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An Introduction to the Law and to the Legal Aspects of Corrections Management

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.

U.S. Constitution, Article III, Section 1

Chapter Outline

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- The Court System
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- Criminal and Civil Law

Our purpose is to tell you about the greatness of our legal system and how important its influence has been on corrections in the United States. There, that's done. Now, the rest of this volume will be dedicated to qualifying that overreaching statement and explaining what the law means to the corrections practitioner. The truth of the matter is that, in the past 50 years, the law has had more of an impact on corrections than any other factor or force. More than new programs. More than research. More than studies and developments in criminology, rehabilitation methods, or any theories of punishment and sentencing. The law has also had more of an impact on corrections than management theory and even new technologies.

Court rulings have directly impacted the operations of corrections facilities. They have also changed the way managers have had to think about their decision making, on matters great and small. In setting their priorities in running institutions and community programs, corrections administrators must take legal considerations into account. This means that, from academic study to the day-to-day work of the corrections officer, legal rulings have been absorbed into the corrections field.

It has not been easy for corrections professionals to accommodate the legal “intrusions.” It is still not easy. Corrections professionals know their business. They know what the problems are and what needs to be done. The last thing they ever needed was a bunch of uninformed, or ill-informed, outsiders (that is how corrections workers saw them—the lawyers and the judges) to make their work more complicated and unpredictable.

As the legal “revolution” in corrections occurred, particularly in the 1960s and 1970s, corrections managers resented the intrusion of the law into their work. That resentment was deep-seated and bitter. With time, most of them grasped (although they never liked the fact) that they needed advice that would help them get along with the courts with the least possible confrontation and the least amount of outside intrusion. Inmate litigation became endemic and, for most people working in adult corrections, litigation was accepted as an inevitable part of corrections operations and management.

Those old-liners, the hard-nosed administrators and workers of the 1960s and 1970s, are now mostly retired from the profession. They have been replaced by managers who, from the time they came to work, had to face the realities of litigation and court involvement. Given their druthers, most of them would prefer the simpler task of running prisons and jails without legal intrusions, but they know that this is not possible in the world of corrections in the United States. (We are careful to specify “in the United States,” because no other country, to our knowledge, experiences anything close to the level of involvement of the courts in corrections that occurs in this country.)

This brings us to the purpose of writing this text. It is designed to serve as a teaching reference for those who are going to work in corrections or those who want to know more about this part of the criminal justice field. At the same time, it should serve as a reference tool for today’s corrections workers who need and want to know what they must do to run corrections facilities with minimal legal entanglements.

We personally know some of those hard-nosed wardens and commissioners who were working in the 1960s when the first cases came down. They were required to revise practices that had been assumed to be solidly justified and impervious to outside review. It was not easy being a corrections lawyer, preaching a new sermon of caution and concern based upon a scripture of constitutionality. Corrections lawyers were roundly disliked, even though they worked for the government and were proposing what was deemed to be best for the protection of corrections principles and corrections workers.

In the intervening decades, thousands of lawsuits and hundreds of court decisions have defined legal constraints on corrections policies and practices. For example, in the year 2010, 25,058 prisoner civil rights and prison condition lawsuits were filed in the 94 United States District Courts.¹ Most important, the U.S. Supreme Court, over time, has produced (at the rate of about one or two decisions per year) the central constitutional guidelines.

There is an expression that “prisons reflect society”; this refers to the view that what one sees in the “free world” exists in some form or other within the correctional environment. Accordingly, there is no aspect of correctional life and work, to our knowledge, that has not been the subject of litigation. Many areas, over time, have been ruled to be outside the realm of judicial review. This text focuses on those areas that are inside that realm: those areas where lawyers and judges will insist on compliance with constitutional or other legal standards.

■ Organization of the Text

This text presents the accumulated legal developments (constraints) in a format that is created with the corrections practitioner in mind. It begins with general discussions of what the law is and in what areas it interfaces with corrections. Most of the text is a detailed presentation of what the law has said about specific areas of corrections operations and practices.

First, we look at the background of corrections and of the law. Next, we look at constitutional law. This is a discussion of those areas of corrections work in which different provisions of the U.S. Constitution have been examined to see whether they define or limit what may be done by corrections officials. In many areas, there are now Supreme Court decisions, which provide the authoritative word and interpret the U.S. Constitution on corrections issues. In many respects, this is one of the most exciting aspects of corrections. The following provisions of the U.S. Constitution will be covered:

- Inmate access to the courts
- The First Amendment: inmate correspondence, inmate association rights, visiting, and religion
- The Fourth Amendment: search and seizure and privacy
- The due process provisions of the Fifth and Fourteenth Amendments, as they apply to such areas as inmate discipline, classification, transfers, personal injuries, and property loss
- The Fourteenth Amendment as it applies to equal protection for female offenders and others
- The Eighth Amendment as it applies to the death penalty and other sentencing issues, conditions of confinement, cruel and unusual punishment, and health care

Our look at constitutional law also includes a discussion of probation and parole, community corrections, and fines. Finally, we will look at law that governs corrections by means other than the Constitution and at corrections issues that are somewhat outside the central core of managing prisons.

