

INTRODUCTION TO AMERICAN LEGAL SYSTEM

I ***INTRODUCTION***

You likely have a basic understanding of how our legal system works from current events reported in the news, and perhaps even from a civics course you took in high school or college. At the risk of revisiting material with which you are already familiar, this chapter begins by summarizing some core points about our legal system that will serve as a foundation for your work as a lawyer. The importance of this background information will become clearer to you as the chapter and exercises unfold, when you will be asked to apply your knowledge of our legal system to better understand its specific relevance to you as a lawyer.

A. Two Basic Court Systems

Before you begin reading about the sources of law in our court system, you might find it helpful to have some context that directly applies to your life as a law student. Consider for a moment your decision to attend orientation classes at your new law school. The first decision you had to make when you arrived for orientation (assuming this was your first visit to your new law school) was to make sure you found the right building in your university. Knowing that you were to appear for an orientation meeting in Room 201, for example, wouldn't help you at all if you ended up in the school of arts and sciences instead of the law school building. The law school and school of arts and sciences are two very different schools in two very different buildings — while classes are taught in each building and some of the room numbers might be the same, the classes themselves are different and are centered around two different disciplines.

Similarly, as a law student and ultimately as a lawyer, you will likewise need to identify “where you are” in terms of the legal issues you will be researching and evaluating. There are two basic court systems in our country — federal and state. The federal court system has its own set of laws and courts, and each state also has its own unique set of laws and courts. Like your law school and the school of arts and sciences, both federal and state legal systems operate simultaneously and pretty much independently.

When a client asks you for legal advice, one of the first things you will need to do is figure out which court system and set of laws controls your client’s actions. Some conduct is governed solely by the state court legal system, while other conduct is governed solely by the federal court legal system. And there are also some instances in which *both* federal and state laws apply. So, for example, if your client lived in Chicago, Illinois and had a legal issue that arose there, you would first need to consider whether federal laws or Illinois state laws governed the client’s conduct — or both. Assuming the legal matter happened to involve litigation, that information would also denote the type of court (Illinois state court or federal court) in which you would file a lawsuit on behalf of the client. As a general rule, federal courts and agencies interpret legal issues that arise from federal law, while state courts resolve legal disputes that arise from state laws.¹

B. Sources of Law

The laws from both the federal and state legal systems stem from three primary sources: the Constitution, statutes, and common law.

1. Constitutions

Although constitutional laws are relatively small in number, they are important because they protect rights that we as a society have found to be of fundamental importance. The right to be free from “unreasonable searches and seizures” is one such important right. As a law student, you will have the opportunity to study cases interpreting the important rights that are embodied in the Constitution in a specific class focused on constitutional law.

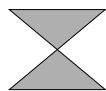
¹ As you will learn in your civil procedure class, there are a few exceptions. Even though the federal and state court systems are separate legal systems, federal courts, in limited circumstances, sometimes hear disputes that arise from state laws. Similarly, state courts sometimes consider federal laws, assuming certain jurisdictional issues are satisfied.

2. *Statutes & Administrative Regulations*

In both the federal and state legal systems, the legislative branch of government also creates law by enacting statutes that govern the rights and duties of the people who have the requisite minimum contacts within that jurisdiction. Although legislators enact statutes, they also authorize agencies to issue regulations that help interpret and clarify what a statute means. For example, you might be familiar with Title VII, a statute that makes it illegal for employers to discriminate against their employees on the basis of their race, religion, gender, or place of birth. Congress also gave a federal agency the authority to implement regulations and guidelines that help interpret Title VII and give it practical effect — the Equal Employment Opportunity Commission (the EEOC).

3. *Common Law*

Some laws do not have their source in a constitution or statute. Instead, these laws evolve solely from court decisions, and are called the “common law.” How did common law evolve? Judges started from a few basic ideas that seemed to be universally accepted in medieval society. As new factual controversies arose, the judges expanded on and refined their interpretations of the common law by focusing on the similarities to and distinctions from previous cases. Although the common law originated in England, it was brought to the United States by British colonists, eventually becoming each state’s original body of law.² Today, although statutes have replaced a fair amount of the common law, the common law still exists today. As importantly, the common law method of reasoning by analogy is still the primary means by which lawyers evaluate cases and predict what the law might say about their clients’ conduct.



EXERCISE 2-1: NATURE OF THE LAW

Sometime in the future, as a result of a major catastrophe, life as we know it no longer exists.³ A group of survivors congregated and formed a new society, Gilligan’s Island. During one of the many social gatherings on the island, the Skipper became enamored with Ginger, an attractive young woman who had captured the interest of a number of men, including the Professor. In fact, Ginger

² Richard K. Neumann, Jr., *Legal Reasoning and Legal Writing: Structure, Strategy, and Style* 5 (4th ed. Aspen L. & Bus. 2001).

