

Third Exam  
The Judicial Branch  
  
United States and Texas  
Courts

Reading Assignment  
\*The *Struggle for Democracy*, Chapter 14, "The Courts"  
\*The *Struggle for Democracy*, Appendices pp. A9-A10, "Article 3 of the US Constitution"  
\*Texas *Government, policy & Politics*, Chapter 10, "The Judicial Branch"

Judicial Review  
1. Under separation of powers, the courts interpret the law  
2. The constitution is the highest law in the land  
3. If the courts, during their interpretations, discover an inferior law in conflict with the constitution, the courts have no alternative but to declare the inferior law unconstitutional

4. The Supreme Court is the final authority on the meaning of the words in the constitution  
5. *Marbury v. Madison* (1803)  
A. The Judiciary Act of 1789 established the framework for our federal court system appellate courts, district courts, etc.  
B. In 1801, Marbury had been appointed to a justice of the peace court in Washington D.C.

Statutory Law  
Definition:  
The enactments (laws) passed by public legislative bodies (congress & state legislatures).  
  
\*Enactments of local legislative bodies are usually referred to as "ordinances"

Administrative Law  
Definition:  
The rules and regulations issued by official public administrative agencies and commissions.

Terms  
1. Constitutional law  
2. Statutory law  
3. Administrative law  
4. Common law  
5. Precedent  
6. *Stare decisis*  
7. Criminal law  
8. Civil law  
9. Equity law  
10. Federal question  
11. Jurisdiction  
12. Original jurisdiction  
13. Appellate jurisdiction  
14. Exclusive jurisdiction  
15. Concurrent jurisdiction  
16. Final jurisdiction  
17. Writ of *certiorari*  
18. Rule of four  
19. Majority opinion  
20. Concurring opinion

Terms, (Cont'd)  
21. Dissenting opinion  
22. *In forma pauperis*  
23. Litigant  
24. Plaintiff  
25. Defendant  
26. Adversary system  
27. Courts are passive  
28. Justiciable dispute  
29. Political question  
30. "Friendly disputes"  
31. Adversarial theory  
32. Juries  
33. Grand jury  
34. Petit (trial) jury  
35. Bail  
36. National supremacy  
37. Judicial review  
38. Quasi-judicial  
39. *Ex parte*  
40. Eminent domain  
41. Inquisitorial procedure  
42. Accusatorial procedure

C. But, the appointment did not get delivered in time before Adams' term ran out on March 3 at midnight.  
D. Congress had passed the Judiciary Act of 1789 that allowed a citizen to file suit in the Supreme Court for a writ of mandamus.  
E. Marbury filed suit in the Supreme Court for a writ of mandamus to compel Madison, who was the new secretary of state, to deliver the appointment to Marbury.

F. This suit was a case of *original jurisdiction*. Marshall held that even though Marbury was entitled to his appointment and should have received it, the Supreme Court could not issue a writ of mandamus because....  
G. A statute had given the supreme court original jurisdiction to issue writs of mandamus.

Summary  
1. Terms  
2. National Supremacy  
3. Separation of Powers/Judicial Independence  
4. Checks and Balances/Judicial Review/*Marbury vs. Madison*  
5. Hierarchy of Law

Common Law  
1. Origin in unwritten old English customs and practices  
2. Judge made law based on the facts of that case and similar cases before  
3. Law of precedent (*stare decisis*)  
\*Much of English common law was carried over to the U.S. And has been codified (written down) as part of our legal codes.

Judicial Independence  
1. Term of office  
A. "...shall hold their offices during good behavior."  
2. Secure salaries  
A. "Neither the president nor congress may reduce the salary of a federal judge."  
3. Removed only upon conviction of impeachment charges

National Supremacy Clause  
1. Article 4 "...this constitution, and the laws passed in pursuance thereof, and all treaties made, or which shall be made shall be the supreme law of the land; and the judges in every state shall be bound thereby...."

H. The constitution lists only two areas of original jurisdiction for the supreme court:  
1) cases involving states, and...  
2) cases involving foreign ambassadors, ministers and counsels  
I. The part of the judiciary act of 1789 that extended the original jurisdiction of the Supreme Court was unconstitutional.

Constitutional Law  
Definition:  
The words in the constitution plus the written opinions of the courts which interpret what the words mean.

It Oughta Be a Crime!!!

