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Mini-Legal Chapter 1

The Court System

In this Chapter, we will discuss

- Jurisdiction
- State Courts - Federal Courts
- Venue
- Standing to Sue
- Judicial Procedures
- Choosing a Court



The Latin term for law is “lex,” and is a system of written or unwritten law for a given jurisdiction. A “lexicon” is a dictionary of legal terms. If you do not know the meaning of a legal term, you can look up the term in a lexicon. The codebooks contain the laws that have been created by state and federal legislatures. The *Corpus Juris Secundum* (corpus=body, juris=pertaining to the law, secundum=second or small part) is an encyclopedia of laws. The *Corpus Juris Secundum* is commonly used as a legal reference by lawyers.

The philosophy or science of law is known as “jurisprudence.” Jurisprudence deals with the principles of law and legal relationships. A “statute” is a law created by a state or federal legislature. The violation of a statute will usually result in a legal proceeding in a court of law.

All members of the legal profession are collectively referred to as the “bar.” Attorneys follow a code of ethics established by the American Bar Association (ABA), and may be censored by the bar association if they are found guilty of misconduct in their profession. You can visit the website, www.abanet

A judge presides over and administers the law in a court of justice. A court of law may also be referred to as the “bench.” Also, the bench may mean the seat occupied by the judge or a commissioner (includes family court jurisdiction for adjudicated youth). A “jurist” is a person who has a thorough knowledge of the law and who has written extensively on legal subjects. Do not confuse a jurist with a “juror” (one who sits on a jury).

When a statute has been violated, the judge will hear the case as presented by the prosecuting and defense attorneys. In juvenile court, the judge, a commissioner, or an attorney general, conduct criminal investigation relating to the “respondent” (the juvenile) and the public defender tries a case in court on behalf of the juvenile offender. In an adult court, the prosecuting attorney conducts criminal prosecutions on behalf of the state or the “people,” whereas the defense attorney tries a case in court on behalf of the one who is charged with the crime. If you were charged with a criminal act and you did not want the assistance of a defense attorney, you could appear in court in *propria persona*, or in *pro per* or *pro se*. Someone who is in *propria persona*, or in *pro per*, or *pro se*, is acting in his or her own behalf and does not have the assistance of an attorney.

The title “Esquire,” is sometimes written after an attorney’s surname. The word “esquire” is usually abbreviated to Esq., and a personal or professional title is not prefixed to the name, for example, Abraham Lincoln, Esquire, since he was a practicing attorney.

As we have discussed, the American system of justice is based on the elements of English common law. Add to that, the Constitution of the United States, state constitutions, statutes passed by federal and state legislatures, administrative law, case decisions and legal principles that form common law, as well as laws of other nations and international law.

A number of different types of courts exist that interpret and enforce the American system of justice. There are fifty-two court systems, one for each of the fifty states. Federal courts are not superior to state courts but are an independent court system derived from Article III, Section 2, of the Constitution.

A. JURISDICTION

Certain requirements must be met before bringing a lawsuit before a court. Generally, a court can exercise personal jurisdiction (“in personam” jurisdiction) over residents of a certain geographical area. A state trial court, for example, has jurisdiction over residents within the state or within a particular area of the state. A state’s highest court is known as the State Superior Court, which has authority over all residents within that state.

A “long arm statute” permits a state to obtain jurisdiction over nonresident individuals and corporations. Under this statute, one must demonstrate that s/he is a nonresident of that state and had sufficient contacts within the state to justify the jurisdiction. For example, if a Maryland citizen committed a wrong within the state of Delaware, such as causing an automobile injury, a Delaware state court usually exercises jurisdiction.

Jurisdiction over subject matter limits the types of cases a court can hear. Within the state and federal court systems are courts of general jurisdiction and courts of limited jurisdiction. For example, probate courts—state courts that handle only matters relating to the transfer of a person’s assets and obligations on that person’s death, including matters relating to the custody and guardianship of children - have limited subject-matter jurisdiction, whereas, bankruptcy courts handle only bankruptcy proceedings as they are governed by federal bankruptcy law, allowing debtors to obtain relief from debts when they have financial difficulty.

Jurisdictional determination also is related to whether the case is being heard for the first time. Courts having original jurisdiction are courts of the “first instance,” or “trial courts” (where lawsuits begin, trials take place, and evidence is presented). Case in point: Any court having original jurisdiction is known as a “trial court.” Courts having appellate jurisdiction are known as reviewing courts, or appellate courts. Generally, cases can be brought before them only on appeal from an order or judgment of a trial court or other lower court.