³ The ideas for Exercises 2-1–2-3 were inspired by James E. Moliterno & Fredric I. Lederer, *An Introduction to Law, Law Study, and the Lawyer’s Role*, Ch. 3 (1991).

and the Professor had been romantically involved for a period of months and the Professor was hopelessly in love with her. However, Ginger was a shameless flirt and encouraged the attention of both the Skipper and the Professor. During one particularly heated confrontation over which man was more deserving of Ginger's affection, the Professor became enraged and struck the Skipper over the head with a shovel, killing him.

The group of survivors quickly elected you as judge and directed you to empanel a group of citizens to try the Professor for killing the Skipper. During his trial, the Professor admitted that he killed the Skipper, but claimed that he had broken no law because the island does not have a law that forbids killing.

As the judge in the *Professor's* case you clearly have been delegated the power to hear the case, i.e., you have jurisdiction. However, before you can proceed with the Professor's trial, you must decide if killing someone is against the law on the island. Deciding whether killing is against the law on the island requires you to think about the question of what "law" is.

Does law consist only of positive, affirmative declarations? That is, must someone with recognized authority enact a rule in order for there to be a law that can be enforced? If that definition of law is too narrow, from where else might "law" be derived? From religious doctrine? From societal values? From natural law?

In our legal system, the judge typically decides what the "law" is. As judge, what is your decision in the *Professor's* case? What value judgments does your decision embody?

If you believe that you should penalize the Professor for killing the Skipper, what are the limits of this approach? Would you reach the same result if the Professor had only injured the Skipper rather than killed him? What if the injury was merely a bruised rib cage from which the Skipper fully recovered? If you would rule differently under these facts, why?

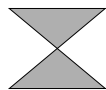
C. How the Branches of Government Work Together

Although each source of law stands on its own, there is also significant interplay between the three branches of government. Because constitutions and statutes are generally future-oriented, they are written in broad, general terms that embrace a wide range of future conduct that might fall within their ambit. Inevitably, when the broad language of a statute or constitution is applied to a specific factual situation, questions arise. Does this specific conduct fall within the ambit of that law? Is this particular individual the type of person the legislature intended to cover? As these questions arise in individual cases, judges are required to interpret the meaning of specific statutes and

constitutions. By giving texture and additional substance to the law, judges play an active role in the evolving interpretation of what a law means, even when the law itself is based on a statute or constitution.

Sometimes when a judge interprets a statute, the legislature disagrees with how the court interpreted the statute. When that happens, the legislature might amend the statutory language to clarify its meaning. In the process, the new legislation invalidates earlier court decisions that interpreted the statute in a different manner. For example, in 1991, Congress amended the Civil Rights Act of 1964 so as to nullify a series of Supreme Court cases that interpreted the Civil Rights Act in a manner with which Congress disagreed.

The process sometimes works the other way as well. When the legislature passes a statute it must pass constitutional muster — a judge can invalidate a statute if the judge concludes that it violates either the relevant state's or United States constitution. For example, in the landmark civil rights case of *Brown v. Board of Education*, the United States Supreme Court invalidated a Kansas statute that permitted the segregation of public schools, holding that the state-sanctioned segregation violated the 14th Amendment to the Constitution.



EXERCISE 2-2: NATURE OF THE LAW

Consider again the Gilligan's Island scenario. Assume that, following your ruling in the *Professor's* case, the new society realized that it should enact some laws that embody the values of the people. The citizens elected a twenty-person legislative body and authorized that representative group to adopt any laws they believe to be fair and just. The legislative body quickly and without debate enacted the following statute:

Any person who kills another person shall be guilty of murder and shall be sentenced to death or life in prison.

Some months later, Mr. Thurston Howell, III injured his back while helping to build a new community center. To help relieve the pain, Mr. Howell took a powerful herbal pain reliever before going to sleep. The herbs not only help relieve Mr. Howell's pain and allow him to sleep, but make his dreams unusually vivid. During that particular night, Mr. Howell dreamt that he was being attacked by a lion. While still asleep, Mr. Howell believed that he was subduing the lion that was attacking him. In reality, Mr. Howell suffocated Mrs. Howell with a pillow, killing her.

You are the duly elected judge on the island. The island constable arrested Mr. Howell and brought him before you for trial on murder charges. Mr. Howell admitted he killed Mrs. Howell, but claimed that the killing was not against the law because it was an accident and he certainly did not intend to kill his wife.

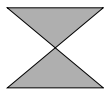
As the judge, you must decide what the statute means. When interpreting a statute, judges typically begin by reading the statutory language to identify its plain meaning. When the language is ambiguous or when the plain meaning would lead to an absurd or unreasonable result, judges sometimes go beyond the literal language of the statute and look for legislative intent by examining the statute's legislative history. Here, however, there is no legislative history, as the legislative body passed the statute quickly and without debate.