Criminal Law  
Definition:  
Laws of public legislative bodies that deal with behavior that is deemed to be a threat to society  
Criminal behavior is either a Felony, or a misdemeanor  
\* The state (public government) is always the plaintiff

Criminal Law, (Cont'd)  
-There is always a penalty upon a conviction  
-The defendant may appeal a verdict of guilty  
-The government may not appeal a verdict of not guilty

Civil Law  
Definition:  
Laws of public legislative bodies that deal with conflicts that do not involve crimes: money, property, domestic relations, torts (damages), etc.  
-There is no guilt nor innocence  
-There is no penalty  
-Civil cases render "judgements"

Final Jurisdiction  
Definition:  
The authority of a level of court to be the highest level of court to hear a certain type of case...no higher level can hear this type of case on appeal.

Concurrent Jurisdiction  
Definition:  
The authority of a level of court to hear the same kind of case in the same instance as another level of court

Federal Jurisdiction  
1. The substance of the suit  
2. The nature of the litigants

The Substance of the Suit  
1. Federal question  
2. Cases involving admiralty and maritime law  
3. Disputes between citizens of the same state over the same piece of land located in another state

Equity Law  
Definition  
Preventive law. Laws and procedures used to prevent an irreparable harm or injustice before it occurs. The primary tool of equity law is the court injunction.

Jurisdiction  
Definition:  
The authority of a level of court to hear a certain kind of case in a given instance

Exclusive Jurisdiction  
Definition:  
The authority of a level of court to be the only level of court to hear a certain type of case at a given instance

Writ of Certiorari  
Definition:  
An order from the Supreme Court directing the lower to send the written record of the proceedings of the case as it was tried  
At least 4 justices must sign a writ of Certiorari (the rule of 4)

The Nature of the Litigants  
Controversies:  
1. In which the united states is a litigant  
2. In which a foreign ambassador, minister or consul is a litigant  
3. Between 2 or more states  
4. Between a state and citizens of another state\* (see amendment 11)  
5. Between citizens of different states  
6. Between a state or its citizens and foreign states, citizens or subjects\* (\*See amendment 11)

Nature of the Litigants, (Cont'd)  
A. *Chisholm v. Georgia*, 1793  
*Chisholm* opposed independence from England. Just before the war for independence started, he went back home to England where he died after a long and prosperous life.  
Georgia confiscated *Chisholm's* property after he left for England. Before *Chisholm* died, he sued Georgia in federal courts for his property and won (1793).

Original Jurisdiction  
Definition:  
The authority of a level of court to hear a certain kind of case in the first instance (before any other level of court can hear that kind of case)

Appellate Jurisdiction  
Definition:  
The authority of a level of court to hear a certain kind of case only after one or more lower courts have heard the case.

Dual Court System  
1. Federal court system  
2. State court systems  
A. 50 state systems  
  
(Note: see page 427 of Greenberg for chart on dual court system.)

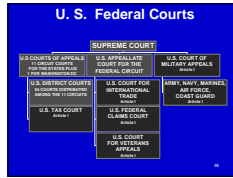
"Well..., You Don't Have to Make a Federal Case Out of It!!!"

B. All the states got nervous, and the 11th Amendment\* was immediately proposed by Congress and was ratified by the states by 1798.  
  
\*Amendment 11: "The judicial power of the U.S. Shall not be construed to extend to suits in law or equity, commenced or prosecuted against one of the U.S. By citizens of another state or by citizens or subjects of a foreign state."

Summary  
1. Civil Law vs. Criminal Law  
2. Types of Jurisdiction  
3. Dual Court System  
4. Jurisdiction of Federal Courts

**Federal Courts**

1. Art. I, sect 8. "The congress shall have the power...To constitute tribunals inferior to the supreme court:..."
2. Art. III, sect. 1. "The judicial power of the united states, shall be vested in one Supreme Court, and in such inferior courts as the congress may from time to time ordain and establish."



"I'll Take It All the Way to the Supreme Court!!!!"

**Supreme Court Jurisdiction**

1. Original jurisdiction
2. Appellate jurisdiction

**Policy Making by the Supreme Court**

1. Three periods of effect of judicial interpretation on policy
  - A. National power & property rights
  - B. Government & the economy
  - C. Government & civil rights and civil liberties

**U. S. Appellate Courts**

1. Eleven regional Circuit Courts apportioned among the states
  - A. At least 3 states per circuit
  - B. Texas, Louisiana & Mississippi make up the 5th Circuit Court of Appeals
2. One Court of Appeals for the District of Columbia

**Article I Courts (Tribunals)**

1. Courts created under Article I do not have the same degree of independence as article III courts
2. Serve for a specified term of office
3. These are specialized courts
  - A. Court of appeals for the armed forces
  - B. Federal claims court
  - C. Court of veteran appeals
  - D. Federal tax court
  - E. Territorial courts

**Article III Courts**

1. One Supreme Court
2. Thirteen courts of appeals (circuit courts)
3. Ninety four federal district courts
4. Judicial independence

**Original Jurisdiction**

1. Very limited
  - A. "...All cases affecting ambassadors, other public ministers and consuls,
  - B. Those in which a state shall be a party."