Jurisdiction of the Federal Courts is limited. As it states in Article III of the U.S. Constitution, Section 2 “[t]he judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority.”

Exclusive versus concurrent jurisdiction occurs when both federal and state courts have the power to hear a case. When cases are tried only in federal courts or only in state courts, exclusive jurisdiction exists. Federal courts have exclusive jurisdiction in cases involving federal crimes, bankruptcy, patents, trademarks, and copyrights; State courts have exclusive jurisdiction in subject matters, such as divorce, adoptions, and probate matters.

Before a dispute is brought to a court, one must research not only the merits of the action, but also which court—state or federal, general or specialized—a claim may be prosecuted.

EXAMPLE

Subject Matter and Personal Jurisdiction Options

On a rainy afternoon, George was driving his car when it slid and hit Rachel's van in downtown Wilmington, Delaware, causing \$50,000 in damages (to the van plus the medical expenses). George is a resident of Delaware, and Rachel of New Jersey. Because vehicular accidents do not raise a federal question, the dispute is not based on the Constitution or a federal statute, thus, the Delaware state court would possess subject-matter jurisdiction over Rachel's action against George. However, because there is "diversity of citizenship," (each party is resident of a different state), and the amount in controversy is over \$50,000, Rachel could very well invoke the federal district court's diversity jurisdiction to entertain this case, if she believes that she may be more successful against George in that court.

B. STATE COURTS

Each state has various levels of courts. In some states there are two levels, and in others, three. Generally, a state's highest court is called the Supreme Court, but that is not always true, for example, in New York, the Supreme Court is the state's lowest court.

In Latin, as was noted earlier, "juris" means "law," and diction means, "to speak." Before any court can exercise personal or in Latin, *personam* jurisdiction, it must be determined whether a person is a resident of a certain geographical area. A state trial court, for example, normally has jurisdictional authority over residents within the state or within a particular area of the state.

In some cases, under the authority of a long arm statute, a state is permitted to obtain jurisdiction over nonresident individuals and corporations. Therefore, under a long arm statute, it must be demonstrated that the nonresident had sufficient contacts (minimum contacts) within the state to justify the jurisdiction. Similarly, federal courts have authority to entertain suits against residents of each of the federal districts.

C. FEDERAL COURTS

Because the federal government is a government of limited powers, the jurisdiction of the federal courts is limited. Article III of the U.S. Constitution established the boundaries of federal judicial power. Article III, Section 2 states that "(t)he judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority.

Federal district courts can also exercise original jurisdiction over cases involving diversity of citizenship. Under Article III, Section 2, a basis for federal court jurisdiction over certain disputes, includes disputes between citizens of different states.

Assume that the following events have taken place:

CASE SCENARIO

Maria Ramirez, a citizen of Florida, was jogging near Collins Avenue in Miami, Florida, when a large crate flew off a passing truck and she sustained serious injuries. She incurred as a result, numerous medical expenses and could not work for six months. Maria decided to sue the trucking company for \$50,000 in damages. The trucking company's headquarters are located in Georgia, even though the company does business in South Florida.

In this particular situation, Maria could bring suit in a Florida court because she is a resident of Florida. The trucking company clearly does business in South Florida since that is where the accident occurred. She could bring suit in a Georgia court, because a Georgia court could exercise jurisdiction over the trucking company since it is located in Georgia. She could also bring suit in the appropriate Florida court since that is where the accident happened.

Exclusive versus concurrent jurisdiction allows both federal and state courts to hear a case, as is true in suits involving diversity of citizenship (such as is Maria's case), where concurrent jurisdiction exists.

On the other hand, when cases can be tried only in federal or state courts, exclusive jurisdiction exists. Therefore, federal courts have exclusive jurisdiction in cases involving federal crimes, bankruptcy, patents, trademarks, and copyrights, and matters of admiralty law (transportation) on the seas and ocean waters. States also have exclusive jurisdiction in certain subject matters—divorce and adoption, probate, etc.

D. VENUE

If you have watched any of the plethora of legal themes on TV, you have probably heard the word, "venue." Venue is defined as "the locality where a crime is committed or a legal action occurs." It becomes the geographical district where an action is tried and from which a jury may be selected. Venue is concerned with the most appropriate location for a trial.

Basically, the concept of venue reflects the policy that a court trying a suit should be in the geographic neighborhood (usually the county) in which the incident leading to the lawsuit occurred or in which the parties involved in the lawsuit reside. For example, a change of venue from Oklahoma City to Denver, Colorado, was ordered for the trials of *Timothy McVeigh* and *Terry Nichols* after they had been indicted in connection with the 1995 bombing of the Alfred P. Murrah Federal Building in Oklahoma City. If a question exists as to the impartiality of the person(s) to be involved in judging the suit, a change of venue may be requested. In the McVeigh case, that is exactly why a change of venue

motion was made since it is certainly doubtful that with all the publicity and the feelings generated from that tragic event, would have made it difficult to have a fair trial in Oklahoma City or its environs.