What is your decision in *Howell's* case? Should you apply the plain meaning of the statute and find Mr. Howell guilty of murder? Or should you go beyond the plain meaning and conclude that the legislatively body surely would have exempted killing under these circumstances had they thought of it? What arguments support your decision?

Before reading any further, take a moment and consider the potential problems with the decision you just reached — what undesirable consequences could result from that decision?

D. Our System of Stare Decisis

By now, you have identified a conundrum that judges sometimes face when interpreting the law. On the one hand, judges want to impose rulings that are fair and seem to further the legislative intent or policy concerns underlying the law. On the other hand, our legal system is premised on the idea that there be predictability and consistency in how our laws are interpreted. It would be difficult for us, as citizens, to know what behavior is lawful unless we know what the law means and can trust that it will be interpreted consistently in the future. Therefore, judges look to the decisions of prior courts for guidance in interpreting the law. This process of judicial interpretation is known as *stare decisis* — a Latin phrase that means that courts should stand by earlier legal decisions (“precedent”) and interpret the law in the same way as earlier courts have done.



EXERCISE 2-3: NATURE OF THE LAW

Consider again the Gilligan's Island scenario. Whatever your actual decision in Exercise 2-2, assume for present purposes that the judge in *Howell's* case decided to apply probable legislative intent rather than the

plain meaning of the statute. Therefore, the judge instructed the jury, in the form of a written decision, that “*the crime of murder requires the intent to kill.*” After deliberating, the jury acquitted Mr. Howell, finding that he did not possess the intent to kill Mrs. Howell. Some members of the legislative body vocally criticized the judge for “creating” law in this manner, arguing that only the legislative body should have the ability to create law. Despite such criticism, the legislative body did not change the statute. Now assume that the judge retired, and the legislative body selected you as the new judge.

Six months later, another killing occurred. After drinking seven margaritas and becoming sloppy drunk, Marianne got into a heated argument with Ginger. Although the two women were friends, they had a contentious history between them and were known to quarrel. In the heat of the argument, Marianne became so enraged that she pulled out a small, snub-nosed pistol and began waving it around. During her drunken rambling, Marianne pulled the trigger and shot Ginger in the chest, killing her. Marianne was so intoxicated that she could not walk and had to be carried away to the local jailhouse. The next morning when Marianne awoke, she experienced a blackout from the previous evening. Marianne didn’t recall anything about her argument with Ginger, nor did she recall shooting Ginger or killing her. Marianne has expressed horror that she could have done such a thing, and claims that she would never knowingly have shot her dear friend.

The constable arrested Marianne and, because you are the new judge, the constable brought her before you for trial on murder charges. Marianne claims that the killing was not against the law. Marianne argues that she was so intoxicated that she didn’t know what she was doing and could not therefore have possessed the “intent” to kill Ginger.

As the new judge, you must first decide whether to recognize the former judge’s decision that the “crime of murder requires the intent to kill.” Assume that the Anglo-American system of *stare decisis* applies. As the new judge, would you, or should you, follow the retired judge’s interpretation of the statute?

Assume you decide that your decision should be consistent with *Howell* and that you therefore adopt the same interpretation of the law as the judge in the *Howell* case — that the crime of murder requires the intent to kill. You are now faced with an additional question as you apply the legal definition of murder to the facts of *Marianne’s* case. Are the facts in *Marianne’s* case close enough to the facts of *Howell* as to require the same result (to acquit Marianne of the charge of murder)? Or are the facts different enough to reach a different decision than the judge in *Howell’s* case? What is your decision in *Marianne’s* case?



STARE DECISIS — MANDATORY & PERSUASIVE PRECEDENT

In evaluating cases under our system of *stare decisis*, judges consider two different kinds of precedent: *mandatory* and *persuasive* precedent. As you might guess from what the names imply, courts are *required* to follow only earlier cases that qualify as mandatory precedent. In contrast, courts may or may not be persuaded to follow earlier cases that are only persuasive precedent. As a future lawyer who will advise clients of their legal rights, it is critical that you know how to tell the difference between mandatory and persuasive precedent.

Whether a case is mandatory or persuasive precedent depends on two questions — the jurisdiction within which the case arose and the hierarchal level of that court within the jurisdiction. If you remember the following two-part test, you can resolve any jurisdictional question. A previous case is binding on a new court only if: (1) the previous case arose within the *same jurisdiction* as the dispute presently before the court; and (2) the earlier case was decided by a *higher-level court* within the same jurisdiction.

A. The Jurisdictional Part of the Test

The jurisdictional part of the test can be deceptively challenging if you are unfamiliar with the way in which the federal and state court systems are organized. You can't begin to answer the question of whether a legal precedent is mandatory or persuasive precedent unless you have a very clear understanding of (a) the jurisdiction in which your new legal problem is based, and (b) the jurisdiction in which the earlier case arose. This is a fundamentally important question that merits some review, even if you are already somewhat familiar with the federal and state court jurisdictions.