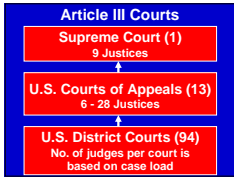
**Appellate Jurisdiction**

1. Hears cases from U.S. Circuit courts of appeal
2. Hears requests for *writs of certiorari* from petitioners in state courts of final jurisdiction. (Usually the state's supreme court)
3. May, *if it chooses*, hear an appeal from state court of *final jurisdiction* that declares a federal law in violation of that state's constitution

3. One Court of Appeals for the Federal Circuit
  - A. Hears appeals from Article I courts and selected government agencies
4. The number of judges per circuit varies from 6 in the 1st. Circuit to 28 judges in the 9th. Circuit
5. The 5th. Circuit has 27 judges
6. Usually only a panel of 3 judges will hear a case

**U. S. Appellate Court Jurisdiction**

1. Original jurisdiction
  - A. None
2. Appellate jurisdiction
  - A. Hears appeals from the District Courts located in that Circuit
  - B. Hears approximately 48,000 cases per year



**One Supreme Court**

1. Only federal court required by the U.S. Constitution.
2. All other federal courts have been created by congress either under the authority of Article III or Article I.
3. Number of members is set by Congress
  - A. Currently 9 members: 1 chief justice (Rehnquist) plus 8 associate justices

Sigh Pitifully.....  
"So Many Cases; So Little Time...."

**The Supreme Court Controls its Own Appellate Docket**

1. Selects less than 100 cases out of approximately 7,000 requests a year
  - A. *Writs of certiorari* & the "rule of 4"
2. Must have exhausted all appeals in the state's court system
3. Subject of suit must raise a "federal question"

**U. S. District Courts**

1. Workhorses of the federal courts
  - A. Try approximately 280,000 cases per year
2. 94 Districts apportioned among the states (currently 646 District Courts)
  - A. The number of District Courts per Circuit is based on case load and geographical need
3. Trial courts which may or not use a jury in civil cases; must use a jury for criminal cases

**U. S. District Court Jurisdiction**

1. Original jurisdiction
2. Concurrent jurisdiction Very limited

**Original Jurisdiction**

1. Federal crimes
2. Non-jury civil suits in which a foreign government is the defendant
3. Federal questions
4. Suits over \$75,000 between :
  - A. citizens of different states
  - B. citizens of a state and citizens or subjects of a foreign state
  - C. a foreign state is the plaintiff v. citizens of a state or legal alien living in the U.S.

5. Admiralty and maritime suits
6. Tort claims against the U.S.
7. The U.S. is a litigant
8. Suits over federal lands
9. Suits over Indian land claims
10. Citizens of the same state claiming the same land located in another state
11. Suits over *eminent domain*
12. Petitions for *writs of mandamus*
13. Vice consuls, members of diplomatic missions & their families

"In this corner, wearing blue trunks and weighing....."

**Adversarial Theory of Justice**

1. The best way to discover the truth is to allow both litigants to do everything possible, *within the rules*, to win.
  - A. To bring in as much evidence, facts, witnesses, etc
2. The judge is sort of a referee ruling on points of law and enforcing the rules

**Summary**

1. Adversarial Theory of Justice
2. Trial Courts
3. Appellate Courts

**Jury System**

1. Grand Jury
2. Petit or trial jury
  - Jurors are paid \$40.00 per day
  - Selected from combined lists of voters and drivers licenses

**Concurrent Jurisdiction**

1. Very limited
  - A. With U. S. Federal Claims Court if U.S. is the defendant involving up to \$10,000

**Summary**

1. Structure of the Federal Court System
  - A. Article 1 Courts
  - B. Article 3 Courts
2. US Supreme Court
  - A. Jurisdiction
    - 1) Original
    - 2) Appellate
      - a) Writ of certiorari

