

## CHAPTER 1

### The Court System, Sources of Rights, and Fundamental Principles

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#### LEARNING OBJECTIVES

After study of this chapter, students will understand the following:

- LO 1: Differentiate between the federal and court systems.
- LO 2: Explain the dual court system.
- LO 3: Explain the effect of a court's decision upon territorial jurisdiction.
- LO 4: Distinguish which criminal acts can be prosecuted in both federal and state courts.
- LO 5: Contrast the legal concepts of jurisdiction and venue.
- LO 6: Describe the sources of legal rights within the United States.
- LO 7: Define the legal concept of judicial review.
- LO 8: Describe the concept of "Rule of Law."
- LO 9: Identify the components of a case brief.
- LO 10: Construct a case brief when given a case.

#### CHAPTER OUTLINE

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##### I. The U.S. Court System

**Learning Objective 1:** Differentiate between the federal and court systems.

**Learning Objective 2:** Differentiate between the federal and court systems.

- a. The Federal Court System
  - i. The United States has a dual court system.
    - 1. There is one system for federal cases and one for state cases.
    - 2. There are 52 separate judicial systems, representing each of the 50 states, and the federal system, and the courts of Washington, D.C.
  - ii. The U.S. Supreme Court was authorized by Article III, Section 1 of the U.S. Constitution.
  - iii. Other federal courts were created by statutes passed by the U.S. Congress.
  - iv. Federal law passed in 1869 fixed the number of U.S. Supreme Court justices at nine.
  - v. The U.S. Supreme Court meets in Washington, D.C., and always decides cases en banc (as one body).
  - vi. Other federal courts may decide cases in divisions.
  - vii. The Court has original jurisdiction over certain cases as specified in the Constitution.
  - viii. Most cases reach the Court either on appeal or on a writ of certiorari.
  - ix. It takes four justices (rule of four) to agree to grant a writ of certiorari, which means the Court will hear the case on appeal.
- b. The State Court System

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- i. The structure of the state court system varies from state to state.
- ii. Most state courts follow the federal pattern.

### What If Scenario

What if you somebody asked you which level of government, state or federal, contributes the most to the criminal justice system? What would you say?

### Media Tool

“U.S. Supreme Court website” [all LOs]

<http://www.supremecourt.gov>

- This is the official website of the United States Supreme Court, which contains information about current cases, court rules, information on the justices, and on the court’s calendar.
- **Assignment:** Assign students to visit the website and explore all the information that is available on the functioning of the U.S. Supreme Court. Prior to class, assign each student to a current justice or to a current court rule. Have each student make a brief presentation about that justice or court rule to the whole class.

### See Assignment 1

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## II. Where Judicial Decisions Apply

**Learning Objective 3:** Explain the effect of a court’s decision upon territorial jurisdiction.

- a. One type of limitation on the power of every U.S. court to try and decide cases is territorial or geographic.
- b. A judicial decision is authoritative and has value as precedent for future cases only within the geographic limits of the area in which the deciding court has jurisdiction (authority).

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## III. Stare Decisis and Judicial Precedent

- a. Stare decisis is a Latin term that means “to abide by, or adhere to, decided cases.”
- b. Judicial precedent means that decisions of courts have value as precedent for future cases similarly circumstanced.
- c. A decision is precedent only for cases that come within that court’s jurisdiction.

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## IV. Federal versus State Criminal Trials

**Learning Objective 4:** Distinguish which criminal acts can be prosecuted in both federal and state courts.

- a. The rule that determines whether a criminal case should be filed and tried in federal or state court is: If an act is a violation of federal law, the trial will be

held in a federal court. If an act is a violation of state law, the trial will be held in a state court.

- b. Dual sovereignty means that federal and state governments are each considered sovereign in their own right.

### Media Tool

What is this video about? Who committed the crimes? Who investigated the alleged criminal activity? How does federalism apply to this situation?

[http://www.huffingtonpost.com/2014/03/26/fbi-public-corruption-arrests\\_n\\_5037482.html](http://www.huffingtonpost.com/2014/03/26/fbi-public-corruption-arrests_n_5037482.html)

### Class Discussion/Activity

On what basis does the dual system of courts exist? Why is a dual system a good or bad idea? Explain.

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## V. Jurisdiction versus Venue

**Learning Objective 5:** Contrast the legal concepts of jurisdiction and venue.

- a. Jurisdiction is the power of a court to try a case.
- b. Venue is the place where a case is to be tried.
- c. The general rule is that cases must be tried in the place where the crime was committed, where a party resides, or where another consideration justifies a trial in that place.

See Assignments 2 and 3

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## VI. Sources of Rights

**Learning Objective 6:** Describe the sources of legal rights within the United States.

- a. Constitutions – Both the federal and state constitutions are sources of rules that protect the rights of individuals.
- b. Statutory Law – Statutory law is law passed by the Congress of the United States or by state legislatures.
- c. Case Law versus Common Law
  - i. Case law is law promulgated in cases decided by the courts.
  - ii. Common law originated from the ancient and unwritten laws of England.
- d. Court Rules
  - i. Various rules have developed as a result of the supervisory power of courts over the administration of criminal justice.