For each subject covered, there are other resources to assist the reader in obtaining an understanding of the material, along with a general summary and “Thinking About It” questions, which are relevant to the covered material. To help you find important statements of the law as you look through this text, holdings of cases and statements of important legal principles are given in boldface font. On every Supreme Court opinion, you can expect to find a boldface presentation of the important statements of the Court in that case. If there are such important statements of the law in other cases (or in statutes), these will be presented in boldface font, as well.

Near the end of this text, there is a glossary of key terms that defines words and terms that are often found in corrections, criminal justice, or the law. The glossary is followed by an alphabetical listing of cases. The Table of Cases also provides the page number(s) where the case can be found within the text.

We note that throughout the text, the words *he* and *she* and the words *his* and *her* are used interchangeably. The use of these terms reflects the significant number of women working in

the corrections field. During the year 2005, women accounted for 33% of the employees in correctional facilities under state or federal authority.²

Our hope is that this text will serve as a handy reference to the corrections professional and as a valuable teaching resource for the criminal justice professor and student. It must be understood that this text is a digest—it distills into a comparatively small volume what has become an overwhelmingly large body of law. Our goal has been to make this text an understandable collection of essential and representative court decisions, combined with some background on the various aspects of corrections on which those decisions touch.

■ The Law

What is the law? There is no need to get bogged down with various definitions. Legal scholars do not agree on definitions, and they, in fact, propose different ones. Let us say the law is the set of principles and rules laid down to determine the rights and duties of a state's citizens (*state* is used here in the sense of any level of autonomous government) and to resolve disputes between those citizens. The law has binding legal force.

Central to nearly all legal systems, and certainly to ours in the United States, is the judiciary. **Courts** are the voice of legal authority. The courts interpret and administer the laws, and they determine the specific rights and duties of citizens. (Note that the courts are central to the legal system of government, not to all of government. As we will see, there are three branches of government, and they are theoretically of equal importance.)

■ Historic Origins

American law derives mainly from English law, which in turn derived historically from Roman law, with some influences from the Normans, the Scandinavians, and church (**canon**) law. After the American Revolution, in the late 1700s, there was reaction against many things English, including legal decisions and procedures. In general, however, law in the United States adopted English concepts and legal language. Louisiana brought along its French law tradition, much of which continues there. Several southwestern and western states include a Spanish influence, particularly in property matters.

English law relied very heavily on the decrees, orders (sometimes called **writs**), and **decisions** of its judges. Together, these judicial pronouncements constitute the **common law**.³ As part of the revolutionary break from English rule in 1776, the former colonies, now states, adopted written **constitutions** as the prime statement and source of the law. The same was done for the federal government in the “supreme law” of the land, the U.S. Constitution. The reliance on written constitutions was the most significant break from English legal tradition. Today, it is still the most significant difference between English and American law, which are in most other respects closely related.

■ Branches of Government

The constitutions of the United States and of each of the individual states establish three branches of government:

1. The legislature, which enacts laws
2. The executive branch, which enforces and carries out the laws
3. The judiciary, which interprets and applies the laws

These very basic descriptions of the functions of the three branches do not take into account some governmental activities that do not fall clearly into one category or another. For our study, however, these broad definitions allow us to see the basis for the activities of government and the conflicts that almost inevitably come out of them.

The functions of the three branches of government also give rise to two important principles of our American government. One is the separation of powers, which holds that each branch should perform its own function and should not intrude into the functions of the other two independent branches. A second major principle is one of **checks and balances**, which establishes, by constitutional requirements, procedures whereby each branch has some constraints on each of the other two. An example is the process of appropriating money: only the legislature (Congress) can impose taxes and raise money for the government to spend. Thus, the executive branch cannot carry out any activity it wishes, unless the money for it is appropriated. But the president must approve, in turn, any appropriation of money, and can veto an appropriation.

Another underpinning of the American government is the establishment of a national (**federal**) government, along with the recognition of the political independence of each state. This system leads to certain hierarchical principles: federal law prevails in conflicts with state or local law.⁴ The U.S. Constitution is the highest source of law, over statutes, treaties, and regulations. Thus, the U.S. Constitution is the highest law in the country.⁵

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. Constitution, Article VI, Clause 2

In the same manner, the constitution of a state is, for that state, the supreme source of law. The legislature of each state enacts laws within the framework of its constitution (as does the federal legislature, the Congress).

In the early decades of the United States, laws were principally derived from common law (judicial) decision making. Legislatures were not very active. This changed during the late 1800s (from the Civil War on), and the national Congress and the state legislatures became more and more active in the 20th century. The courts did not back off from their historic role, though, so

the American legal system is truly a mixture of the elements of common law development (with its emphasis on judicial decisions), along with **statutes** and **regulations**.

■ The Court System

Federal Courts

Under the U.S. Constitution, judicial authority is given to “one supreme Court, and in such inferior Courts as the Congress may from time to time...establish” (Article III, Section 1). Thus, the U.S. Supreme Court is the only court established by the Constitution. The Constitution specifies neither the number of members who will sit on the Supreme Court (it has varied from 6 to 10), nor the qualifications of Court members or the Court’s precise **jurisdiction** (what kinds of **cases** it will review).