E. STANDING TO SUE

To bring a lawsuit before a court, a party must have “standing to sue,” which means the individual must have a sufficient stake in a controversy before s/he can bring a lawsuit. Assume an individual was injured in an auto accident caused by defective brakes. The individual would have standing to sue the automobile manufacturer for damages since s/he would certainly have a stake in the event the brakes failed.

F. JUDICIAL PROCEDURES

From the moment a lawsuit is initiated until the final resolution of the case, it must follow specifically designated “procedural rules.” The procedural rules for federal court cases are set forth in the Federal Rules of Civil Procedure. State rules which are often similar to the federal rules, vary from state to state—and even from court to court within a given state. Paralegals and legal transcriptionists need to be familiar with the procedural rules of the relevant courts. Go online and check out *The Federal Rules of Civil Procedure* <http://www.cornell.edu>.

G. CHOOSING A COURT

When an attorney is working on a case, s/he must decide which court is the proper one for a given action. That determination includes:

- Review the jurisdiction of each court
- Evaluate the strengths and weaknesses of the case
- Evaluate the remedy sought
- Evaluate the jury pool available for each court (if seeking a jury trial)
- Evaluate the likelihood of winning in each court
- Evaluate the length of time it will take each court to decide the case

COURTS AND THE LEGAL SYSTEM TERMINOLOGY AND DEFINITION

LEGAL TERM	DEFINITION
U.S. Supreme Court	The highest court in the federal judicial system. Composed of a chief justice and eight associate justices. This court has final jurisdiction in matters tried in the lower federal courts and can also hear certain cases on appeal from the highest courts in the state systems if a constitutional question of federal law is involved.
U.S. Court of Appeals	An appellate court. Reviews cases from lower federal courts. There are currently 13 judicial circuits, each of which has a U.S. Court of Appeals.
U.S. District Court	A federal trial court or a federal court of original jurisdiction. The court in which a case is first tried in the federal court system.
Special courts	There are several special U.S. courts that have limited jurisdiction, including the Court of Claims, the Court of Customs and Patent Appeals, and the Tax Court.
Supreme court	The highest court in most state court systems. Certain cases decided in a state supreme court may be appealed to the U.S. Supreme Court if a constitutional question of federal law is involved.
Court of appeal	A court that reviews cases from the trial courts or lower courts. The highest court in states not having a supreme court.
Appellate court	Same as court of appeal. A court that reviews cases that are appealed from a lower court.
Trial court	A court of original jurisdiction. Hears a case the first time it is tried in court.
Probate court	A court that deals with the probate of wills and the settlement of estates. Also, may be called orphan court or surrogate court. In some states the probate court has jurisdiction over the estates of minors and the appointment of guardians.

H. ALTERNATIVE DISPUTE RESOLUTION

Generally, litigation in court is a last resort. Because of the growing backlog in the court system, many individuals and business entities use “Alternative Dispute Resolution” (ADR), in fact, it is now included in a number of legal contracts as a first alternative, and is increasingly used in medicine relating to care issues and reimbursement of medical services and claims.

ADR methods for settling disputes outside the court system include:

- negotiation
- mediation
- arbitration

Negotiation is where disputing parties, with or without the assistance of attorneys, meet informally to resolve the dispute out of court.

Mediation is a method of settling disputes outside court using the services of a neutral third party, who acts as a communicating agent between the parties. This method of dispute settlement is less formal than arbitration. A mediator need not be a lawyer. Mediation usually results in the quick settlement of a dispute.

Arbitration is a more formal method of ADR. In arbitration, the third party hearing the dispute normally makes the decision, wherein the arbitrator becomes a private judge.

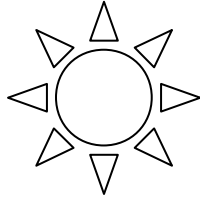
Arbitration clauses and statutes are frequently used in commercial matters, and are beginning to enjoy great popularity in medical applications. An arbitration clause in a contract provides that, in the event of a dispute, the parties will determine their rights by arbitration rather than through the judicial system. Most states have statutes under which arbitration clauses are enforced. At the federal level, the “Federal Arbitration Act” (FAA) of 1925 enforces arbitration clauses in contracts relating to interstate commerce between two or more states.

