



ORIENTATION MATERIAL



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¹ Ruta K. Stropus and Charlotte D. Taylor, *Bridging the Gap Between College and Law School – Strategies for Success* 41 (Carolina Academic Press, 2001).

² *Id.* at 42.

³ *Id.* at 45.

⁴ *Id.* at 49.

⁵ Courtesy of Professor Kathleen Mahoney, St. Thomas University School of Law (Miami, Florida) (adapted from case briefing format in Laurel Currie Oates, Anne Enquist, & Kelly Kursch, *The Legal Writing Handbook: Analysis, Research, & Writing* 81 (4th ed., Aspen Law and Business 2002).

⁶ *Vosburg v. Putney*, 80 Wis. 523 (Wisc. 1981).

⁷ Stropus, *supra* note 1, at 50.

⁸ Laurel Currie Oates, Anne Enquist, & Kelly Kursch, *The Legal Writing Handbook: Analysis, Research, & Writing* 81 (4th ed., Aspen Law and Business 2002).

⁹ *Ranson et al. v. Kitner*, 31 Ill.App. 241 (Ill.1889).

¹⁰ Oates, *supra* note 8, at 5.

¹¹ *Directory of State Court Clerks and County Courthouses* 56 (CQ Press, 2008)

A Basic Understanding of Case Briefing and Notetaking

Difference Between Notes in College and Notes in Law School

You may remember getting writer's cramp in college from attempting to write down every single word that came out of the professor's mouth. After that, you soon realized that a tape recorder would work much better and that you could listen to the professor's lecture over and over again until the information sank in. In a pure lecture class, writing down all or most of what is said is important. Because the professor tells you exactly what you need to know, you can memorize and repeat this information on the exam and do well in the class. The same is not true for law school. You may need to memorize the rules for an exam; however, you certainly will not need to memorize every single fact of every case, or everything that was said during every class session. Law school is very different from college. You need to understand the problem solving process that takes place in each case you read, so that you can apply that method to a new fact pattern on the exam. In that respect, you are not expected to memorize all the professor's words; rather, you must focus on the law and application of the law in class. Your notes should reflect this goal.



Dos and Don'ts for Taking Notes

We offer the following information with this caveat: this is not the only method for taking notes. You may talk to other law students who take more or fewer notes, and take them in different ways, and still do very well in law school. Our purpose here is to provide you with a template or a starting point to help you focus on the important information during class discussion. We do not want you to become frustrated or overwhelmed at the amount of information you will learn in law school. Accordingly, we offer the following suggestion when taking notes.

First, don't write down everything the professor and other students say. Remember: this is not college. You are not required to regurgitate, word for word, the professor's brilliant speeches. You are required to use the information to solve new problems.

Second, don't space out and not take a single note. One year, we had a student who did not do very well his first semester. We observed him in class, where he spent most of his time reading his cases. He didn't take a single note during the entire fifty minutes! Class time should be used for listening to the dialogue and understanding the cases. Although you do not want a verbatim transcript, you also do not want a blank sheet of paper at the end of class. Remember: you need to use your notes to guide you in examination preparation because they will help you identify which issues are important to your professor.

Third, try to separate the relevant information from the irrelevant. What is relevant? Think back to FIRAC-fact, issue, rule, application, and conclusion. You should continually focus on FIRAC as your problem solving technique for each case you read. We suggest you take notes in three general categories: (1) editing your case briefs, (2) writing down hypotheticals and examples (i.e., application of rule), and (3) writing down other relevant "stuff" (social policy, dissent, theories, etc.).

Edit Your Brief

During class, most professors will start with questions on cases assigned for that class. She will ask for the facts of the case, the holding, and the reasoning. During this process, the professor is trying to teach you the legal problem solving method. She is trying to help you understand the facts of the case, the issue, the rule, the application of that rule, and the conclusion-FIRAC. During class time, you should correct your case brief. Remember: your brief is your attempt to understand how the court solved the issue in that case. Your first order of business should be to check your brief for mistakes. Make sure that you are dissecting each case properly; therefore, you need to check for each part of FIRAC.

TIP: Use this checklist for your brief:

- ✓ Did you include the relevant facts?
- ✓ Did you have too many facts or not enough?
- ✓ Did you get the correct issue?
- ✓ Does your issue statement combine the legal issue with the relevant facts?
- ✓ Was your statement of the rule worded exactly as the professor wants?
- ✓ Did you correctly identify the court's rationale (and understand the application)?

Write Down All Hypotheticals

After discussing a case, your professor may change the facts or present a hypothetical situation. If so, write this information down. Hypotheticals (“hypos”) are additional examples similar to the facts of the case, usually offered to illustrate some portion of the rule. Hypos demonstrate how to solve similar problems using FIRAC. When the facts change, or when you are given a new set of facts, you need to go through FIRAC to solve the new problem. The issue and the rule may be the same as the one discussed in the case at hand, but the application or reasons why the outcome is the way it is will be different. Hypos and the reasoning or rationale are examples of the application part of FIRAC, and you should write these down to study later for the exam. Again, law school exams do not test your memory of a case inside and out. Instead, they test your ability to take a rule you’ve learned and apply it to different facts. So when your professor poses hypotheticals, she’s doing just that – she’s taking the rule you learned in a case and is asking you to apply it to different set of facts. You should treat hypotheticals like mini-exam questions and write down all hypotheticals.

Note How the “Other Stuff” Relates to FIRAC

You may be thinking, okay, everything so far makes sense, but what do I do with all the “other stuff” that comes up in class? What do I do with the new legal concepts or Latin phrases that my professor keeps mentioning? What about all these other issues like social policy or newspaper articles that the professor discusses? Should I take notes on that information? Absolutely. If your professor mentions something in class that seems off track, you need to ask: “How will this help me on the exam? Will this information contribute to my approach to solving new problems?”