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### Class Discussion/Activity

Ask the class to explain the difference between common law and case law.

### What If Scenario

What if you had to choose just two sources for the basis of law in America? Which two would you select?

### Media Tool

“U.S. Constitution” [all LOs]

<http://www.law.cornell.edu/constitution/constitution.overview.html>

- The web page on the Cornell Law School website, which includes annotations created by the Congressional Research Service of the Library of Congress.
- **Assignment:** Assign students to visit the website and explore the structure of the U.S. Constitution and its amendments. Then, divide the students into groups and assign each group an article of the Constitution. Have each group prepare a handout for the class explaining the article they were assigned and which government departments or agencies are affected by the article.

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## VII. The Judicial Review Doctrine

**Learning Objective 7:** Define the legal concept of judicial review.

- a. Judicial review is defined as “the power of any court to hold unconstitutional and hence unenforceable any law, any official action based on a law, or another action by a public official that it deems to be in conflict with the Constitution.”
- b. *Marbury v. Madison* (1803) is the case that established this principle.

### Class Discussion/Activity

Is judicial review found in the Article III of the Constitution? If not, then how was the Supreme Court able to declare its existence?

### What If Scenario

What if you were in Congress at the time of the *Marbury v. Madison* ruling? Knowing the effect of the ruling on the power of the courts, would you work to overturn the ruling legislatively?

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## VIII. The Rule of Law

**Learning Objective 8:** Describe the concept of “Rule of Law.”

- a. The concept of the rule of law goes back to ancient Greece.
- b. The best-known meaning of the rule of law is this: no person is above the law.

### What If Scenario

What if you somebody asked if you to explain why the rule of law is important and you responded by saying what would the country look like if there were no rule of law? Do you think this reply would be adequate? Explain.

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## IX. The Incorporation Controversy

- a. Background
  - i. Whether the Bill of Rights in the U.S. Constitution protects against violations of rights by the federal government only or whether it also limits acts by state and local government officials.
  - ii. Bill of Rights added in 1791
  - iii. Fourteenth Amendment added in 1868
- b. Approaches to Incorporation
  - i. *Duncan v. Louisiana* (1968)
- c. A Summary of the Four Approaches to Incorporation
  - i. Selective incorporation
  - ii. Total incorporation
  - iii. Total incorporation plus
  - iv. Case-by-case incorporation
- d. Fundamental Right as the Test for Selective Incorporation
  - i. Fundamental rights are those of the very essence of a scheme of ordered liberty and principles of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.
  - ii. *Palko v. Connecticut* (1937)
- e. Rights Not Incorporated
  - i. The Fifth Amendment right to indictment by grand jury
  - ii. The prohibition against excessive bail and fines
- f. The Result of the Incorporation Controversy: “Nationalization” of the Bill of Rights

See Assignment 4

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## X. Court Cases

**Learning Objective 9:** Identify the components of a case brief.

- a. Case Citation
  - i. A case citation indicates where a case may be found in the vast firmament of legal publications.
  - ii. The case citation for *Mapp v. Ohio*, 367 U.S. 643 (1961) is the official case citation that means that case is found in Volume 367 of the *United States Reports*, starting on page 643, and it was decided in 1961.

### Class Discussion/Activity

What is a court case? What are the components of a case brief?

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## XI. How to Brief a Case

**Learning Objective 10:** Construct a case brief when given a case.

- a. Case briefs help readers understand court cases better and are used extensively as a learning tool in law schools and in the practice of law.
- b. The basic elements of a simple case brief are as follows:
  - i. Case title

- ii. Citation
- iii. Year decided
- iv. Facts
- v. Issue or issues
- vi. Court decision
- vii. Holding
- viii. Case Significance

### **Class Discussion/Activity**

Have the class discuss the steps to briefing a case.

### **Media Tool**

“Findlaw Legal Information website” [all LOs]

<http://www.findlaw.com>

- This is a commercial website which provides free access to a wide variety of information about cases and other legal issues.
- **Assignment:** Assign students to visit the website and explore all the information that is available to aid them in researching legal matters. Prior to class, assign each student to a significant U.S. Supreme Court case involving the Constitution in a criminal matter, such as *Mapp v. Ohio*, and have the student make a brief presentation in class about how to find the case and briefly what it is about.