The lower federal courts are established by statute. Typically, the federal courts are courts of “general jurisdiction.” This means that, unlike courts in many other countries and in some states, the same courts handle civil matters (involving private rights), criminal cases (involving offenses against all), equity-type cases (involving the spirit of fairness⁶), and most commercial matters (involving business and commerce).⁷

The first level of federal courts includes the U.S. District Courts. These are the federal courts in which **trials** are held and federal cases are initially filed and disposed of. Every state has at least one federal district. Larger states may have several district courts. Thus, there are, in some states, Northern, Southern, Eastern, Western, Middle, or Central Districts. California, Texas, and New York each have four districts, which is the greatest number of districts in any one state.

There are usually several judges appointed to sit in each district. Cases are heard before a single judge.⁸ Assisting the U.S. district judges on many matters, but not with the same wide authority, are U.S. magistrate judges. (These may be thought of as assistant judges or junior judges, although they will not appreciate us saying so!)

The district court’s role is to receive **evidence** about the “facts of the case” (establishing who did what). Higher-level courts will not retry a case, but instead serve as a forum for review and **appeal**. This review process is one reason why cases with factual similarities can have different results.

Appeals from the decisions of the federal district courts are taken to U.S. Courts of Appeals. Each **court of appeals** has jurisdiction over several states. Appeals from all the district courts in those states are taken to the designated court of appeals. The geographic area that a court of appeals covers is called a “circuit.” The circuits are numbered, and there are now 11 numbered federal circuits.⁹ For example, all federal appeals from Maine, New Hampshire, Massachusetts, and Rhode Island (plus Puerto Rico) are taken to the U.S. Court of Appeals for the First Circuit. Appeals from the U.S. District Courts in Vermont, New York, and Connecticut go to the Second Circuit Court of Appeals. In common usage, these courts are sometimes called “circuit courts.” You will hear, as a common abbreviation, something like, “That case was decided in the Eighth Circuit,” which means the U.S. Court of Appeals for the Eighth Circuit decided the case. **Figure 1-1** is a map showing the breakdown of the United States into federal judicial circuits.

The Thirteen Federal Judicial Circuits

See 28 U.S.C.A. § 41

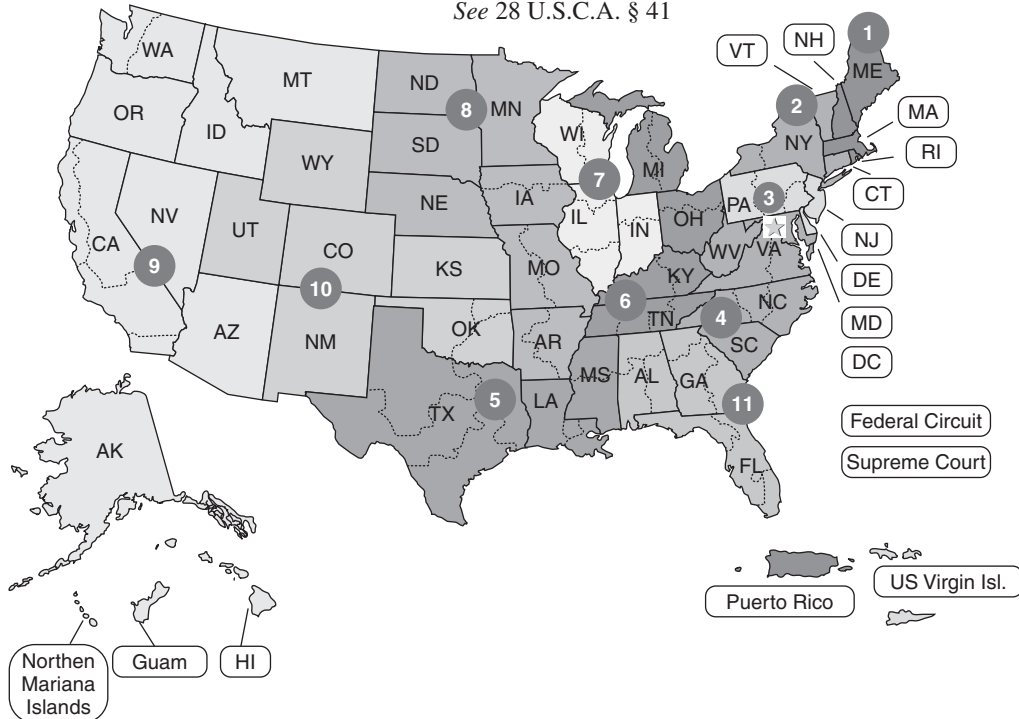


Figure 1-1 The Thirteen Federal Judicial Circuits.

Source: United States Courts. *Court Locator*. Available from http://www.uscourts.gov/court_locator.aspx. [19 February 2011]

In most cases, when appeals are taken, the lawyers for each side file **briefs**, arguing their cases in writing, and later they argue their cases orally before the court of appeals. There are usually three judges who sit and decide each case at the appellate level. Sometimes, in special matters and because of the importance of the case, it will be heard by all members of that particular court. This is called a hearing **en banc**. Cases are decided by a majority of the judges who sit on the case. One judge is designated to write the **opinion** of the court. If not all the judges agree, the disagreeing judge or judges will often write a dissenting opinion. (This practice of writing majority and dissenting opinions goes on in the Supreme Court, as well. With nine justices voting, there are many more dissenting opinions in the Supreme Court.)

