Part 1

Introduction to American Legal Case Reading and Discussion

Reading 1
The United States Legal System—The Courts and the Law

Hierarchy of State and Federal Courts

In the United States, state and federal constitutions provide for the establishment of the court system and give courts judicial power. The federal court system and most state court systems organize their courts in a hierarchy consisting of lower-level or trial courts, appellate courts, and a supreme court (see Figs. 1 and 2).

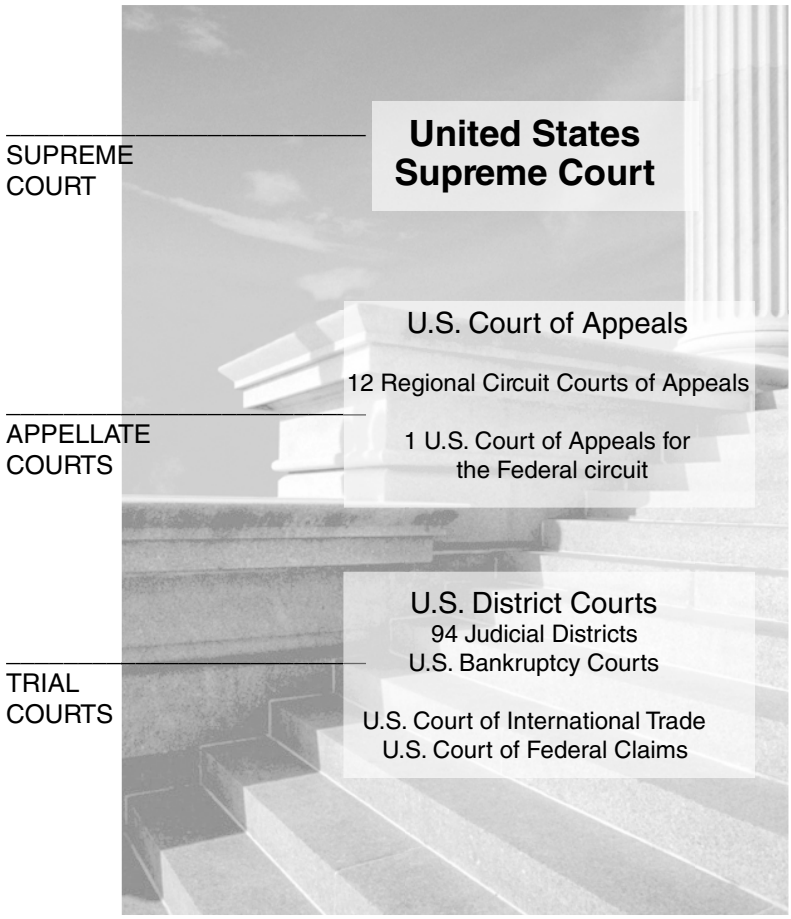
Jurisdiction

If a court has subject-matter jurisdiction, it has the authority to *adjudicate* or determine the outcome of a legal matter. The Constitution of the United States, to balance the power of the federal and state governments, specifically limits the scope of jurisdiction over the types of cases that federal courts may hear. Thus, it can be said that federal courts have *limited jurisdiction.* Under Article III, Section 2 of the U.S. Constitution, their jurisdiction includes, among other things, all cases "arising under this Constitution, the Laws of the United States, and Treaties," controversies in which the United States is a party and "Controversies between two or more States" or "Citizens of different States." Also considered courts of limited or *special jurisdiction* are those courts that, by statute, are limited to particular types of cases they can hear—for example, state probate and juvenile courts.

State courts may be regarded as courts of *general jurisdiction* because they have the authority to hear a broader range of cases. In certain circumstances, it is possible for courts to have *concurrent jurisdiction* over a legal matter. In other words, jurisdiction is shared by more than one tribunal.

Some courts have *original jurisdiction* over certain legal matters, which means that all cases dealing with a particular matter must be initiated in that court. Most cases are initiated in a trial court. However, a higher court can also have original jurisdiction over a legal matter. For example, the U.S. Constitution states that "[I]n all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party, the supreme Court shall have original Jurisdiction."