1. Federal Courts

Federal courts have jurisdiction to resolve disputes that involve the United States Constitution, federal statutes, and federal regulations. In addition, federal courts have jurisdiction to resolve disputes that involve state laws if the parties satisfy other jurisdictional requirements (i.e., diversity of citizenship; pendent jurisdiction). Unlike the differing state laws, federal laws are, by definition, national in scope and apply irrespective of whether conduct covered by the law arises within the State of New York, the State of Florida, or the State of Illinois.

Because our nation is so vast and the volume of lawsuits so expansive, for practical reasons Congress has divided the country into thirteen federal

judicial circuits. There are eleven numbered circuits, such as the United States Court of Appeals for the First Circuit, the Second Circuit, and so on. In addition to the eleven numbered circuits, there is also the United States Court of Appeals for the District of Columbia and the United States Court of Appeals for the Federal Circuit. The Federal Circuit resolves disputes involving patents, certain international trade disputes, and some cases involving damage claims against the United States government. Take a look at the accompanying map of the thirteen judicial circuits to gain a sense of how the country is divided into separate regions. Note that each numbered federal judicial circuit encompasses a number of different states. As you review the map, recall, however, that the jurisdiction of a federal judicial circuit extends only to acts within those states that affect a *federal* law. In what federal circuit do you reside?

How do the different federal judicial circuits affect the doctrine of *stare decisis*? An earlier case is mandatory, or binding, precedent only with respect to new federal court cases that arise within the same judicial circuit. For example, a decision issued by the United States Court of Appeals for the First Circuit is binding only on future cases that arise within the First Circuit. That decision does not carry any binding weight within any other circuit. A judge or panel of judges within the Second Circuit is free to agree or disagree with the manner in which the First Circuit Court of Appeals interprets a federal law.