It is the **majority opinion** that prevails for the individual case the judges are deciding. That opinion also becomes the prevailing law, or **precedent**, on any legal matter that is decided by that case. It is the governing law for that circuit, and it will be followed by all courts in that circuit when that particular legal question arises in the future. It is not binding in other circuits but may be looked to for guidance by other courts. Through this procedure, you can see that there may be disagreeing opinions or legal conclusions in different circuits. This does happen, and such disagreements are often grounds for taking cases to the Supreme Court. Only the Supreme Court can resolve differences between the lower federal courts of appeals.

The U.S. Supreme Court is the highest and final federal appellate court. There is a direct appeal to the Supreme Court on only a few kinds of cases (for example, if a federal law, or a state law of statewide application, is found by a lower court to be unconstitutional, that decision can be appealed directly to the Supreme Court).¹⁰ Most cases come to the Supreme Court by means of **certiorari**, which means that the Supreme Court certifies that the legal question raised by the case is of considerable importance and that the Supreme Court should decide that question. As noted, one frequent basis for the Supreme Court to review a case is that it presents a question that has caused a conflict or difference of opinion between two or more courts of appeals.

When a party loses its case in a court of appeals and it wants the Supreme Court to consider and reverse that decision, it files a petition for a writ of certiorari, which is a legal paper asking the Supreme Court to review the lower court's decision. The Supreme Court votes (in chambers—not in public) on whether the case is one that the Supreme Court should consider. If four or more justices vote to review the case, the Court issues an order certifying the case to be heard in the Supreme Court. This is called granting a writ of certiorari. If, as in most cases that are petitioned to the Supreme Court, the justices do not vote to review the case, the writ of certiorari is denied. Each year, several thousand cases (about 5,900 during the 12-month period ending September 30, 2010) are taken by petition to the Supreme Court. The Court votes to accept the appeal or grant certiorari in relatively few cases (165 during the above 12-month period).¹¹

Cases in the Supreme Court, like the appellate courts, are considered by a process that involves each party submitting written briefs and then arguing the case orally before the Court. All cases in the Supreme Court are considered by all nine justices of the Court. (Sometimes a justice disqualifies himself or herself because of some prior involvement, or there may be a vacancy on the Court that remains unfilled. Thus, some cases are decided by eight or fewer justices.)

The Supreme Court still sits in a “term of court,” as virtually all courts once did. The term of the Supreme Court runs from October through June. Lower federal courts no longer have such terms. Federal judges at all levels (the Supreme Court and district and appeals courts) are appointed by the president, with the advice and consent of the Senate (meaning their appointments must be approved in the Senate by affirmative vote). They serve for life and can be removed only by impeachment. This contrasts with the states, where many judges are elected to their offices.

State Courts

Each state has a similar hierarchy of courts, which is structured much like the federal system. There are, in every state, levels of trial courts and appellate courts. That is as far as a general statement can go, because there is a huge difference among states regarding how their court systems are organized and named. You will have to investigate the state of interest to you regarding what the courts at different levels are called.

For example, **trial courts** may be called circuit courts (typically for counties), district courts, superior courts, or municipal courts (in larger cities). There may be courts authorized to handle

certain specialized kinds of cases at the first level, such as juvenile courts, probate courts, domestic relations courts, and traffic courts. In some jurisdictions, all of these special matters and all kinds of cases—civil and criminal—are handled in the trial courts, which we then call **courts of general jurisdiction**. It is becoming more and more common, especially in counties and cities of larger populations, to reduce the burdens on the trial courts by having matters of smaller import taken to small-claims courts (for civil matters with limited jurisdiction, such as those involving matters of up to \$5,000) or police courts or magistrates or justices of the peace (for criminal matters, with jurisdiction to impose small sentences such as fines or short jail terms of 10 days or less). Persons often appear in these small-claims courts or traffic courts without counsel, which tends to save money and speed up the process.

Most states have two levels of appellate courts. The middle level is called a court of appeals, an appellate division, or some similar name. A few states (Delaware, Maine, Montana, Nevada, New Hampshire, Rhode Island, South Dakota, Vermont, West Virginia, and Wyoming) do not have an intermediate appellate court and have only one level of appeal. The final level of appeal in the state is usually the **supreme court** of that state, with a few exceptions (exceptions include the Court of Appeals in New York, where the supreme court is a first-level court; the Supreme Judicial Court in Massachusetts; the Court of Appeals in Maryland; the Supreme Judicial Court Sitting as Law Court in Maine; and the Supreme Court of Appeals in West Virginia). These appellate-level courts handle appeals in all kinds of cases, both civil and criminal. Only Texas and Oklahoma have supreme appellate courts that are divided—one for civil and one for criminal cases.¹²

As noted previously, state judges at all levels are elected in many states. In some states, judges are appointed by the governor or by legislative election.¹³ The means of selecting state judges, particularly by election, has been the subject of criticism and debate. In many states, the judges do not run as nominees of political parties, making them (theoretically) separated from the partisan political process. Also, especially upon re-election, judges may run unopposed, reducing the political effects on their offices.