The first step in the arbitration process is the submission agreement where the parties agree to submit the dispute for arbitration. In most states an agreement to submit a dispute for arbitration must be in writing. The second step is the hearing process. In a typical hearing, the parties begin as they would at a trial by presenting opening arguments to the arbitrator and stating the desired remedies. Witnesses may be called and after all evidence has been presented, the parties give closing arguments. After each side has had an opportunity to present evidence and to argue its case, the arbitrator(s) reaches a decision. The final decision of the arbitrator is called an “award.”

The role of the courts in the arbitration process is limited. When a dispute arises as to whether the parties have agreed in an arbitration clause to submit a particular matter to arbitration, one party may file suit to compel arbitration. The court before which the suit

is brought will not decide the basic issue or controversy, but must decide whether the dispute is arbitratable (whether the matter can be resolved through arbitration).

You can read more about ADR on this Web site: www.fjc.gov.



OK, that overview of court systems requires you to answer some questions to make sure you understood what you read.

Go to the next page, write your answers on a piece of paper, then check them against the answers on the following page. Don't look at the answers until you finish the questions.

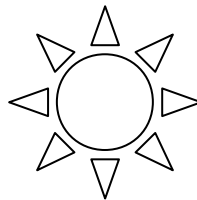
QUESTIONS - CHAPTER 1

1. The Latin term for law is _____
2. A _____ statute permits a state to obtain jurisdiction over nonresident individuals and corporations.
3. Any court having original jurisdiction is known as a _____
4. A person appearing on his/her own behalf is termed _____
5. The power of the federal court unlimited? T F
6. The American legal system was derived primarily from what country? _____
7. State courts have jurisdiction over divorce actions T F
8. The court who has original jurisdiction is the “trial court” T F
9. Appellate courts are the courts that hear appeals T F
10. Federal courts have unlimited jurisdiction T F
11. Under the definition of diversity of citizenship, Maria may bring an action only in the Florida court T F
12. Venue is the word used to describe the nature of the crime T F
13. “Standing to sue,” means the individual must have a sufficient stake in a controversy before s/he can bring a lawsuit T F
14. The procedural rules for federal court cases are set forth in the Federal Rules of Civil Procedure. T F
15. The highest court in the federal judicial system is the U.S. Court of Appeals
T F
16. Probate matters are decided in state courts T F
17. ADR stands for _____
18. Three primary methods for settling disputes in the ADR include:
 - a. _____
 - b. _____
 - c. _____
19. The “arbitrator” serves as the judge in ADR T F

20. The title _____ is sometimes used after the surname of an attorney.

ANSWERS CHAPTER 1

1. juris or lex
2. long arm
3. trial court
4. *propria persona*, or in *pro per*, or *pro se*
5. false
6. England
7. true
8. true
9. true
10. false
11. false
12. false, describes location
13. true
14. true - did you visit the website?
15. false - U.S. Supreme Court
16. true
17. Alternative Dispute Resolution
18. a.b.c. any order: negotiation, mediation, arbitration (3 points)
19. true
20. esquire



Congratulations, you just finished what we hope was an interesting chapter on the legal system. The courses are designed exactly like this chapter. Now, determine your level of understanding the information.

Take the total number of questions you got the right answer for and divide that number by 22 (total questions). This will give you your percentage.

Example: 18 correct divided by 22 = 82%

If you found the subject matter interesting and scored over 80%, the legal field might be for you. Talk to an enrollment counselor if you have questions. 877-335-4072.

As the wise old owl says:



“He who hesitates is lost!”

If you have a few minutes more, please try the sample of on-line assignments on the next page. It is interesting and important to learn more about the law, courts, your state, the constitution, even if you do nothing whatever in the legal field. Good citizens are expected to be informed citizens.

ASSIGNMENTS:

1. Research – under <http://www.findlaw.com/cascode/constitution/> and find the Fifth Amendment (rights of persons), and read the annotations relating to

- Indictment by Grand Jury
- Double Jeopardy
- Development and Scope
- Supreme Court Review
- Procedure in the Trial Courts

2. Use the Web site dedicated to the United States Supreme Court, located at <http://www.uscplus.com>. Has a data base of all Supreme Court opinions.

Also: <http://www.lawsources.com/also/usa.cgi?us1>

FindLaw's home page at <http://www.findlaw.com> you may browse through the various options on the main page.

Your state court information: Check out: National Center for State Courts Web site. <http://www.statelocalgov.net/50states-courts.htmus>.

Information on the federal court system at www.uscourts.gov.

Trial courts, public records, state courts, criminal records, etc., <http://www.courts.net>.