Your professor may discuss topics that seem unrelated to the case. These include topics like social policy, economic concerns (*i.e.*, who pays for what), and jurisdiction (*i.e.*, whether the courts or the legislature should decide this issue). During this discussion, your professor is attempting to point out the broader ramifications of the court’s decision. Here the emphasis is not so much on the rules or elements, but rather social policy. In these instances you need to focus on how this relates to FIRAC-how can this information help solve a new legal problem in the future (*i.e.*, on the exam)? Does it concern the application of the rule? Should other reasons, besides the facts, make the court decide differently? Think about this information, jot it down, and try to make some connection to FIRAC and the problem solving method.

Legal phrases, what we call “magic words,” must be learned and can be helpful later. Some legal concepts, which take many words to explain, can be summed up in a single word or phrase, for example, “proximate cause” or “constructive eviction.” When you hear these words or phrases used in class, write them down. These are

“magic words.” They can be legal terms of art (*res ipsa loquitur*) or terms a professor uses to refer to a concept (victimless crimes). You will get points on the exams if you know what these terms mean and use them correctly.

Finally, some professors begin or end class with a summary of what happened last time. Make sure to write this down. This review will be an invaluable guide to how the professor wants you to analyze a problem and show how it all fits together. Legal analysis is very orderly; you must analyze elements not only separately but also in a certain order. Make sure you know both the elements and the order of analysis.

TIP: While taking notes in class, make sure you:

- ✓ Edit your brief.
- ✓ Write down hypotheticals.
- ✓ Include the magic words.
- ✓ Include the professor’s summary.

Now that you have an idea of what to focus on during class discussion, we want to give you a taste of what a law school classroom is like. The following is a transcript of an actual law school class discussion, and sample notes taken from that discussion.

Sample Class Discussion

Torts Class Discussion

PROF: Good morning class. Last week we began our unit on international torts and discussed the tort of assault. Today, we’re going to talk about its partner in crime: battery. Sarah, who has the burden of proof in a battery case?

SARAH: The plaintiff.

PROF: And what kind of case must the plaintiff make out?

SARAH: A *prima facie* case.

PROF: And what does that mean?

SARAH: That the facts of the plaintiff’s case are good on their face, absent any defenses.

PROF: Good. On its face, the proof offered by the plaintiff is at least good enough that a judge will not dismiss the claim but allow it to go to trial, so a jury may decide. The defendant may offer any number of defenses, but

this won't be necessary if the plaintiff cannot make out a *prima facie* case. Now, Sarah, tell me what the definition of a battery is.

SARAH: Um...when someone acts intending to cause a harmful or offensive contact against another person that results in that person being harmed.

PROF: Do you have to actually touch the person?

SARAH: Yes?

PROF: Jose, do you have to actually touch the person?

JOSE: No, you don't actually have to touch the person for the contact to be offensive.

PROF: What do you have to do?

JOSE: The contact is offensive if it offends a person's reasonable sense of personal dignity.

PROF: So if you're wearing a baseball cap, and I come charging at you and knock your hat off of your head, have I just committed a battery?

JOSE: Yes, because the hat was an extension of my person, and you offended my sense of dignity.

PROF: Good. Now, let's take a look at today's reading, in which the person didn't even touch an extension of the person's self. Keisha, what were the facts in *Vosburg v. Putney*?

KEISHA: The defendant kicked the plaintiff in the leg while they were at school.

PROF: Where were they?

KEISHA: They were in class.

PROF: Were they standing up and fighting?

KEISHA: No, they were sitting in their desks on opposite sides of an aisle, and the defendant kicked the plaintiff from his desk.

PROF: So what happened after the kick?

KEISHA: The plaintiff didn't really feel pain at first, but later on, it became inflamed and really began to hurt him.

PROF: Okay good. Now, what court heard this case?

KEISHA: The Wisconsin Supreme Court.

PROF: Good. How did the court know what the facts of the case were?

KEISHA: The court got the facts from the trial record.

PROF: Okay, now what if the court thought that the facts-as the trial court found them to be-were more than likely not what really happened? What's the standard of review then?

KEISHA: The court must accept the facts found at trial unless they are "clearly erroneous."

PROF: Okay good. Now, why did the plaintiff win in this case?

KEISHA: The defendant intended to kick the plaintiff; it wasn't an accident. That kick caused the harm the plaintiff suffered.

PROF: We'll talk more about this later when we talk about defenses to intentional torts, but why don't you take a stab at it now? Could the defendant raise any defense to his actions?

KEISHA: No, I don't think so. He wasn't defending himself in a fight, so he didn't really have any justification, other than a personal grudge, I guess.

PROF: Good Keisha. Now, argue the other side. What did the defendant say?

KEISHA: That the kick wasn't that hard, and the plaintiff didn't even feel it. The plaintiff's injuries were not a result of the kick but merely a coincidence.

PROF: Good job. Now, Tim, this was called a "special verdict" because the jury answered specific questions, instead of rendering a verdict in favor or against liability. What did the jury find with regard to whether the defendant intentionally attempted to hurt the plaintiff?

TIM: The jury found that "the defendant, in touching the plaintiff with his foot," did not intend to do him any harm.

PROF: What was the issue for the Wisconsin Supreme Court?

TIM: The issue was whether the trial court judge should have held in favor of the defendant, because the jury found that he did not intend to inflict the harm the plaintiff suffered.

PROF: And how did the court decide?

TIM: The court held that the trial judge was correct in finding in favor of the plaintiff.

PROF: What legal reasoning did the court use to reach that holding?

TIM: The court held that it was not necessary for the defendant to "intend" to cause the harm. It was sufficient that the defendant intended to perform the unlawful act of kicking the plaintiff.

PROF: Good. And how did the court determine whether the kick was an unlawful act?

TIM: Um...the court looked at where the kick took place. They said....

PROF: Correction Tim. You said "they." Even though the court is made up of several judges here, you still refer to the court as a singular entity. So you would say, "it held," not "they held."

TIM: Oh, okay. It held that since the kick took place during school hours, in a classroom, after the teacher had called class to order, the kick was unlawful.

PROF: What if the plaintiff had been kicked while playing outside during recess?