See Assignment 5

## **CHAPTER SUMMARY**

- The United States has a dual court system, meaning it has two levels of courts—federal and state.
- Where a criminal case is to be tried is determined by this rule: If an act violates federal law, it is tried in federal court; if it violates state law, it is tried in state court. If an act violates both federal and state laws, it can be tried in both courts.
- *Judicial precedent* means that decisions of courts have value as precedent for future cases similarly circumstanced.
- *Jurisdiction* is the power of a court to try a case; *venue* is the place where the case is tried.
- *Judicial review* is “the power of any court to hold unconstitutional and hence unenforceable any law, any official action based on a law, or any other action by a public official that it deems to be in conflict with the Constitution.”
- *Rule of law* is difficult to define, but it generally means that no person is above the law; and that every person, from the most powerful public official down to the least powerful

individual, is subject to the law and can be held accountable in the courts of law for what he or she does.

- The *incorporation controversy* is about whether the Bill of Rights protects against violations of rights by the federal government only or also limits actions of state and local government officials. The four approaches to incorporation are selective incorporation, total incorporation, total incorporation plus, and the case-by-case approach.

## KEY TERMS

- **Bill of Rights**—the first ten amendments to the U.S. Constitution.
- **Case-by-case incorporation**—an approach that examines the facts of a specific case to determine whether there is an injustice so serious as to justify extending the provisions of the Bill of Rights to that case.
- **Case citation**—indicates where a case may be found in legal publications.
- **Case law**—law promulgated in cases decided by the courts.
- **Common law**—law generally derived from ancient usages and customs or from judgments and decrees of courts recognizing, affirming, and enforcing them.
- **Double jeopardy**—being punished more than once for the same offense.
- **Dual court system**—the United States has two court systems: one for federal cases and another for state cases.
- **Dual sovereignty**—federal and state governments are both considered sovereign.
- **Due process clause**—fundamental fairness.
- **En banc decision**—as one body.
- **Incorporation controversy**—the issue of the relationship between the 14<sup>th</sup> Amendments's Due Process Clause and the Bill of Rights.
- **Judicial precedent**—decisions of courts have value as precedent for future cases similarly circumstanced.
- **Judicial review**—the power of courts to declare law or acts unconstitutional.
- **Jurisdiction**—the power of a court to try a case.
- **Original jurisdiction**—the case is brought to the Court directly instead of on appeal.
- **Rule of four**—at least four justices must agree for the Court to consider the case on its merits.
- **Rule of law**—no person is above the law.
- **Selective incorporation**—the doctrine that the 14<sup>th</sup> Amendment's Due Process Clause incorporates only rights deemed fundamental by the Supreme Court.
- **Stare decisis**—to abide by, or adhere to, decided cases.

- **Statutory law**—law passed by legislatures.
- **Total incorporation**—an approach holding that the Fourteenth Amendment’s Due Process Clause should be interpreted to incorporate all the rights granted in Amendments I–VIII of the Constitution.
- **Total incorporation plus**—in addition to applying all the provisions of the Bill of Rights to the States, other rights ought to be added, such as the right to clean air, clean water, and a clean environment.
- **Venue**—the place where a case is to be tried.

### CRITICAL THINKING EXERCISES

1. *Duncan v. Louisiana*, briefed in Chapter 1, is an example of selective incorporation. It can be found at <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=391&invol=145>. What are the various tests for determining which rights are incorporated? Are these tests so vague as to leave the justices free to impose their own personal preferences? Doesn’t it seem that everything in the Bill of Rights is “fundamental” and should be incorporated? If it was not fundamental, why would it be in the Bill of Rights? How does incorporating or not incorporating a right affect the principle of federalism? Could federalism concerns have been a reason for rejecting total incorporation? [LO8]
2. The rule of four requires that four justices agree to hear a case in order for it to be considered on its merits. What reasons could there be for the requirement of four justices? Why not five? Could the Court use other methods to determine which cases to hear? Is the rule of four the best method? [LO1]

### DISCUSSION QUESTIONS

1. The Supreme Court has held that certain rights are fundamental and those rights apply in both federal and state proceedings. Discuss what makes rights handled on a case-by-case basis different. Should these rights be incorporated? Why or why not? [LO7|8]
2. The case of *Marbury v. Madison* (5 U.S. 137 [1803]), which established the doctrine of judicial review, has been said to be the most important case ever decided by the Supreme Court. Discuss the importance of *Marbury v. Madison* (1803). Discuss how current law might be different had the case been decided differently. [LO5]

### ASSIGNMENTS

1. Have the class write a one-minute paper distinguishing the differences between federal and state courts. [LO 1]
2. Provide the class with Internet links using Findlaw to several significant cases involving the Constitution and criminal matters. Assign groups of 3-4 students to brief different cases and report their conclusions to the class. [LO 5]



3. Assign students to brief a case from the list of significant cases. Students can each be assigned a different case individually or can be assigned to work as a group on the cases as a group homework assignment. [LO 5]
4. Divide the class into four groups. Assign one of the four approaches to incorporation to each of the groups. Have each group prepare a summary of their assigned approach and an example and report to the class. [LO 8]
5. Assign the students to write a brief on a case. [LO 10]