**Trial Courts**

1. Adversarial theory of justice
2. Courts of original jurisdiction
3. Hears civil and criminal cases
4. Discovery of the facts of the case
5. May or may not have jury in civil cases
  - A. renders a judgement
6. Must use jury in criminal cases
  - A. determines guilt or innocence
  - B. determines the penalty/punishment

**Negotiated Settlements**

1. Approximately 90% of all civil suits in federal courts are settled out of court.
  - A. Judges encourage this
  - B. Lawyers & litigants encourage this
  - C. Uncertainty by litigants about the outcome of a court decision
    - 1) Many cases are highly technical and involve large amounts of money, so many litigants are leery of leaving their fate up to a jury of laymen

**Grand Jury**

1. Used primarily for criminal cases
2. No guilt; no innocence
3. Determines if there is enough evidence to have a trial to determine guilt or innocence
4. Federal grand juries may last up to 18 months
5. 16 - 23 members
6. Supposed to represent a cross section of the community

**Trial or Petit Jury**

1. Hears the evidence
  - A. Renders judgement in favor of one of the litigants in civil cases
    - 1) Less than unanimous verdict allowed if both litigants agree
    - 2) 6 - 12 members
  - B. Determines guilt or innocence in criminal cases
    - 1) Unanimous verdict is required in criminal cases
    - 2) 12 members

**Summary**

3. US Appellate Courts
  - A. Jurisdiction
    - 1) Original
    - 2) Appellate
4. US District Courts
  - A. Jurisdiction
    - 1) Original
    - 2) Appellate

**Two Basic Kinds of Courts**

1. Trial courts
2. Appellate courts

**The Plea Bargain**

1. Approximately 90% of all criminal suits in federal district courts are not tried.
  - A. Plea Bargain where the defendant pleads guilty in return for a lesser sentence or.....
  - B. The evidence is so overwhelming that the defendant simply pleads guilty

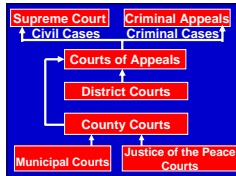
**Appellate Courts**

1. Appellate jurisdiction
2. Usually cases heard by a panel of three judges
3. No witnesses
4. No evidence is introduced
5. Rule of point of law

**Summary**

1. Adversarial Theory of Justice
2. Trial Courts
3. Appellate Courts
4. Jury System
  - A. Grand Jury
  - B. Petit/Trial Jury

**Structure of the Texas Court System**



**Municipal Courts**

- Selection:
  - Elected or appointed depending on the city's charter
- Qualifications:
  - Determined by city's charter
- Salaries:
  - Paid entirely by the city. Varies widely from city to city
- Term of office:
  - Most serve 2-year terms - set by city charter

**Texas County Courts**

- Constitutional County Courts
- Statutory County Courts

**Texas County Courts**

- Selection:
  - Partisan election
- Qualifications:
  - None
- Salaries:
  - Paid entirely by the County. Varies widely from county to county
- Term of office:
  - 4-year term

2. Concurrent Jurisdiction

- With County Courts in cases involving juveniles

**Types of Cases Filed in Texas District Courts**

- Civil cases: 67.7%
- Criminal cases: 28.8%
- Juvenile case: 3.5%

**Municipal Court Jurisdiction**

- Only misdemeanors
- Exclusive original jurisdiction over violations of city ordinances
  - Only punishment is a fine "Dollar amount jurisdiction"
- Concurrent jurisdiction with J. P. Courts for misdemeanor violations of state laws inside the city limits (mostly traffic violations)
  - Only punishment is a fine "Dollar amount jurisdiction"

4. Criminal Jurisdiction

- Class C Misdemeanors with fines under \$500

**County Court Jurisdiction**

- Civil Jurisdiction
  - "dollar amount jurisdiction"
- Criminal Jurisdiction
  - Misdemeanors only
  - Fines, only
  - "Dollar amount jurisdiction"

**Texas District Courts**

- Selection
  - Partisan election within district
- Qualifications
  - U. S. Citizen
  - Resident of Texas
  - Resident of judicial district
  - Age: 25
  - Licensed to practice law in Texas
  - Practiced law or served as a judge for a combination of 4 years

**Types of Civil Cases (67.7%)**

- Divorce: 26.1%
- Other family disputes: 34.9%
- Taxes: 12.3%
- Personal injury: 11.2%
- Debt: 4.2%
- Other civil: 11.5%