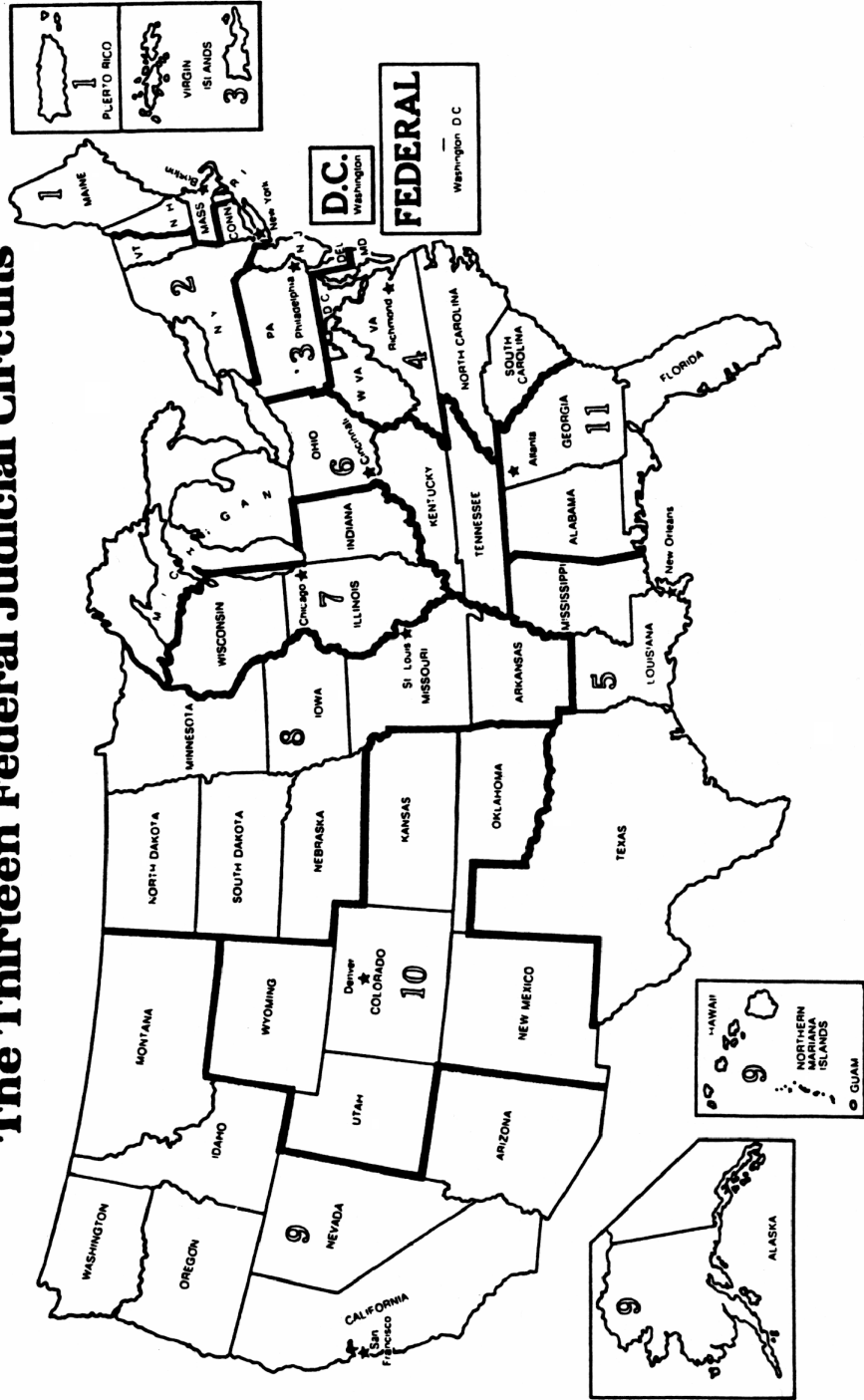
2. *State Courts*

Each individual state has its own laws and court system. State court judges have sole jurisdiction to resolve controversies involving their state's constitution, statutes, and common law. Therefore, earlier cases have binding effect only on future disputes that arise within that same state. In fact, a case from one state has very little persuasive impact on a judge in another state. As an example, a judge in the State of Illinois interpreting Illinois' burglary statute would not be required to follow a Wisconsin judge's interpretation of a similar Wisconsin statute and would likely not even find the Wisconsin case persuasive. Unlike the sources of federal law, which apply nationwide, each state's laws are different from the laws in other states and result from a unique balancing of interests and public policy within that state.

B. The Court Hierarchy Part of the Test

In order for an earlier case to have mandatory precedential effect, the earlier case must not only arise from within the same jurisdiction as the problem you are researching, but the earlier case must be decided by a *higher-level court* within that jurisdiction. The federal government, the District of Columbia,

The Thirteen Federal Judicial Circuits

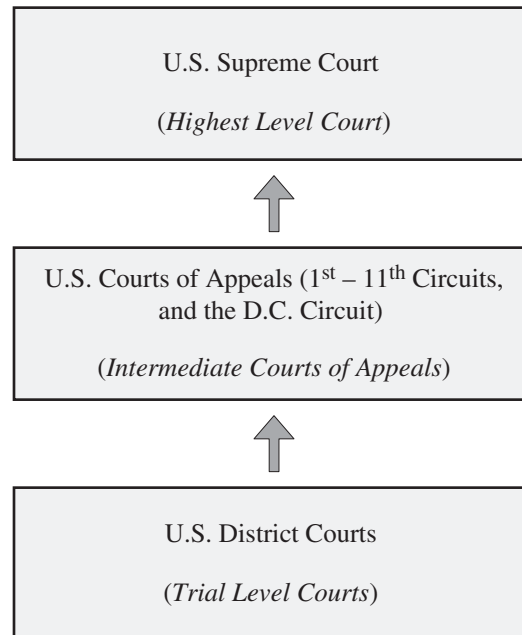


and each individual state have their own hierarchy of courts within their court systems. However, irrespective of the jurisdiction in which you practice law, an overriding principle applies: higher-level courts are binding on lower-level courts. Lower-level courts are never binding on higher-level courts.

1. *Federal Court System*

The federal court system has three levels of courts: (1) the trial court level (*District Courts*); (2) the intermediate appellate court level (*United States Courts of Appeals*); and (3) and the highest appellate court level (the *United States Supreme Court*). As the highest level court in the federal system, decisions of the United States Supreme Court are binding on all other federal courts. Decisions of each United States Court of Appeals are binding only on the lower federal courts within their jurisdiction. Federal district court decisions are not binding on other courts — even other court decisions within the same jurisdiction.

Graphically, the federal court system is organized like this⁴:



⁴ In addition, there are also federal courts that have special subject matter jurisdiction, such as federal claims courts, bankruptcy and tax courts, and veterans, armed forces, and international trade courts.

(a) *Federal District Courts*

If you were to file a lawsuit that involved a federal law, you would file the lawsuit in a federal district court, which is the name of the trial level court within the federal judiciary system.⁵ Each of the twelve federal circuits (the eleven numbered circuits and the District of Columbia), has a number of district courts within its jurisdiction. The size and number of federal district courts within a particular circuit depends upon the size and caseload of that district. Additionally, each federal district court is typically comprised of more than one judge, again depending upon the size and caseload of the district.

(b) *United States Courts of Appeal*

If you were to try a case in federal district court and end up in the position of having to appeal the decision of that court, you would appeal to the next highest level court in the federal system — one of the United States courts of appeals. If your case were tried in a New York district court, you would appeal the decision to the Second Circuit Court of Appeals, the circuit that encompasses New York. On the other hand, if your case were tried in a Texas district court, you would appeal to the Fifth Circuit Court of Appeals, the circuit that encompasses Texas.

