.N.Y. 2000" means the case was decided in the year 2000 in the U.S. District Court for the Southern District of New York.

United States v. A.D., 28 F. 3d 1353 (3d Cir. 1994)

"F." refers to the *Federal Reporter,* the case reporter for cases from U.S. Courts of Appeal. The following "3d" means the third edition. (The *Federal Reporter* may also contain some decisions from U.S. District Courts.) After that comes "3d Cir. 1994," which means that this case was decided by the Third Circuit Court of Appeals in 1994. Therefore, this case can be found in volume 28 of the third edition of the *Federal Reporter* on page 1353.

Craig v. Harney, 331 U.S. 367 (1947)

"U.S." refers to *U.S. Reports,* a case reporter for decisions from the U.S. Supreme Court. The case can be found in volume 331 of *U.S. Reports* on page 367. The case was handed down in 1947. Note that in the parentheses here, there is a date but no reference to the court issuing the decision. There is no need for such a reference because only one court's decisions can be found in these volumes—the U.S. Supreme Court.

Parallel Citations

Melon v. Capital City Press, 407 So.2d 85, 8 Media L. Rep. 1165 (La. Ct. App. 1981)

This is a parallel citation, which means this case can be found in two places: volume 407 of the second edition of the *Southern Reporter,* on page 85, and also in volume 8 of the *Media Law Reporter,* on page 1165. This decision was handed down in 1981 by the Louisiana Court of Appeals.

Extra Numbers in Citations

Zamora v. CBS, 480 F. Supp. 199, 201-202 (S.D. Fla. 1979)

This case is in volume 480 of the *Federal Supplement,* on page 199. The extra numbers "201-202" are used in footnotes when the writer is indicating the specific pages from which certain information or quotations were obtained.

Table 1.1 is a brief guide to citations for various types of court cases and the case reporters in which these cases can be found. The guide also includes citations for laws and regulations passed by Congress and independent regulatory agencies.

Legal Research Online

Much legal research today is done online. No longer do researchers have to wade through stacks of case reporters to find material. The Internet has provided a much faster and easier way to access court cases and other legal writings. In fact, many university libraries now make online legal research tools available to their students. There are a number of legal sites on the Web that allow you to find cases from local, state, and federal courts. LexisNexis®,

Table 1.1 Legal Reference Guide

Courts	*Example of Citation*
Supreme Court	
U.S. Reports (official)	438 U.S. 726 (1978)
Supreme Court Reporter	104 S. Ct. 2199 (1987)
Supreme Court Reports (Lawyer's Edition)	86 L. Ed.2d 593 (1984)
U.S. Courts of Appeal	
Federal Reporter	563 F.2d 343 (7th Cir. 1977)
Federal Cases (older cases)	16 F. Cas. 471 (1848)
U.S. District Courts	
Federal Supplement	348 F. Supp. 954 (M.D. Pa. 1972)
Federal Rules Decisions	166 F.R.D. 268 (1996)
Federal Reporter/Federal Cases	See *Federal Reporter* citation, above
Regional court reporters (Compilations of state court decisions from specific geographic areas)	
Atlantic Reporter	441 A.2d 966 (Md. Ct. App. 1984)
Northeastern Reporter	446 N.E.2d 428
Northwestern Reporter	304 N.W.2d 814
Pacific Reporter	653 P.2d 511 (Ct. App.)
Southeastern Reporter	320 S.E.2d 70
Southern Reporter	421 So.2d 92 (Ala. 1982)
Southwestern Reporter	779 S.W.2d 557
State court reporters (Each state has a case reporter for its highest court. Some states also have reporters for lower courts. These are just two examples.)	
California Reporter	25 Cal.3d 763
New York Supplement	46 N.Y.S.2d 304
U.S. Congress	
Statutes	
U.S. Code	18 U.S.C. 1464
U.S. Code Annotated	18 U.S.C.A. 1464
U.S. Code Service	18 U.S.C.S. 1464
U.S. Statutes at Large	77 Stat. 49 (1974)
Regulatory agencies (federal)	
Code of Federal Regulations	84 C.F.R. 319
FCC Record	2 F.C.C.R. 2705 (1987)
FCC Reports	41 F.C.C.2d 777 (1977)
Federal Register	47 Fed. Reg. 40, 443 (1982)
Broadcasting references	
Media Law Reporter	18 Med. L. Rep. 1953 (1991) or 18 M.L.R. 1953 (1991)
Fischer's Radio Regulation	40 R.R.2d 1577

VersusLaw®, and FindLaw® are some of the more popular sites available for online legal research. These sites may also provide searches for other legal materials, including articles from legal newspapers and law journals. Searches may be done by case name, citation, topic

area, and key words. Be aware that some sites are free, but others may charge for their search services. Many university libraries provide free access to such sites, but some do require students to pay for their use.

Key Government Web Sites

(Note: These Web site addresses are correct as of this text's publication date.)

Code of Federal Regulations: http://www.gopaccess.gov/cfr/index.html

Federal Communications Commission: http://www.fcc.gov

Federal Register: http://www.gpoaccess.gov/fr/index.html

Federal Trade Commission: http://www.ftc.gov

Statutes at Large: http://memory.loc.gov/ammem/amlaw/lwsl.html

U.S. Code: http://www.gpoaccess.gov/uscode/index.html

U.S. Supreme Court: http://www.supremecourtus.gov

SUMMARY

The U.S. Constitution is the oldest living constitution in the world. It is the bedrock of the American legal system. There are five basic sources of law: constitutional law, common law, equity law, administrative law, and statutory law. The executive branch may also issue executive decrees, which some consider a sixth source of law.

The courts are an integral part of our legal system. The highest court in the land is the U.S. Supreme Court. The second-highest courts in the federal system are appeals courts, which often hear cases appealed from federal district courts. Each state also has its own court system, which is similar to the federal system.

Criminal law punishes people for crimes against society, such as murder; civil law involves the settling of disputes between private parties. Criminal law often involves jail time or fines; civil law usually results in monetary settlements between parties. Most communications cases are civil cases.