TIM: The court said there may have been some type of "implied license."

PROF: That's correct, but why would there have been such a license?

TIM: Because if the boys had been involved in some sort of game or sport on the playground, the plaintiff would be said to have "assumed the risk."

PROF: That's right. In a situation such as playing a rough game of, say soccer, there is no express license to hurt other players; however, by voluntarily participating in a game in which injury is likely to result, we imply

consent to be injured. But as we'll see later, even that defense has its limitations.

MATT: Wait, I'm a little confused. Doesn't the fact that these are kids have anything to do with it?

PROF: Well, how old were the plaintiff and defendant?

MATT: The plaintiff was 14 and the defendant was 12.

PROF: How does that affect the case?

MATT: Um...the defendant was young, so he might not have known what he was doing?

PROF: Well, I think he knew what he was doing. He kicked him in the leg!

MATT: What I meant was that he probably didn't expect to have hurt him so badly just by kicking him in the leg. I mean that he was 2 years younger than the plaintiff and probably smaller, too.

PROF: Does that matter? Twelve years old isn't that young.

MATT: Well, he didn't intend to hurt him.

PROF: But that's not the issue. The issue is the act itself. Again, What's the rule for battery?

MATT: Someone who intends to cause a harmful act, and that act results in a harm.

PROF: So if he intended to kick him, and that kick resulted in a harm, is he liable for battery?

MATT: I guess so, yes. But how was he supposed to know that the fourteen year old had a problem with his leg?

PROF: He probably didn't, but that doesn't matter either. Remember that you take the plaintiff as he is. Here's a hypo: you're waiting to use a public telephone and you're really in a hurry because this girl you've been wanting to date has just beeped you. There's someone else already using the phone. After waiting five minutes, you get impatient and yank him away from the phone. He stumbles backward, trips, and hits his head on the ground. Lo and behold, he has a unique condition called "egg-shell skull syndrome," and he fractures his skull and starts bleeding profusely. Did you know that he had an eggshell skull?

MATT: No, but I suspect it doesn't matter that I didn't intend for him to hit his head and start bleeding.

PROF: Exactly. You intended to pull him away from the phone. As a result of that action, he suffered an injury, and you're liable. Now, let's take that scenario one step further. What if you never touched the person, but as a result of your actions, that person suffered an injury? Jen, let's say that you see Matt walking down the hall. You drop a banana peel on the ground around a corner, right where you know Matt will walk. He slips and breaks his wrist as he falls. Are you liable for battery?

JEN: Um...based on the rule we just learned, I think I am because I knew that he would slip on it. But like the other case, I didn't intend to hurt him, and it's not like I physically pushed him down or anything.

PROF: Well, let's see if that holds true as we continue our look at battery with *Garratt v. Dailey*.

Sample Notes

CAVEATS: Below are sample notes that you might have taken if you attended the class discussion above. Observe how the notes focus on making changes/additions to the case brief, as well as on definitions, hypos, and other points that the professor deems important.

Battery

Plaintiff must make out a "prima facie case" - proof offered by the plaintiff is good enough that a judge will not dismiss the claim but will allow it to go to trial so that a jury will decide.

Definition of battery

When someone acts intending to cause harmful or offensive contact against another person that results in that person being harmed. You don't have to actually touch the person for the contact to be offensive - the contact is offensive if it offends a person's reasonable sense of personal dignity.

Hypo #1: Wearing a baseball cap and someone charges at you, hitting you in the head is battery because the hat is an extension of the person, and you have offended her sense of dignity.

Special verdict: when a jury answers one or more specific questions, instead of rendering a verdict regarding liability.

Unlawful act: the court considers special circumstances of the situation. Specifically, this court considered when the alleged activity took place (in the classroom during organized class time).

Implied license: Consent or permission to do an act, implied from the circumstances, other than expressly given, i.e., consent to touching in a soccer game.

Age: In this case, the court was unconcerned whether the children were of a certain age. Instead, it considered whether the child had the ability, not to understand his action would harm another, but the intent to commit an illegal act.

Hypo #2: You are waiting to use the public telephone, and you are in a hurry. Someone is already using the phone. After waiting five minutes, you get impatient and yank the phone away from him. He stumbles backwards, trips, and hits his head. Turns out he has a condition known as egg-shell skull syndrome and starts bleeding profusely. This is considered battery because you intended to pull the phone away from him; therefore, you are still liable.

Hypo #3: If you never touched the person, but, as a result of your actions, the person suffered an injury (drop a banana on ground, knowing that someone will likely walk over it and slip and fall), you are liable because you knew that your action (dropping a banana on ground) would cause harm.

How to Brief a Case

How to Brief a Case

Note: There are many different ways to brief a case. Every format has its advantages, but all case-briefing formats have the identical goal, that is, to facilitate your understanding of the case and its analysis. The case-briefing format in this section is excerpted from Oates, et. # al., The Legal Writing Handbook 4th ed. (2002).

CASE BRIEF FORMAT

Directions*

Use the following briefing form for all briefing assignments in this course. Type or print your assignments. Double space between sections of the brief and single space the text within the section. Include the names of the sections of the brief as specified here. Number the pages of your briefs at the bottom center of the page. There is a page limitation of two (2) pages for each brief, not including the cover page. Refer to the Course Policies and Procedures for the information to be included on the cover page and other information about your assignments and this course. Refer to your class notes and any handouts on briefing cases to supplement the following information. You will be graded on your demonstrated ability to analyze the case, follow each and every direction, and write in a professional manner (so take the time to proofread your work carefully). Refer to the Syllabus for the due dates for these assignments. Suggestion: look in a legal dictionary for all terms of the case with which you are unfamiliar.

*Your Instructor or Professor may supplement these directions.

1. Case Name and Citation

For briefing assignments, use the case name and citation at the top of the reported opinion or follow your Instructor's or Professor's directions. You will soon learn how to write correct case names, including abbreviations, and citations.