All active judges on a federal court of appeals do not hear every case that comes before that court. Instead, cases are heard by three-judge panels during one week of the month. Sometimes, for unusually significant cases, all active judges on a federal court of appeals hear a case together, as a group. These decisions are called *en banc* decisions — a French term that simply signifies that the entire panel of judges heard the arguments and rendered an opinion.

(c) *United States Supreme Court*

Assuming that you were in the position of appealing a decision from one of the United States courts of appeals, your appeal would be filed with the United States Supreme Court. As the highest level of court in the land, the nine-member Supreme Court consents to review only a select few appeals each year. Out of

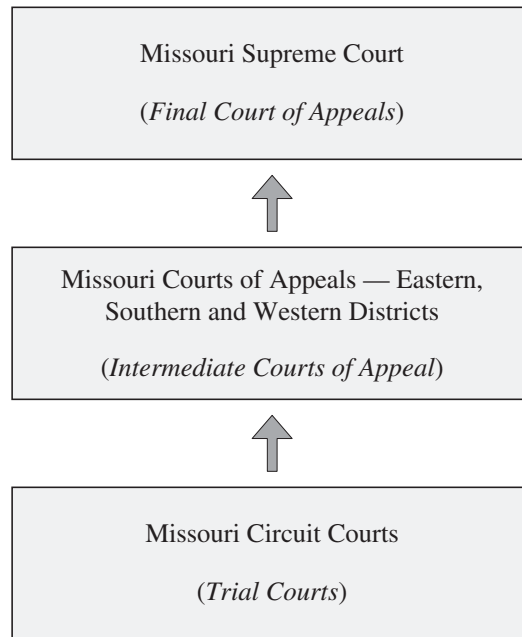
⁵ For present purposes, assume that the legal matter you are handling does not involve a specialized issue that would be addressed by the United States Tax Court, the Court of Federal Claims, or the Court of International Trade.

thousands of petitions for appeal every year, the Supreme Court consents to hear only 100 to 200 per year. Generally, it agrees to hear only those cases that are of exceptional constitutional or statutory magnitude, or those cases upon which lower courts have disagreed in their interpretation of federal law, i.e., where two or more federal circuit courts of appeal are split in their interpretation of an important law. When the Supreme Court declines to hear an appeal, the technical term is that it has *denied certiorari*. This term is abbreviated for citation purposes. Thus, when you see the phrase “*cert. denied*” following the citation of a case, that means that the lawyers in that case appealed the case to the United States Supreme Court and that the Supreme Court declined to hear the appeal.

2. State Court Systems

Like the federal court system, many, but not all, states have three levels of courts — trial level courts, intermediate appellate level courts, and a final appellate level court. (Most states have courts of limited jurisdiction as well, such as small claims courts or municipal courts.) However, some states have only two levels of courts. To complicate matters even further, some states call their final appeals court the “Supreme Court,” while other states call their final appeals court the “Appellate Court.” Thankfully, you are likely to practice law only in a few different jurisdictions and will become familiar with your jurisdictions’ court systems during summer clerkships or externships, or as you begin practicing law. As law students, however, the *Bluebook* and the *ALWD Manual* can be helpful in unraveling a particular state’s court system. Appendix 1 of the *ALWD Citation Manual*, and Table 1 of the *Bluebook*, list each state alphabetically and designate each state’s court structure.⁶ Ignoring the courts of very limited jurisdiction, such as small claims and municipal courts, a typical state court system such as Missouri would look like this:

⁶ The *ALWD Citation Manual* and the *Bluebook* only list those state courts from which decisions are actually published. In most states, intermediate appellate court and final appellate court decisions are published and are therefore denoted in the *ALWD Citation Manual* and the *Bluebook*. However, most states do not publish their trial court opinions. For example, the State of Missouri does not publish trial court opinions. Thus, the citation manuals do not list Missouri’s trial level courts.