■ Criminal and Civil Law

Matters of the law are divided, for study and for practical concerns, into divisions or topics. A division is often made between criminal and civil matters of the law. What difference does it make? It is not purely an academic question. We have noted that, in some jurisdictions, certain courts only consider one kind of case or the other, civil or criminal. Some lawyers specialize in **criminal law**, and others practice only **civil law**. There are different rules of procedure in federal and in many state courts that govern criminal trials and proceedings, as opposed to civil ones.

Examples of different rules include those for **burden of proof**. For criminal cases, the standard is proof beyond a reasonable doubt; the evidence must be entirely convincing in establishing the defendant's guilt. In civil cases, the usual standard is proof by a preponderance of the evidence; the evidence must show a greater likelihood that the person did, as opposed to did not do, the act as charged. This is also referred to as the "greater weight" of the evidence. The

reason for this dual standard and for the higher standard of proof in criminal trials is that, in a criminal case, the defendant is facing the loss of freedom (**liberty**).¹⁴

Crimes are those acts that are described by a state (that is, a government) in its laws or regulations as prohibited activities, for the protection of its citizens. Every citizen has a duty to conform to those standards of conduct. A violation of that duty, or commission of such a prohibited act, is a crime, and the violator (the criminal or the **offender**) is subject to punishment. It is important to note that the description of criminal acts and the punishment authorized for them are matters of legislation and not judicial (common) law. A crime is a violation of a duty owed to the state and all its citizens. Court actions are thus brought by state officials, called prosecutors (often district or state attorneys), on behalf of all citizens in that state. There are, of course, wide ranges of criminal activities, from the practically trivial (parking and small traffic matters) to violations of the most horrendous nature (homicides, espionage, and other violent behaviors).

Crimes are often divided into the more serious, called **felonies**, and the less serious, called **misdemeanors**, for procedural reasons (such as the type of punishment upon **conviction** or the kinds of court procedures that apply). The most common dividing line between felonies and misdemeanors is the maximum **penalty** authorized for the particular offense. As a general rule, if a crime carries a penalty of more than one year in prison, it is a felony; if it carries a penalty of one year or less, it is a misdemeanor. There are, in some criminal systems, offenses of even lesser importance than misdemeanors, such as **petty offenses** (which may be punishable only by fines or by jail terms of 30 days or less, as examples).

Civil law is the entire body of law that is not criminal—that is, it deals with duties owed by one person to another and not to the state. (This area of noncriminal law is also sometimes called “private law.”) The two most common kinds of civil law are contracts and torts. Contracts law is the set of rules established to deal with promises made by one person to another. (In all of these discussions, it should be remembered that, for most purposes, a “person” may be a corporation, business, or an agency, as well as an individual human being.) At one time, contracts law was governed primarily by court decisions and precedents—that is, by common law. Over time, legislatures have enacted more and more rules with respect to contracts, so that the law today is a large mix of common law and legislation.

Torts law covers other types of duty owed by one person to another (that is, other than duties owed by contracts) and is the means by which an **injury** or harm caused can be remedied through a legal action. We will discuss torts in more detail later. It is noted here that in civil law, both for contracts and for torts, the remedy that is most often sought by the injured person is damages—that is, money; though in some cases, specific performance (of a contract) or injunctive relief (to force action or to restrain it) may be the remedies sought. All of these are now considered to be civil actions (and almost all of the litigation in the corrections field is civil, not criminal.)

Some actions may be a violation both of criminal law and civil duties owed to others. For example, **assault** may lead to a civil suit, whereby an individual attempts to recover money damages for the harm inflicted by a wrongful action. The same activity, investigated by the police, may be the basis for a prosecutor bringing a criminal prosecution for assault.

Civil actions are usually initiated when an **attorney** files a legal paper—a **complaint**—on behalf of his client, asking for damages because of a wrong inflicted or a duty violated by another person. The person bringing the action is the **plaintiff**; the person sued is the **defendant**. By

contrast, criminal cases are brought by a **grand jury** (handing up an indictment) or by a prosecutor (filing a bill of information or some other title in lesser cases). The case is brought by the state (or the people of the state) against a defendant, who is charged with wrongdoing. (Of course, there may be multiple defendants involved in criminal activity. In a civil case, there may also be more than one plaintiff and more than one defendant.) Class actions are civil cases in which, for purposes of economy, a plaintiff or a group of plaintiffs who have the same legal complaints against a defendant (or defendants) may be joined together by a court into a single class; one plaintiff or several are allowed to proceed with the lawsuit on behalf of all the others, who are notified of the proceedings. A decision or judgment in a class action is entered on behalf of all the plaintiffs and is binding on all the parties.

While criminal law and civil law are the two major components of the law, the law may be categorized in other ways. Any one or all of the following may be evident in criminal or civil litigation.

Case law is the common law that was discussed earlier. It refers to decisions of courts published in law books (called reporters). A significant portion of this text includes a discussion of case law.