2. Statement of the Case

Answer this question and in the following order: *who is suing whom for what and on what legal basis?* Refer to the legal relationship of the parties, not their names or legalese (i.e., "plaintiff," "defendant," and "appellant"). Example: Seller is suing buyer for money damages for breach of contract.

3. Procedure

State what transpired below at each level of court (i.e., "The trial court granted the buyer's motion for summary judgment, and the seller appeals." In other words, describe in sentence formant how the case got to the court which is writing the opinion which you are briefing.

4. **Fact**

Summarize the legally significant facts relating to the issues in correct sentence format. Use terms to express the legal relationships of parties instead of the actual names of people. Avoid using legalese (i.e., “said contract,” “hereinbefore”). Be concise while still observing correct gram and punctuation.

5. **Issue**

State in question format the precise legal dispute which the court is trying to resolve, in two (2) ways: broad and narrow (see below). Again do not use names of parties or legalese. Express parties in terms of legal relationships instead. Include any significant legal facts which might make this case different from another seemingly similar case. Write using correct grammar and punctuation. Usually, there is one question for each issue of the case.

A. Broad (i.e., where general facts A and B occurred, did the lower court err in finding for the buyer?)

B. Narrow (i.e., where specific facts A, B, C, D, E occurred, did the lower court err in granting summary judgment for the buyer?)

6. **Procedural Result**

In one sentence, state what the court, which is writing the opinion, did to the lower court’s ruling (i.e. affirm, reserve, remand with instructions). If there is more than one lower court, make sure to specify which court you mean.

7. **Holding**

State the court’s holding in correct sentence format, responding to the issue. Express the court’s decision in terms of the legal claim and the important facts of the case. Usually, one sentence can represent the answer or holding for each issue. Check back to see whether the holding truly matches the corresponding issue; if not, you may need to change your issue as well.

A. Broad (i.e., where general facts A and B occurred, the lower court erred in granting summary judgment for the buyer?)

B. Narrow (i.e., where specific facts A, B, C, D, and E occurred, the lower court erred in granting summary judgment for the buyer because there were disputed material facts and he employed the wrong legal standard.)

8. **Reasoning for the Decision**

Explain in correct sentence format the court's rationale for its decision. Include any relevant rules of law which the court has used to reach its decision. Also state the policy behind the court's decision (think about who or what is the court trying to protect). Usually, this part of the brief is several sentences in length. Try to explain the reasoning in plain English so you and the reader will comprehend. Do not quote. However, you may freely paraphrase (no need to cite to the instant case).

9. Additional Points

This part of the brief may be optional depending on the opinion. Mention any dissenting or concurring opinions with a brief explanation of the substance of those opinions. Also state, in sentence format, anything that puzzled or interested you. You might comment on the importance of the case in relation to a sequence of cases, for example.

Sample case

VOSBURG, by guardian ad litem, Respondent, v. PUTNEY, by guardian ad litem,
Appellant.

SUMPRE COURT OF WISCONSIN

890 Wis. 523, 50 N.W. 403; 1891 Wisc. LEXIS 234

October 26, 1891, Argued
November 17, 1891, Decided

PRIOR HISTORY: [***1] APPEAL from the Circuit Court for Waukesha County.

OPINION: [*527] [***403] LYON, J. Several errors are assigned, only three of which will be considered.

1. The jury having found that the defendant, in touching the plaintiff with his foot, did not intend to do him any harm, counsel for defendant maintain that the plaintiff has no cause of action, and that defendant's motion for judgment [***7] on the special verdict should have been granted. In support of this proposition counsel quote from 2 Greenl. Ev. § 83, the rule that "the intention to do harm is of the essence of an assault." Such is the rule, no doubt, in actions or prosecutions for mere assaults. But this is an action to recover damages for an alleged assault and battery. In such case the rule is correctly stated, in many of the authorities cited by counsel, that HN1 ↴ plaintiff must show either that the intention was unlawful, or that the defendant is in fault. If the intended act is unlawful, the intention to commit it must necessarily be unlawful. Hence, as applied to this case, if the kicking of the plaintiff by the defendant was an unlawful act, the intention of defendant to kick him was also unlawful.

Had the parties been upon the play-grounds of the school, engaged in the usual boyish sports, the defendant being free from malice, wantonness, or negligence, and intending no harm to plaintiff in what he did, we should hesitate to hold the act of [**404] the defendant unlawful, or that he could be held liable in this action. Some consideration is du to the implied license of the play-grounds. Bit it appears [***8] that the injury was inflicted in the school, after it had been called to order by the teacher, and after the regular exercise of the school had commenced. Under these circumstances, no implied license to do the act complained of existed, and such act was a violation of the order and decorum of the [*528] school, and necessarily unlawful. Hence we are of the opinion that, under the evidence and verdict, the action may be sustained.

[OTHER ARGUMENTS AND COURT DISCUSSION OMITTED]

2. The remaining errors assigned are upon the rulings of the court on objections to testimony. These rulings are not very likely to be repeated on another trial, and are not of sufficient importance to require a review of them on this appeal.

By the Court. – The judgment of the circuit court is reversed, and the cause will be remanded for a new trial.

Sample Case Brief

NAME: *Vosburg v. Putney*

FACTS: Two boys were in a classroom during school hours; the class had just been called to order by the teacher. The defendant reached across the aisle with his foot and kicked his toe against the plaintiff's shin. Afterward, the shin area became infected, and the plaintiff eventually became lame.

ISSUE: Whether a boy satisfied the intent element of battery when he kicked another boy in the knee (while in class) and, as a result, the knee later became infected and diseased.

RULE: In an action to recover damages for an alleged assault and battery, the plaintiff must show either that the defendant intended to do the act and the act was unlawful or that the defendant intended the ultimate result. If the intended act is unlawful, then the intention to commit it must necessarily be unlawful.

APPLICATION: Here, the boy did not intend the end result (injuring his friend's leg so severely), but he did intend to kick him in the shin during a time (class in session) and a place (the classroom) where this action (the kicking) was unlawful. Because he intended the act (kicking) and the kick was unlawful, he satisfied the intent element of battery.