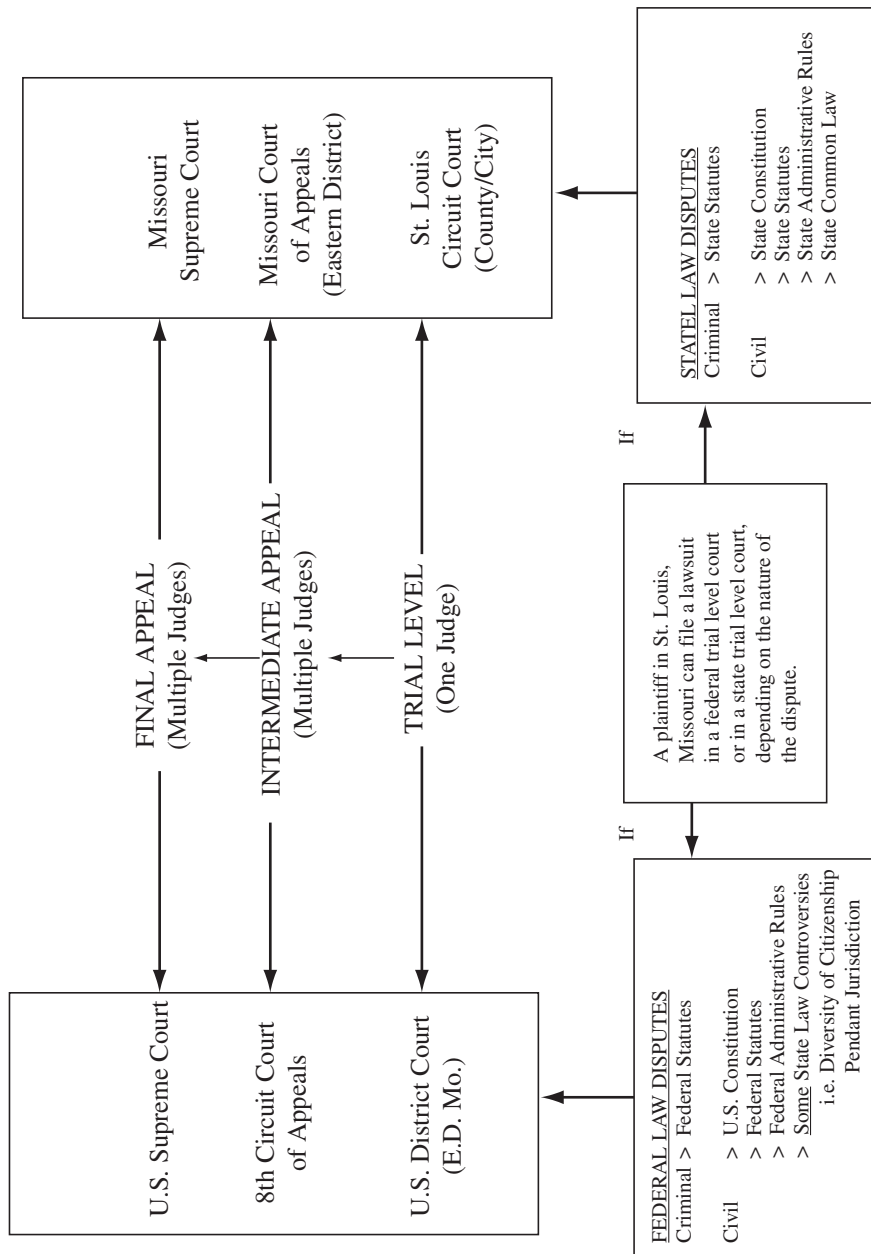
Like the federal court system, in a state system, the highest level of appellate court binds all lower level courts. Intermediate level appellate courts bind all trial level courts within all districts within the state. For example, an earlier case decided by the Court of Appeals for the Western District of Missouri would bind all state trial courts within the state, even those trial courts that sit within the Eastern District of Missouri.

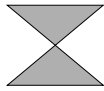
However, there is a caveat of which you should be aware: because court decisions are not binding on other courts that operate at the same level, it is possible for different intermediate appellate courts within a state to conflict. For example, suppose the Court of Appeals for the Western District of Missouri disagreed with a decision of the Court of Appeals for the Eastern District of Missouri. As a lawyer trying to sift through the conflicting opinions, you would need to consider the district under which your case falls. If, for instance, you were involved in a lawsuit in a trial court that happens to fall within the Western District of Missouri, the earlier decision of the Court of Appeals for the Western District of Missouri would be mandatory, binding authority for your case. The trial judge in your case would be required to follow the interpretation of the law rendered by the Court of Appeals for the Western District of Missouri — even if the trial court judge happened to personally agree with the legal interpretation rendered by the Eastern District.

C. Illustration of the Federal and State Court Structures

The illustration below reflects, in practical terms, the two parallel court systems, how the source of law affects whether you would litigate a dispute in federal or state court, and the appeals process.

TYPICAL COURT STRUCTURE



**EXERCISE 2-4:****MANDATORY AND PERSUASIVE PRECEDENT**

Factual Situation: Assume that you are practicing law in Los Angeles, California. California falls within the Ninth Circuit Court of Appeals. You represent Tim Jones, who has asked for your advice concerning a potential lawsuit against his former employer, Rainmaid. After a lengthy discussion, you discovered the following facts. Jones is a member of a religious sect that worships the sun. When the sun shines, the religion requires its followers to frolic in the sun on Wednesday afternoons and worship the sun god. The religious doctrine strictly forbids its members from engaging in any kind of work on such afternoons. Rainmaid recently fired Jones for refusing to work on one such Wednesday afternoon. Jones has informed you that he told Rainmaid at the time he was hired that his religion would require him to miss work on certain Wednesday afternoons. Jones claims that he and his employer verbally agreed that Jones would compensate for the lost time by working Wednesday evenings instead. Jones has given you a copy of his employment contract, which states that Rainmaid would not fire Jones except “for good cause.” Jones is a data processor. His job duties included inputting data about Rainmaid’s customers into a computer and then generating invoices for the customers.