Statutory law is the body of law created by the acts of the various legislatures, including Congress. Examples of such laws, discussed later in this text, are the Prison Litigation Reform Act and the Interstate Agreement on Detainers.

Administrative law is a body of law created by administrative agencies (for example, departments of justice and state regulatory agencies). These laws, discussed with statutory law, are seen in the form of rules, regulations, orders, and decisions. Administrative law is often developed to more effectively carry out statutory law.

Procedural law refers to the methods by which a legal right or duty is enforced (for example, entering a plea, presenting evidence, or establishing jurisdiction).

Substantive law is the whole area of the law that creates and defines legal rights and obligations (for example, tort law and criminal law).

SUMMARY

- Law in the United States is principally derived from English law, which in turn was largely based on judicial rulings, collectively called the common law. A major difference between the United States and England is that the supreme law of the land in the United States is the Constitution. Each of the states also has a written constitution, which is the highest law of that state.
- In the federal, state, and local governments, there are three branches: legislative, executive, and judicial. Each of these branches has separate powers, which are spelled out in the respective constitutions.
- Laws of the federal government are the highest laws of the country. The U.S. Supreme Court is the highest court of the country.

- In the federal government, the levels of courts are trial courts, called U.S. District Courts; appellate courts, called U.S. Courts of Appeals (designated primarily by numbered circuits); and the U.S. Supreme Court.
- Cases in the Supreme Court are usually considered when at least four justices of the Court agree to review a case by granting a writ of certiorari (certifying the case's importance to be heard in the Supreme Court). Only a small percentage of cases that are petitioned (appealed) to the Supreme Court are actually reviewed by the Court. In a few cases, there is a right of direct appeal to the Supreme Court; the kind of direct appeal we will see occasionally in this text is that in which a federal law, or a state law of statewide application, is found by a district court to be unconstitutional.
- Each state has similar levels of courts: trial courts at the county, city, or town level; appeals courts (in most states); and a supreme court, which is the final judicial authority for cases brought under state laws.
- Legal matters are divided into criminal law and civil law. Criminal law is used for the prosecution of offenders who violate statutes that define conduct or activity that is prohibited because it is offensive to the state's citizens. Upon conviction of any such crimes, sanctions (sentences) are imposed, as authorized by the state's criminal statutes. Civil law comprises the rest of the law—that is, all the law that is not criminal. There are many kinds of civil law, but the most common are contracts law (the duties owed by one person to another because of promises made) and torts law (the remedies the law provides for injuries done by one person to another, other than by contract violation). The law may be further categorized into such areas as case, statutory, administrative, procedural, and substantive law. Any of these may appear within the context of criminal and civil litigation.

KEY TERMS

administrative law: The body of law created by administrative agencies (such as regulatory agencies). These laws are seen in the form of rules, regulations, orders, and interpretive decisions.

appeal: A request by either party that a case be removed from a lower court to a higher court in order for a trial proceeding to be reviewed by the higher court. It also refers to the review by an appeals court of a lower court's proceedings or outcome.

assault: The unlawful intentional infliction, or attempted or threatened infliction, of injury upon another. (Also defined as an unlawful physical attack by one person upon another.)

attorney: A person trained in the law, admitted to practice before the bar of a given jurisdiction, and authorized to advise, represent, and act for other persons in legal proceedings. (Used interchangeably with lawyer or counsel.)

brief: A written document prepared by counsel that presents facts, discussion of contested issues, legal references, and arguments pertaining to the case before a trial court or an appellate court.

- burden of proof:** The necessity of proving a fact or facts in dispute in a case. The obligation a party has to introduce sufficient evidence to convince the trier of fact that an essential fact or conclusion is true.
- canon law (church law):** The body of law established by religious organizations, and administered by religious officials, for the determination of rights and liabilities under matters subject to religious jurisdiction.
- case (legal proceedings):** The court proceeding, whether civil or criminal, in all its aspects. Also used to refer to a report of a court decision in legal publications, such as court reporters.
- case law:** The cumulated law, as given in the decisions of courts. The aggregate of reported cases on a particular subject, from a particular source, or in toto.
- certiorari:** A writ issued by a superior court to an inferior court of record that orders the certification of the records and proceedings in the case, so that the record (the case) may be reviewed for any error and corrected, as needed. A form of appellate review. (Now used principally to apply to reviews by the U.S. Supreme Court of actions by lower courts. To obtain a Supreme Court review, an applicant files a petition for a writ of certiorari.)
- chancery (court of chancery):** A court to hear cases in equity (in England and some places in the United States).
- checks and balances:** Procedures established by constitutional requirements, whereby each of the three branches of government has some constraints on the other two.
- civil law:** The body of law that determines private rights and liabilities, as distinguished from criminal law.
- common law:** Those principles and rules, applicable to government and individuals, that do not rest for their original authority on statutes but on statements (rulings) found in decisions of courts. In a broader sense, it is sometimes used to refer to the Anglo-American system of justice and legal concepts.
- complaint (civil procedure):** The initial pleading filed in court, by which a legal action is commenced. This is the pleading that sets out a claim for relief, including the factual and legal grounds for such relief.
- constitution:** A statement of the fundamental laws or principles that are agreed on to govern a nation, a state, an organization, or a society.
- conviction:** A judgment of a court, based either on the verdict of a jury, judicial officer, or on the guilty plea of the defendant, that the defendant is guilty of the offense for which he has been tried.
- court:** An agency or individual officer of the judicial branch of government, authorized or established by statute or constitution, which has the authority to decide controversies in law and disputed matters of fact brought before it.
- court of appeals:** A court that does not try cases, but rather hears appeals.
- court of general jurisdiction:** A court that has the legal authority to try all civil cases and criminal offenses, including all felonies.