**Types of Criminal Cases (28.8%)**

- Drugs: 29.0%
- All thefts: 13.7%
- Burglary: 12.4%
- Assault: 11.3%
- Felony DWI: 6.2%
- Robbery: 4.0%
- Homicide: 1.2%
- Other felonies: 22.2%

**Justice of the Peace Courts**

- Selection:
  - Partisan election
- Qualifications:
  - None
- Salaries:
  - Paid entirely by the County. Varies widely from county to county
- Term of office:
  - 4-year term

**J. P. Court Jurisdiction**

- Civil Jurisdiction
  - "dollar amount jurisdiction"
  - Small Claims Court
- Criminal Jurisdiction
  - Misdemeanors only
  - Fines, only
  - "Dollar amount jurisdiction"

3. Salary: \$101,700 paid by the state

- Salary supplement may be paid by the county

- Term of office
  - 4 years
- 396 district courts, each with its own geographical jurisdiction
- One judge per district

**District Court Jurisdiction**

- Original Jurisdiction
  - Criminal cases
    - All felonies
  - Civil cases
    - Divorce suits
    - Suits over title to land
    - Suits over elections
    - "Dollar amount" jurisdiction - some concurrent with County Courts involving at least \$200

**Texas Courts of Appeals**

- Selection
  - Partisan election within appellate district
- Qualifications
  - U. S. Citizen
  - Resident of Texas
  - Resident of judicial district
  - Age: 35
  - Licensed to practice law in Texas
  - Practiced law or served as a judge for a combination of 10 years

3. Salary:

- Chief Justice \$107,850
- Associate Justices 107,350
- paid by the state
- Salary supplement may be paid by the counties in which the appellate district is located
- Term of office
  - 6 years, overlapping
  - One judge per district

6. Fourteen Appellate Court districts, each with its own geographical jurisdiction

7. Each appellate court has 1 Chief Justice plus 2 to 12 Associate Justices

- Harris County is only county with two Texas appellate courts (9 Justices each)

**Texas Appellate Court Jurisdiction**

- Appellate from trial courts within its geographical appellate district
  - Death penalty appeals from District Courts go directly to Texas Court of Criminal Appeals
- Original - None

**Summary**

- Structure of Texas Court System
  - Municipal Courts
    - Jurisdiction
  - Justice of the Peace Courts
    - Jurisdiction
  - County Courts
    - Constitutional
    - Statutory
    - Texas District Court
      - Jurisdiction

**Summary**

- Texas Appellate Courts
  - Jurisdiction
- Texas Court of Criminal Appeals
  - Jurisdiction
- Texas Supreme Court
  - Jurisdiction

**Campaign Contributions to Texas Supreme Court Justices**

- Contributions from litigants or lawyers with cases before the court: 40% or \$3.8 million
- Other contributions: 60% or \$5.3 million

**Summary**

- Selection of Texas Judges
  - Jacksonian Democracy
  - Missouri Plan
  - Texas Justice and Money

**Court of Criminal Appeals**

- Selection
  - Partisan statewide election
- Qualifications
  - U. S. Citizen
  - Resident of Texas
  - Age: 35
  - Licensed to practice law in Texas
  - Practiced law or served as a judge for a combination of 10 years

3. Salary:

- Chief Justice \$115,000
- Associate Justices \$113,000
- paid by the state

- Term of office
  - 6 years, overlapping
- One court with statewide jurisdiction

**Selection of Texas Judges**

- More than 40 states elect or "re-elect" by referendum at least some of their judges
  - Fifteen states use some form of the Missouri plan
    - Initial appointment of judges by the state's governor
    - Use of referendum thereafter
- Texas is one of the 10 remaining states that use partisan elections

3. Unofficial "appointive/elective" selection at district courts and above

- Governor Bush appointed:
  - 53 district judges during his 1st two years of office
  - four of the 9 justices on the Texas Supreme Court during his 1st 4-year term

**Court of Criminal Appeals Jurisdiction**

- Statewide final appellate jurisdiction for criminal cases, only
- Exclusive jurisdiction over automatic appeals directly from District Courts in death penalty cases
- Original - None

**Texas Supreme Court Jurisdiction**

- Statewide final appellate jurisdiction for civil and juvenile cases, only
- Original - None

**Jacksonian Democracy**

- The "long ballot" makes it next to impossible for voters to cast an informed vote on all positions AND issues
- Don Yarborough, Democratic sweep
- Steve Mansfield, Republican sweep
- "The results are an unstable judiciary and an increasingly inexperienced one."

"Show me the money!!!"