CONCLUSION: Yes. Because the defendant's intentional act of kicking the plaintiff was unlawful, his intention

to kick plaintiff was also unlawful. Defendant was at fault for any harm resulting from his unlawful act.

Corrections/additions to the brief made during class

Relevant facts: In the classroom – called to order – that make kick illegal.

Issue: intent is key

Rule: Battery is committed when one person acts intending to cause harmful or offensive contact against another person that results in that person being harmed. It is also sufficient that a person intends to perform an unlawful act (this is what happened here).

Application/reasoning: The defendant intended to touch the plaintiff in an offensive manner, even though he did not intend to cause him harm. The act of performing the unlawful kick is sufficient to satisfy the intent element of battery. The kick occurred in the classroom, after the teacher had called the class to order. The act was unlawful because it occurred in a place and at a time that kicking is not allowed or lawful.

Conclusion: The defendant committed a battery when he intended to perform an illegal act by kicking the plaintiff during school while class was in session.

More additions to brief:

Procedural history: The trial court found for the plaintiff, even though the defendant did not intend to inflict the harm the plaintiff suffered. The Supreme Court of Wisconsin found that the trial judge was correct in finding in favor of the plaintiff.

TIP: Take five minutes after each class to summarize the day's discussion. Limit yourself to one sentence. For this day's discussion, your one sentence summary should be about intent. How do you know if someone has satisfied the intent element for battery: By taking the time after class you:

- ✓ Revisit the class information while it's fresh in your mind, thereby increasing recall and comprehension.
- ✓ You are able to assess whether you understood the day's lesson clearly. If you cannot complete the one sentence summary, ask yourself why you're stuck. Write down one or two questions you have about the topic so that you can clarify with colleagues and your professor immediately.
- ✓ By doing this daily work, you will eliminate the need at finals time to go back over three months' worth of notes, trying, for the first time to make sense of the material.

It is imperative that you review your notes the same day as class, while the material is fresh in your mind. This will help you focus when you organize your notes, and help you prepare for outlining later.

§4.3.2 Briefing Cases

Briefing is a process that attorneys use to analyze a case. By preparing a brief, they force themselves to read the case carefully.

As a general rule, you will need to read a case more than once. When reading a case for a law school class, use the first reading to determine what the case is about and why it was included in your casebook. What point does the case raise or illustrate? Similarly, when reading a case for a research project, use the first reading to determine whether the case is potentially useful. Does it discuss the same issue that you have been asked to research? If it does, does it set out or interpret the rule? Can you use the case to make an argument based on precedent? How might the other side use the case?

Then read the case again, this time looking at (a) the name of the court and date the opinion was issued; (b) the case's procedural posture; (c) the issue or issues that were before the court; (d) the rule or test that the court applied in resolving each; (e) the facts that the court found legally significant; (f) the court's holding; (g) the court's reasoning; and (h) the disposition of the case.

a. The name of the court and the date the opinion was issued. Although you should always note the name of the court issuing the opinion and the date of issuance, this information will be used differently depending on whether you are briefing the case for a law school class or for a research project.

If you are briefing the case for class, the name of the court and date of the opinion may help explain why the result in the case that you are reading is different from the result in the preceding case or the case that follows: It is not unusual for different jurisdictions to have different rules (either statutory or common law), and in later cases courts can overrule their earlier decisions.

In contrast, if you are briefing the case for a research project, the court and date of the opinion will be used to determine whether the case is mandatory authority (authority that the court must follow) or only persuasive authority (authority that the court will consider but that is not binding on the court). (See section 2.3 for a complete discussion of mandatory and persuasive authority.)

b. The case's procedural posture. Note also the case's procedural posture. Is the decision a decision of a trial or an appellate court? If it is a decision of an appellate court, is the appellate court reviewing a procedural ruling before there has been a final judgment, or is the court reviewing the final judgment itself?

c. The issue(s) before the court. The issue can almost always be stated in more than one way. It can focus on the procedural aspects (did the trial court err in granting the motion for summary judgment?) or on the substantive issues (what test did the court apply in determining whether the goods were specially manufactured?). In addition, it can be stated either narrowly or broadly.

If you are stating the issue for class, consider both the issue as stated by the court and the reason that the case was included in the casebook. If the case is in your civil procedure casebook, you will want to frame the issue so that it highlights the procedural issues; if it is in your contracts book, frame the issue so that it highlights the substantive rules.

In stating the issue for a research brief, consider two things. First, make sure that you understand the case's procedural posture. Did the court decide that goods were specially manufactured or only that the trial court erred in granting summary judgment? Second, remember that the issue determines the holding. How can you state the issue so that the court's holding supports your client's position? How will the other side characterize the issue and the holding?

d. The rule or test that the court applied. Once you have identified the issue before the court, the next step is to determine what law the court applied in resolving that issue. In some cases, the law is not in dispute. Both sides agree that the case is governed by a particular statute or well-established common law rule. In other cases, the parties disagree over what the law is. If there is no law, they may each advocate a different approach; if there is law, they may disagree over how that law should be interpreted or applied.

In the former instance, you need note only the rule or test that the court applied; in the latter, note which rule each side advocated and which rule the court ultimately applied.

e. The facts that the court found legally significant. The next step is to identify the legally significant facts. Which facts did the court rely on in deciding the case? To determine which facts the court relied on, look at both the facts that the court recited in its fact summary at the beginning of the case and at the facts that it refers to in its holding and reasoning. Also look at the facts set out in any concurring or dissenting opinions. Sometimes it is the absence of a fact that is legally significant.

f. The court's holding. The holding is the answer to the question before the court. If the question was whether the court erred in granting summary judgment, the holdings is that the court did (or did not) err in granting the motion. Similarly, if the issue is whether there was sufficient evidence to support a finding that the rugs were specially manufactured when they were stock items and not subjected to any special dyeing or weaving, the holding is that there was (or was not) sufficient evidence.

g. The court's reasoning. In addition to setting out the court's holding, also set out its reasoning. Why did the court decide the issue as it did? Did it rely on an established rule or test? If not, why did it adopt the rule or test that it did? Also look at how broadly or narrowly the court stated its holding and the policies that it considered.

h. The disposition of the case. The final section is the disposition of the case. What was the court's decision and how did that decision affect the parties?