FIGURE 1 The United States Federal Courts



From *Understanding the Federal Courts, The Administrative Office of the U.S. Courts, 1999, www.uscourts.gov/UFC99.pdf.*

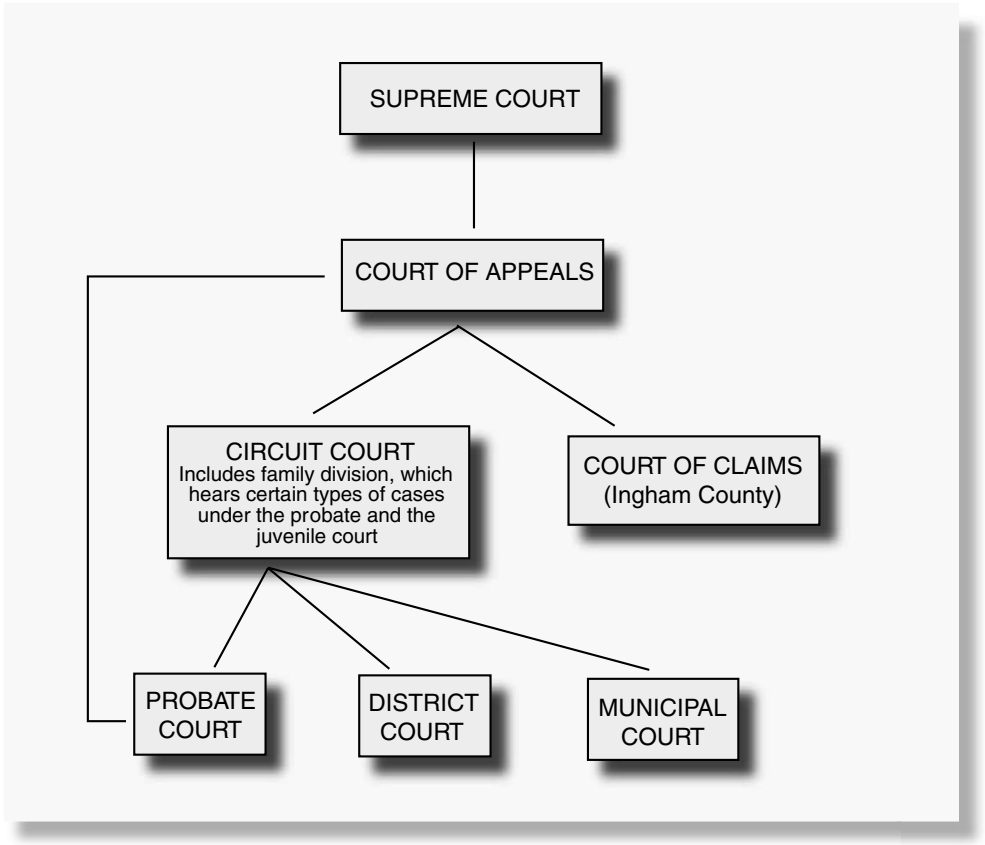
In these cases, the U.S. Supreme Court, the highest court in the country, has both original and *exclusive jurisdiction.*

Disagreements over jurisdiction between the federal and state courts are decided by the U.S. Supreme Court.

The Trial Court and the Jury System

In the American legal system, the *jury* may play a part in the trial court, the court in which a case generally begins—for example, U.S. district court or a state district court (see Figs. 1 and 2). The jury has two important roles. First, it decides the relevant facts in the dispute. This requires jury members to listen to and *weigh* the

FIGURE 2 Michigan State Government Judicial Branch



From *A Citizen's Guide to State Government, 1999–2000 Michigan Legislature, www.legislature.mi.gov/documents/publications/citizensguide.pdf.*

evidence presented at trial by each party in an attempt to determine what actually happened. The jury must consider matters such as the credibility of the eyewitnesses, character evidence, and *controverted* or *contested facts (evidence in dispute).* In this role, the jurors are commonly referred to as the *fact finders (factfinders)* or *triers of fact.*

The other major role of the jury is to apply the law as instructed by the judge. Before the jury *deliberates,* the judge reads a series of instructions to the jurors that set forth the law they must apply to the case. Using these instructions, the jury weighs the facts and *renders* or *delivers a verdict*—that is, whether the defendant is *liable/not liable* (in a civil trial) or *guilty/not guilty* (in a criminal trial).