- crime (criminal offense):** An act committed or omitted in violation of a law forbidding or commanding it, for which an adult can be punished, upon conviction, by incarceration or other penalties, or for which a juvenile can be brought under the jurisdiction of a juvenile court and adjudicated as a delinquent or transferred to adult court.
- criminal law:** The entire body of law—statutes, court opinions, rules—that defines offenses against the state, sets rules for their prosecution, and authorizes sanctions for committing offenses.
- decision:** A determination or conclusion reached by a court. Usually used to refer to the written report of a court that states its conclusion or determination of the case. The decision reached by a court is reflected in its opinion. (See that definition.)
- defendant:** A person against whom a criminal proceeding is undertaken or a person against whom a civil legal action is brought.
- en banc (courts):** A proceeding in which all members of a particular court will participate in hearing and deciding a case.
- equity (courts):** An alternative, established in English law, to the ordinary forms of civil law and justice. The emphasis in equity is to provide fair and just results in cases in which the common law or ordinary laws do not appear adequate. Equity concentrates on the persons who are present in court without trying to establish rights to govern other cases. (In the United States, in most jurisdictions, equity and law have been combined in courts of general jurisdiction.)
- evidence:** Any type of proof that is presented at trial, consisting of witnesses' testimony, records, documents, and other physical objects. Used to prove (or disprove) a fact relevant to the case being tried.
- federal:** Pertaining to the national government of the United States of America. The government of a community of independent states, joined in a union having central and predominant authority.
- felony:** A criminal offense punishable by death or by incarceration in a confinement facility for a period of which the lower limit is prescribed by statute in a given jurisdiction, typically more than one year.
- grand jury:** A body of persons who have been selected and sworn to investigate criminal activity and the conduct of public officials and who hear evidence and legal advice from a prosecutor against an accused person to determine whether there is sufficient evidence to bring that person to trial. The decision of a grand jury that there is sufficient evidence for trial results in an indictment or "true bill," which is "handed up" by the grand jury.
- injury:** Any wrong or damage done to another's person, rights, reputation, or property.
- jurisdiction:** The precise geographic territory, subject matter, or person(s) over which lawful authority may be exercised, as defined by constitutional provisions or by statute.
- liberty:** Freedom from restraints. As provided in the Fifth and Fourteenth Amendments, no person shall be deprived of "life, liberty, or property, without due process of law."
- majority opinion:** The opinion of an appellate court in which the majority of its participating members join. It therefore is the controlling opinion for the case.

misdemeanor: An offense usually punishable by incarceration in a local confinement facility (jail) for a period of which the upper limit is prescribed by statute in a given jurisdiction; the period is less than that of a felony and is typically limited to a year or less.

offender: An adult who has been charged with (strictly, that person is an alleged offender) or convicted of a criminal offense.

opinion (court): The statement by a judge or a court of the decision reached in a case. It is usually given in writing and typically sets out the issue(s) presented in the case, the facts of the case, the law that applies, and the reasoning used to reach a conclusion or judgment.

penalty: The punishment that is affixed by law or by judicial decision to the commission of a particular offense. It may be death, imprisonment (which may be a prison sentence or a jail sentence), an alternative facility sanction, a fine, restitution, or a loss of civil privileges. (Also called a sanction or punishment.)

petty offense: A minor criminal offense that is triable by a magistrate or subjudicial officer, without a jury. (The definition of the offenses so triable will be made by statute. In some places, it may include misdemeanors.)

plaintiff: The party who initiates a civil action. The person who files a complaint in court. (Technically, also the prosecutor, the state, or the United States in a criminal action, but it is seldom used in that context.)

precedent: A court decision that provides authoritative guidance or principle for a later case that has a similar question of law. A determination of a point of law made by a court, which is to be followed by a court of the same rank or of lower rank in a subsequent case that presents the same legal problem.

procedural law: Methods of proceeding, typically in a court, by which a legal right or duty is enforced. Distinguished from substantive law, which defines the rights, responsibilities, and duties of persons.

regulation: An order by competent authority, most often an agency of the executive branch, setting rules for actions that are under the agency's control.

statute: An act of a legislature declaring, commanding, or prohibiting something.

statutory law: The body of law created by the acts of the legislatures.

substantive law: The whole area of law that creates and defines legal rights and obligations. Distinguished from procedural law, which is the methods of proceeding by which a legal right or duty is enforced.

supreme court: An appellate court at the highest level in most states and in the federal court system. The court of last resort in the particular jurisdiction. The U.S. Supreme Court is the highest court in the federal court system and the highest court in the nation.

trial: The examination of issues of fact and law in a case or controversy, beginning when the jury has been selected in a jury trial, the first witness is sworn, or the first evidence is introduced in a court trial, and concluding when a verdict is reached or the case is dismissed.

trial court: A judicial officer who is authorized to conduct trials. (Usually used to distinguish from appeals courts.)

writ: An order requiring a specified act to be performed.