Although the format will vary from person to person and even from class to class, the following brief is representative.

CASE FOR DISCUSSION IN LECTURE SECTION

Ranson et al. v. Kitner
Appellate Court of Illinois, 1889.
31 Ill.App. 241.

CONGER, J. This was an action brought by appellee against appellants to recover the value of a dog killed by appellants, and a judgment rendered for \$50.

The defense was that appellants were hunting for wolves, that appellee's dog had a striking resemblance to a wolf, that they in good faith believed it to be one, and killed it as such.

Many points are made, and a lengthy argument failed to show that error in the trial below was committed, but we are inclined to think that no material error occurred to the prejudice of appellants.

The jury held them liable for the value of the dog, and we do not see how they could have done otherwise under the evidence. Appellants are clearly liable for the damages caused by their mistake, notwithstanding they were acting in good faith.

We see no reason for interfering with the conclusion reached by the jury, and the judgment will be affirmed.

CASE BRIEF

CASE NAME

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FACTS

PROCEDURE

ISSUE(S)

HOLDING

RATIONALE

Understanding Court Structure and Jurisdiction in the United States

An Overview of the United States Legal System

The United States system of government. For some, it is the secret to democracy, the power to elect one's leaders, and the right to speak freely. For others, it is a horrendous bureaucracy, a maze through which one must struggle to obtain a benefit, to change a law, or to get a day in court. For still others, it is more abstract, a chart in a ninth-grade civics book describing the three branches of government explaining the system of checks and balances.

For lawyers, the United States system of government is all of these things and more. It is the foundation for their knowledge of law, the stage on which they play out their professional roles, and the arena for the very serious game of law.

No matter which metaphor you prefer—foundation, stage, arena—the point is the same. To be successful as a law student and a lawyer, you must understand the system. You must know the framework before you can work well within it.

Like most complex systems, the United States system of government can be analyzed in a number of different ways. You can focus on its three branches—the executive branch, the legislative branch, and the judicial branch—or you can focus on its two parts, the federal government and the state governments.

In this chapter, we do both. We look first at the three branches, examining both their individual functions and their interrelationships. We then examine the relationship between state and federal government, again with an eye toward their individual functions and powers.

§1.1 THE THREE BRANCHES OF GOVERNMENT

Just as the medical student must understand both the various organs that make up the human body and their relationship to each other, the law student must understand both the three branches of government and the relationships among them.

§1.1.1 The Executive Branch

The first of the three branches is the executive branch. In the federal system, the executive power is vested in the President; in the states, it is vested in the governor. (See Article II, Section 1 of the United States Constitution and the constitutions of the various states.) In general, the executive branch has the power to implement and enforce laws. It oversees public projects, administers public benefit programs, and controls law enforcement agencies.

The executive branch also has powers that directly affect our system of law. For example, the President (or a governor) can control the lawmaking function of the legislative branch by exercising his or her power to convene and adjourn the Congress

(or state legislature) or by vetoing legislation. Similarly, the President or a governor can shape the decisions of the courts through his or her judicial nominations or by directing the attorney general to enforce or not to enforce certain laws.

§1.1.2 The Legislative Branch

The second branch is the legislative branch. Congress's powers are enumerated in Article I, Section 8 of the United States Constitution, which gives Congress, among other things the power to lay and collect taxes, borrow money, regulate commerce with foreign nations and among the states, establish uniform naturalization and bankruptcy laws, promote the progress of science and the useful arts by creating copyright laws, and punish counterfeiting. Powers not granted Congress are given to the states or left to the people. (See the Tenth Amendment to the United States Constitution.) The state constitutions enumerate the powers given to the state legislatures.

Like the executive branch, the legislative branch exercises power over the other two branches. It can check the actions of the executive by enacting or refusing to enact legislation requested by the executive, by controlling the budget, and, at least at the federal level, by consenting or refusing to consent to nominations made by the executive.

The legislative branch's power over the judicial branch is less obvious. At one level, it can control the judiciary through its power to establish courts (Article I, Section 8 grants Congress the power to establish inferior federal courts) and its power to consent to or reject the executive branch's judicial nominations. However, the most obvious control it has over the judiciary is its power to enact legislation that supersedes a common law or court-made doctrine or rule.

The legislative branch also shares its lawmaking power with the executive branch. In enacting legislation, it sometimes gives the executive branch the power to promulgate the regulations needed to implement or enforce the legislation. For example, although Congress (the legislative branch) enacted the Internal Revenue Code, the Internal Revenue Service (part of executive branch) promulgates the regulations needed to implement that code.

§1.1.3 The Judicial Branch

The third branch is judicial branch. Article III, Section 1, of the United States Constitution vests the judicial power of the United States in one Supreme Court and in such inferior courts as Congress may establish. The state constitutions establish and grant power to the state courts.

a. The Hierarchical Nature of the Court System

Both the federal and the state court systems are hierarchical. At the lowest level are the trial courts, whose primary function is fact-finding. The judge or jury hears the evidence and enters a judgment.

At the next level are the intermediate courts of appeals. These courts hear the majority of appeals, deciding (1) whether the trial court applied the right law and (2) whether there is sufficient evidence to support the jury's verdict or the trial judge's finding of fact and conclusions of law. Unlike the trial courts, these courts do not conduct trials. There are no witnesses, and the only exhibits are the exhibits that were admitted during trial. The decisions of the appellate courts are based solely on the written record and the attorney's arguments.

At the top level are the states' highest court and the Supreme Court of the United States. The primary function of these courts is to make law. They hear only those cases that involve issues of great public import or cases in which different divisions or circuits have adopted or applied conflicting rules of law. Like the intermediate courts of appeals, these courts do not hear evidence; they only review the trial court record. See Exhibit 1.1.