The U.S. Constitution gives all criminal defendants the right to a jury trial: "The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury. . . ." U.S. Const. art. III, § 2. Also, under the Seventh Amendment of the Constitution, "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved. . . ." If a defendant does not request a jury trial, the judge assigned to the case decides both the law and the facts. This is called a *bench trial*. A defendant may prefer a bench trial for various reasons, such as time and cost, complexity of the case, and confidence in the judge that has been assigned to the case.

Jurors are chosen from a pool of citizens during a procedure called *voir dire*. During *voir dire* lawyers from the opposing parties have the opportunity to interview potential jurors. They can eliminate a potential juror in one of two ways. The first is by using *peremptory challenges*, which allow a lawyer to dismiss an individual without providing a reason. However, the dismissal cannot have a discriminatory basis, such as racial or gender bias. Individuals can also be dismissed *for cause*. In this case the attorney provides a legitimate reason for dismissal. Some reasons may be that the person (1) knows one of the parties in the case, (2) has been a victim in a similar type of case, or (3) has a particular bias in favor of or against the defendant.

In federal courts juries are composed of twelve members, and all decisions must be unanimous. Depending on the state, state courts may have fewer jurors, and decisions may not need to be unanimous. The level of proof for finding the defendant *guilty* (criminal cases) or *liable* (civil cases) is different. Criminal cases require *proof beyond a reasonable doubt*. Civil cases require a lower standard, such as *a preponderance of the evidence*.

Appellate Courts

A party who is dissatisfied with the outcome of a case in trial court usually has the right to *appeal* to an appellate-level court, which has the power to *affirm*, *reverse*, or *reverse in part* (modify) the lower court's decision. However, generally only matters of law are appealed. It is rare for the appellate court to intervene in matters of fact (issues involving the jury's determination of the facts in the case), unless the fact finders have made an obvious error. At the appellate level, a *three-judge panel* in a circuit decides a legal case. Circuits are designated geographical areas within the United States or within a particular state. However, in some cases, the *full court* (i.e., all the judges or a larger number of judges in the circuit) will sit together to hear the appeal *en banc (in banc, en bank)*. The full court may affirm or reverse the decision of the three-judge panel.

Parties wishing to appeal to either a state supreme court or the U.S. Supreme Court (sometimes referred to as *courts of last resort*) may request *certiorari* or *leave* (permission) *to appeal*. In spoken English, *certiorari* is commonly referred to by its abbreviation *cert*. If the court decides to hear the case, it issues a *writ of certiorari*,

which is an order to the lower court indicating its intention. Otherwise, *the decision* of the appellate court is *let stand*. Courts often grant certiorari if conflicts exist in the lower courts or a case deals with an important legal issue.

Judges on the U.S. Supreme Court and on some states' highest courts are called *justices*. There are nine justices on the U.S. Supreme Court, but state supreme courts may have fewer justices.

The Courts and Common Law

The United States is a common law country. Common law principles are not embodied in statutes but arise from decisions made by the courts of the various states. *Common law*, also referred to as *judge-made law* or *case law*, arises out of specific legal situations. General legal principles derived from these individual decisions are then applied to other similar or analogous cases. These prior cases are referred to as *precedent* because they constrain courts in deciding future related cases. Through this process a body of law develops. Common law principles are flexible. Over time, new laws may be created, and old ones expanded, modified, or disposed of to respond to changing societal and economic practices, new legal situations, and other circumstances.

Common law focuses on the protection of people and property. Important areas of law that embody common law principles are torts, contracts, and property law. They are required areas of study for first-year American law students.

In the United States, all states except the civil law state of Louisiana are common law states. In each state, common law exists alongside statutory law. State legislatures have constitutional power to make state law. They may choose to *codify* common law rules. If this occurs, courts, when deciding new cases, have the power to interpret these statutes by relying on pre-existing common law cases as precedent. However, if the legislature passes a statute that modifies, restricts, or *abrogates* (abolishes) the common law, the statute supercedes the common law rule. A new body of cases controlled by the statute will develop and be relied on as precedent. If only a section of a common law rule is modified, courts may continue to apply common law rules over the remainder. Changes to a state constitution that conflict with the common law also repeal the common law.