Jones is worried about the expenses of a lawsuit and the time involved. Depending upon the results of your research, you agreed that you might be willing to accept the case on a contingency fee basis (i.e., if you win the lawsuit, you take 1/3 of the judgment as your legal fees; if you lose, you take nothing). Jones was also amenable to the idea of at least considering paying you on an hourly basis. You and he agreed that, before you actually filed any lawsuit on his behalf, you would let him know the likelihood of success of such a lawsuit. You agreed to forward to him a legal memorandum that would educate him about the relevant law and the likelihood of success.

Possible Legal Claims: After talking to your client, you have pursued the possibility of filing a lawsuit on Jones’ behalf alleging two separate claims for relief. One such claim would allege that Rainmaid breached the employment contract by firing Jones without good cause.

The second claim would seek damages against Rainmaid for religious discrimination in violation of Title VII, a statute. Title VII makes it an unlawful employment practice for an employer “to discharge any individual . . . because of such individual’s . . . religion. . . .” 42 U.S.C. § 2000(e)-2 (2006).

Consider the following questions concerning the Title VII claim:

- (1) Is this claim based on constitutional, statutory or common law?
- (2) Is this a civil or a criminal lawsuit?
- (3) In what court would you file this lawsuit?
- (4) You conducted some initial research to investigate the viability of your client's claims. You found a July 2010 case in which a federal appeals court in the Tenth Circuit held that another member of this same religious sect had a Title VII cause of action against her employer when her employer fired her for missing work on Wednesday afternoons.
 - (a) Is this case mandatory precedent or persuasive precedent?
 - (b) Based on this case, should you go ahead and file a lawsuit against Tim's employer under the Title VII claim?
 - (c) What additional information would you want to know before filing a Title VII lawsuit?
 - (i) About the case itself?
 - (ii) About other cases?
- (5) After more exhaustive research, you were able to find only one other case in the country that involved a claim by a member of this sect against a former employer. In this second case, a 2005 case, a federal appeals court in Oregon held that the plaintiff did not state a valid claim under Title VII because the employer had a valid business reason for firing the plaintiff for failing to work Wednesday afternoons.
 - (a) Is the federal appellate court case that originated in an Oregon district court mandatory precedent or persuasive precedent?
- (6) Which of the two cases is more important, the Tenth Circuit case decided in 2010, or the 2005 case?
- (7) Are either of the two cases unimportant to your client's Title VII claim?

- (8) In light of the Oregon case, should you forget about filing a Title VII claim against Rainmaid?
- (9) What other facts would you want to know about the cases in order to assess the value of your client's Title VII claim?
 - (a) What additional facts might help your client?
 - (b) What additional facts might hurt your client?
- (10) Should you tell your client about both cases, or just the case that has the favorable holding?

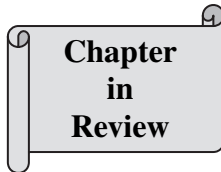
Consider the following questions concerning the breach of contract claim:

- (1) Is this claim based on constitutional, statutory or common law?
- (2) Is this a civil or a criminal lawsuit?

The 2005 federal appellate court case that held the plaintiff did not have a cause of action under Title VII also considered the plaintiff's claim that the employer breached the employment contract by firing him. In this Ninth Circuit case, the court held that the plaintiff did not state a valid claim for breach of an employment contract because the employer had "good cause" to fire the employee.

- (3) Is the Ninth Circuit case that originated in an Oregon district court mandatory or persuasive authority?
- (4) In light of this Ninth Circuit case, should you forget about filing a breach of contract claim against Jones' employer?
- (5) Assume there are no other cases in the country that have addressed these issues with respect to this religious sect. What other kinds of cases might prove to be helpful as you investigate your client's potential claims? Consider:
 - (a) the legal issue involved in the cases;
 - (b) the nature of the relationship between the plaintiff and the defendant;
and
 - (c) the nature of the dispute between the plaintiff and the defendant.

- (6) As you research the issue further, in what jurisdiction would you focus your research efforts?

A graphic of a rolled-up scroll with the text "Chapter in Review" written on it.

**Chapter
in
Review**

✓ CORE CONCEPTS

1. There are two parallel legal systems: federal and state.
 - (a) Federal system has 13 judicial circuits.
 - (b) Each state system is also subdivided into different jurisdictions (*e.g.*, southern, northern)
2. Both legal systems have three sources of law. What are they?
3. Each legal system has different levels of courts, with appeals that can be taken from trial-level courts to higher-level courts.
4. The persuasive appeal of a case depends on whether the case is mandatory or persuasive precedent.
 - What is the two-part test that determines whether legal precedent is mandatory or merely persuasive?