An example illustrates the role each court plays. In *State v. Strong* (see Chapter 9), the defendant was charged with possession of a controlled substance. At the trial court level, both the state and the defendant presented witnesses and physical evidence. On the basis of this evidence, the trial court decided the case on its merits, the trial judge deciding the questions of law (whether the evidence should be suppressed), and the jury deciding the questions of fact (whether the state had proved all of the elements of the crime beyond a reasonable doubt).

Both issues were decided against the defendant: The trial court judge ruled that the evidence was admissible, and the jury found that the state had met its burden of proof. Disagreeing with both determinations, the defendant filed an appeal with the intermediate court of appeals.

In deciding this appeal, the appellate court could consider only two issues: whether the trial court judge erred when he denied the defendant's motion to suppress and whether there was sufficient evidence to support the jury's verdict.

Because the first issue raised a question of law, the appellate court could review the issue *de novo*. It did not need to defer to the judgment of the trial court judge; instead, it could exercise its own independent judgment to decide the issue on its merits.

The appellate court had much less latitude with respect to the second issue. Because the second issue raised a question of fact, and not law, the appellate court could not substitute its judgment for that of the jury. It could only review the jury's findings to make sure that they were supported by the evidence. When the question is one of fact, the appellate court can decide only (1) whether there is sufficient evidence to support the jury's verdict or (2) whether the jury's verdict is clearly erroneous—not whether it would have reached the same conclusion.

Trial Court

- The trial court hears witnesses and views evidence.
- The trial court judge decides issues of law; the jury decides questions of facts. (When there is no jury, the trial court judge decides both the questions of law and the questions of fact.)

Intermediate Court of Appeals

- The intermediate court of appeals reviews the written record and exhibits from the trial court.
- When an issue raises a question of law, the intermediate court of appeals may substitute its judgment for the judgment of the trial court judge; when an issue raises a question of fact, the appellate court must defer to the decision of the finder of fact (the jury or, if there was no jury, the trial judge).

Supreme, or Highest, Court

- Like the intermediate court of appeals, it reviews the written record and exhibits from the trial court.
- Like the intermediate court of appeals, it has broad powers to review questions of law: It determines whether the trial court and intermediate court of appeals applied the right law correctly. Its power to review factual issues is, however, very limited. Like the intermediate court of appeals, it can determine only whether there is sufficient evidence to support the decision of the jury or, if there was no jury, the decision of the trial court judge.

Regardless of the type of issue (law or fact), the appellate court must base its decision on the written trial court record and exhibits, and the attorney's arguments. Consequently, in *Strong*, the intermediate court of appeals did not see or hear any of the witnesses. The only people present at the appeal were the judges and the attorneys. Not even the defendant, Strong, was present.

If Strong lost his first appeal, he could petition the state supreme court (through a petition for discretionary review), asking it to hear his case. If the state supreme court granted the petition, its review, like that of the intermediate court of appeals, would be limited. Although the supreme court would review the issue of law *de novo*, it would have to defer to the jury's decision on the questions of fact.

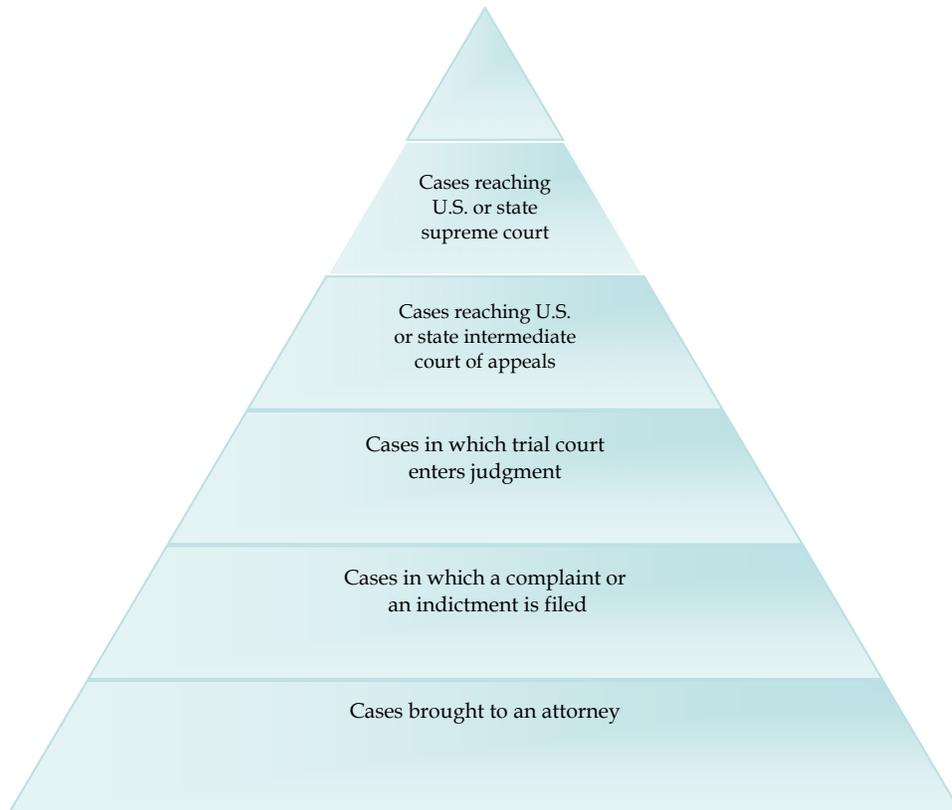
Most of the cases that you will read in law school are appellate court decisions, decisions of the state or federal intermediate court of appeals or Supreme Court. These cases, however, represent only a small, and perhaps not representative, percentage of the disputes that lawyers see during the course of the year. See Exhibit 1.2.