Stare Decisis

Stare decisis is an important concept in American law. *Black's Law Dictionary*[1] defines stare decisis as the "[p]olicy of courts to stand by precedent and not to disturb a settled point." This means that the court, for the sake of predictability, fairness, and consistency, must apply as precedent *well-settled* or *long-settled* principles established

[1] *Black's Law Dictionary, 6th ed.,* s.v. "stare decisis."

in previous cases to future similar or analogous cases. As a matter of public policy, the court is *bound* by its own decisions. Precedent may be *binding* on other courts within the jurisdiction as well. For example, if the U.S. Supreme Court decides a case involving federal law, all other courts in the nation, including the highest state courts, are bound by the principles set forth in that decision when deciding future similar federal cases.

Specific Rules Regarding Binding Authority

In the federal court system, U.S. district courts and courts of appeals *sit* (hold court proceedings) in thirteen circuits. A decision made by a district court in a circuit is not binding on other district courts inside or outside that circuit. A decision by a three-member panel of judges on the court of appeals in a circuit is binding on all other courts within that circuit. However, decisions can be reversed if judges in that circuit sit *en banc*. In this case, the full court hears or *rehears* the case, and its decision is binding on all courts in the circuit. However, decisions made in one circuit are not binding on district and appellate courts in other circuits, even though they may be considered persuasive authority. This system can create *circuit splits*. The outcome of two cases *on point* (having the same fact situation) may differ depending on the circuit in which each is heard. The U.S. Supreme Court may grant certiorari to resolve this conflict. If the Supreme Court refuses to hear a case, the decision of the court of appeals stands. However, refusal to hear the case does not necessarily mean that the Supreme Court agrees with the decision of a particular circuit court. For various reasons, the Court may decide to wait to hear a future case on the same issue. All courts in the United States are bound by decisions of the U. S. Supreme Court on federal matters.

In the state system, all state courts are bound by decisions of the state's supreme court in state matters. For example, if the Supreme Court of Michigan decides a legal matter involving an area of state law, all other courts in Michigan must follow the principles set forth in that decision when deciding future similar cases. Rules governing decisions of state appellate courts may differ. In some states, for a decision to be binding on all other appellate courts in the state, judges must sit en banc. In cases where a federal court applies state law, it is bound to follow precedent set by the highest-level court of that state. However, state courts are not bound to follow decisions of federal courts on state matters.

Although not bound by decisions of courts in other states, state courts may look to each other for guidance. This guidance is commonly referred to as *persuasive authority*. For example, in cases of *first impression* (cases dealing with matters that a state court has not heard before) a court may turn to other states for both majority and minority views on the matter.

U.S. courts are not bound by *dicta*. *Dicta* or *obiter dicta* (singular: *obiter dictum*) are opinions expressed in a legal case that are not directly relevant to the decision

of that case. They often concern hypothetical situations discussed in the opinion and are therefore generally regarded as persuasive authority.

Overruling Prior Decisions

Even though both the federal and state supreme courts are bound by their own *settled principles*, they have the power to *overrule (overturn*[2]*, disturb, reject)* a decision that they made previously if there are compelling reasons to do so. For example, courts may *overrule* a prior decision if the reasons for upholding it no longer make sense or have been found to have negative consequences.

Vocabulary Development

Task 1 *Common Law* [3]

Collocations are word combinations, or words that occur next to or near each other, often in a particular sequence. When becoming familiar with legal English, students may not always know which word combinations are permitted and which are not. Take, for example, the noun phrase *common law.* We know that in English prepositions can precede noun phrases, but what specific prepositions can precede *common law?*

Consider this sentence:

> _____ common law, the possessor of land owes a duty of ordinary care to his invitees, who are persons whom he invites onto his land for some purpose beneficial to him. *Newton v. Pennsylvania Iron & Coal, Inc.,* 85 Ohio App. 3d 353, 619 N.E.2d 1081 (2 Dist. 1993).

You may not know the answer and therefore may only be able to make some guesses, such as *in, under,* or *at.* Look at these examples containing instances of *common law.* What preposition precedes *common law* in these cases?

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[2] *Overrule* and *overturn* are synonyms; however, *overrule* is used more often. The court *overrules/overturns,* for example, a *decision, precedent,* or a *case.* The court can also *overrule itself. Overturn* is essentially not used in this latter case.

[3] Excerpts used in the vocabulary development tasks are not intended for legal purposes. Quotation marks and internal citations may have been removed and punctuation altered. The citation for each excerpt is included but does not include the page on which the excerpt is found.