ENDNOTES

1. Administrative Office of the U.S. Courts. *2010 Annual Report of the Director: Judicial Business of the United States Courts*. Table C-2A. Washington, DC: U.S. Government Printing Office, 2011.
2. Stephan, J. *Census of State and Federal Correctional Facilities, 2005*. Appendix table 12. Washington, DC: Bureau of Justice Statistics, U.S. Department of Justice, October 2008.
3. There was, in English law, equity law alongside common law. **Equity** dealt with matters of “doing the right thing” (keeping the “King’s conscience”), particularly in hardship cases. Separate courts, called **chancery courts**, handled equity matters. In equity cases, courts ordered specific performance or injunction rather than money damages, and they developed maxims rather than decisions. Equity was used when common law did not provide an adequate remedy. Equity law was also taken from English law and incorporated into American law. However, in most jurisdictions in the United States, equity and common law have been merged, so that both kinds of cases are heard in the same courts. The equity concept persists in some different legal language, in some differences in philosophical approaches to cases, and in procedural differences, such as the fact that there is a right to a jury trial only in common law cases and not in equity matters, which are decided by the judge alone. (This explains why there is no jury in injunction cases.)
4. Conflicts between federal and state or local law can serve as another example of the checks and balances concept. For example, in 2001, the federal government challenged the state of Oregon’s Death with Dignity Act, which authorized physician-assisted suicide. The federal government took the position that assisting in a suicide is not a “legitimate medical purpose” and authorized federal drug agents to identify and punish doctors who assisted in helping terminally-ill patients to die. In April 2002, a U.S. district court rejected the government’s directive; in September 2002, the government asked the Court of Appeals for the Ninth Circuit to strike down the Oregon law. In May 2004, the Ninth Circuit upheld the state law, stating that the “[U.S.] Attorney General’s unilateral attempt to regulate general medical practices historically entrusted to state lawmakers...far exceeds the scope of his authority.” The U.S. Supreme Court granted the government’s petition for certiorari. In January 2006, the Supreme Court affirmed the Court of Appeals decision and upheld the state law, stating, “the statute [Controlled Substances Act] manifests no intent to regulate the practice of medicine generally. The silence is understandable given the structure and limitations of federalism, which allow the States “ ‘great latitude under their police powers to legislate as to the protection of the lives, limbs, health, comfort, and quiet of all persons.’ ” *Gonzales v. Oregon*, 546 U.S. 243 (2006).
5. According to the constitutions of the states, or by legislation, local governmental jurisdictions of many levels are created, including counties, townships, and cities. In most cases, each of these levels of government also has a type of legislature (a board of supervisors or a county or city council), an executive (a sheriff, a mayor, or a town manager), and a judicial system (circuit courts, city courts, or magistrates). Thus, the three-branch concept of government prevails at all levels in our country.
6. See endnote 3.

7. There are some specialized courts in the federal system, such as customs courts, tax courts, and military courts-martial. These trial-level courts have counterpart appellate courts. These specialized courts are not of concern to us in this study, because they do not deal with corrections matters, with the exception of the military courts—including the Court of Military Appeals—which do deal with sentencing and corrections litigation.
8. There are some rare exceptions. One that we see in the corrections field is the requirement (by statute) that when a state law is under review as to its constitutionality, a panel of three district judges is convened to rule on that question.
9. In addition, and as an exception to the numbering rule for circuits, there are two courts of appeals that sit in the District of Columbia. The U.S. Court of Appeals for the District of Columbia Circuit hears appeals from the U.S. District Court for the District of Columbia. The Federal Circuit Court hears appeals from specified federal boards and administrative courts.
10. There are an even smaller number of cases that may, by direction of the Constitution (Article III, Section 2), be brought directly and from the beginning into the Supreme Court. These are cases that involve ambassadors and those in which a state is a party. There have been a few such cases, which involved such matters as disputes between states about their boundaries or the allocation of water from rivers. Because the Supreme Court is not a trial court and has no procedure to take testimony or receive evidence, it has usually appointed a special master to conduct such a trial on its behalf.
11. Administrative Office of the U.S. Courts. *2010 Annual Report of the Director: Judicial Business of the United States Courts*. Table B-2. Washington, DC: U.S. Government Printing Office, 2011.
12. National Center for State Courts. *State Court Web sites*. Accessed January 15, 2011, <http://www.ncsc.org/information-and-resources/browse-by-state/statecourtwebsites.aspx>. Under the states listed, there is a court structure chart.
13. American Judicature Society. *Methods of Judicial Selection*. Accessed January 15, 2011, <http://www.judicialselection.us>.
14. Different burden of proof standards can lead to different results, even with the same basic facts. Perhaps the best known example is the O. J. Simpson case, where the former football great was found not guilty of murder in the criminal trial but had a monetary judgment entered against him in the civil trial, which was based on the same set of facts.