1. There is no physician-patient privilege *at common law,* but a majority of states have enacted statutes. *Landelius v. Sackellares,* 453 Mich. 470, 556 N.W.2d 472 (1996).
2. Article I, Section 16 of the Alaska Constitution provides in relevant part: "In civil cases where the amount in controversy exceeds two hundred fifty dollars, the right of trial by a jury of twelve is preserved to the same extent as it existed *at common law."* *Alyssa B. v. State, Dept. of Health and Social Services,* 123 P.3d 646 (Alaska 2005).

Based on what you know so far, what preposition would you use to fill in the blanks in these three excerpts?

1. Civil fraud, as with suits _____ common law, involves lower evidentiary standards—e.g., a preponderance of the evidence, not guilt beyond a reasonable doubt. Mark Zingale, *Note: Fashioning a Victim Standard in Mail and Wire Fraud: Ordinarily Prudent Person or Monumentally Credulous Gall?,* 99 Colum. L. Rev. 795 (1999).
2. _____ the common law, an insurance agent whose principal is the insurance company owes no duty to advise a potential insured about any coverage. *Harts v. Farmers Ins. Exchange,* 461 Mich. 1, 597 N.W.2d 47 (1999).
3. _____ the common law, "one who suffers from deficient mental capacity is not immune from tort liability solely for that reason. . . ." *Wagner v. State,* 122 P.3d 599 (Utah 2005).

Is the preposition *at* the only preposition that can occur with *common law?* Does it make a difference if *common law* is preceded by *the,* as in Excerpts 2 and 3?

Since the answers are not likely to be found in your dictionary, you would normally have to conduct more inquiries. If you have access to a corpus of legal documents via Westlaw or Lexis Nexis, you can find the answers to these questions on your own by choosing a database (such as state cases) and then typing in key terms or word combinations, such as "common law". Hint: Avoid beginning your entry with a high-frequency word like *the.* You will be able to find examples of prepositions that occur with *common law.* Alternatively, you can go to *scholar.google.com* and type in some possibilities, such as "at the common law" (law), to see if they exist.

The answer can also be found in the Answer Key.

Task 2 *Certiorari (leave to appeal),* Verbs of Permission and Refusal

Even though two or more terms are regarded as synonymous (having the same or a similar meaning) in English, they may not always be substituted for one another. For example, a noun may only collocate or combine with a specific verb but not its synonym. Look at the legal term *certiorari,* for example.

Which of the following verbs of permission do you think can combine with *certiorari* in the example sentence? If you're only becoming familiar with legal English, you may not know the answers, just make your best guess.

permitted

granted

allowed

gave

agreed to

One month ago, this Court _____ certiorari to resolve the issues whether the execution of the presently mentally incompetent offends the Eighth Amendment, and, if it does, what process is due a condemned prisoner who might lack any understanding of the penalty he faces. *Roach v. Aiken,* 474 U.S. 1039, 106 S. Ct. 645 (1986).

Granted almost always combines with *certiorari.* The English Language Institute, University of Michigan (ELI-UM) legal English corpus contains 30 examples of *grant certiorari* and no examples of other verbs of permission that collocate or combine with *certiorari. Allowed* and *permitted* also combine with *certiorari,* but rarely.

What about the opposite of *grant certiorari?* Which of the verbs of refusal that follow collocate with *certiorari* in the sentence on page 11? Given that *certiorari* generally collocates with only one verb of permission, is it logical to suppose that it also collocates primarily with one verb of refusal? If you have access to a legal corpus, you may wish to search it for the answer. You can also go to Google Scholar and type in each verb plus *certiorari,* as in "refuse certiorari." Otherwise, make your best guess. The answer is in the Answer Key.

refuses

rejects

denies

declines

Relying on Ninth Circuit precedent, the district court finds that Nanosoft's copying is fair use and grants summary judgment in favor of Nanosoft. The Ninth Circuit affirms, and the Supreme Court _____ certiorari. *Tyler G. Newby, What's Fair Here Is Not Fair Everywhere: Does the American Fair Use Doctrine Violate International Copyright Law?,* 51 Stan. L. Rev. 1633 (1999).

Leave to appeal is a synonym for *certiorari.* Is it likely to combine with the same verbs?

By the way, how do you pronounce *certiorari?*