Thus, as you read the cases in your casebooks, remember that you are seeing only the proverbial tip of the iceberg. For a case to reach the Supreme Court, the parties must have had the financial means to pursue it, and the Court must have found that the issue raised was significant enough to grant review.

b. The Federal Courts

In the federal system, most cases are heard initially in the federal district courts, the primary trial court in that system. These courts have original jurisdiction over most federal questions and have the power to review the decisions of some administrative agencies. Each state has at least one district court, and many have several. For example, Indiana has the District Court for Northern Indiana and the District Court for Southern Indiana. Cases that are not heard in the district court are usually heard in one of several specialized courts: the United States Tax Court, the United States Court of Federal Claims, or the United States Court of International Trade.

Exhibit 1.2 Number of Cases That Move Through the Court System



The intermediate court of appeals is the United States Court of Appeals. There are currently thirteen circuits: eleven numbered circuits, the District of Columbia

Circuit, and the Federal Circuit. See Exhibit 1.3. The Federal Circuit, which was created in 1982, reviews the decisions of the United States Court of Federal Claims and the United States Court of International Trade, as well as some administrative decisions.

The highest federal court is the United States Supreme Court. Although many people believe that the Supreme Court is all-powerful, in fact it is not. As with other courts, there are limits on the Supreme Court's powers. It can play only one of two roles.

In its first role, the Supreme Court plays a role similar to that of the state supreme courts. In the federal system, it is the highest court, the court of last resort. In contrast, in its second role, it is the final arbiter of federal constitutional law, interpreting the United States Constitution and determining whether the federal government or a state has violated rights granted under the United States Constitution.

Thus, although people often assert that they will take their case all the way to the Supreme Court, they may not be able to. The Supreme Court can hear the case only if it involves a question of federal constitution law or a federal statute. The Supreme Court does not have the power to hear cases involving only questions of state law. For example, although the United States Supreme Court has the power to determine whether a state's marriage dissolution statutes are constitutional, it does not have the power to hear purely factual questions, such as whether it would be in the best interests of a child for custody to be granted to the father or whether child support should be set at \$300.00, rather than \$400.00 per month.

Each year, the United States Supreme Court receives more than 7,000 requests for review (writs of certiorari). Of the approximately 100 cases that it actually hears, the overwhelming majority are appeals from the federal courts.

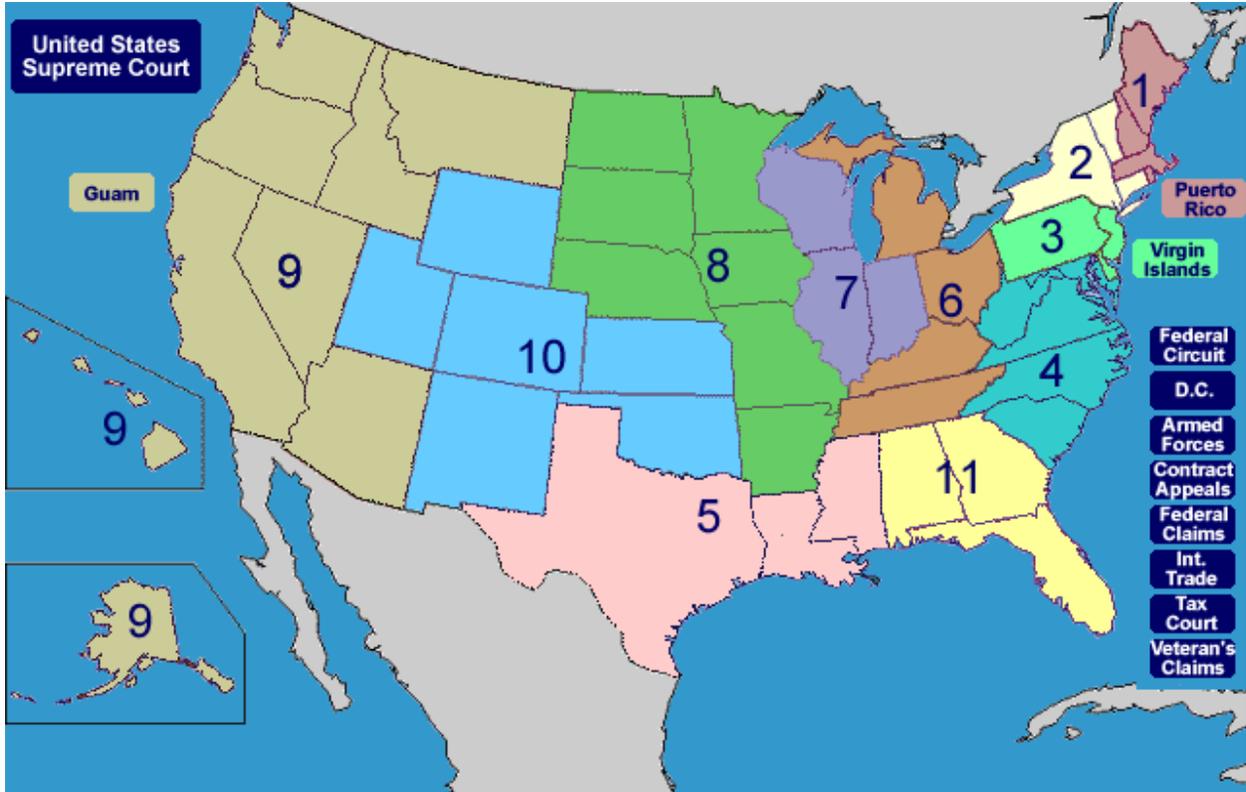
Exhibit 1.4 illustrates the relationships among the various federal courts.

Because the United States District Court and Court of Appeals hear so many cases, not all of their decisions are published. When they are published, district court opinions are published in either the *Federal Supplement* or *Federal Rules Decisions*, and current Court of Appeals decisions are published in *Federal Reporter, Third Series*. (Decisions from the specialized courts are published in specialized reporters.)

All United States Supreme Court decisions are published. The official reporter is *United States Reports*, and the two unofficial reporters are *West's Supreme Court Reporter* and *United States Supreme Court Reports, Lawyer's Edition*. See Chapter 15.

Exhibit 1.3

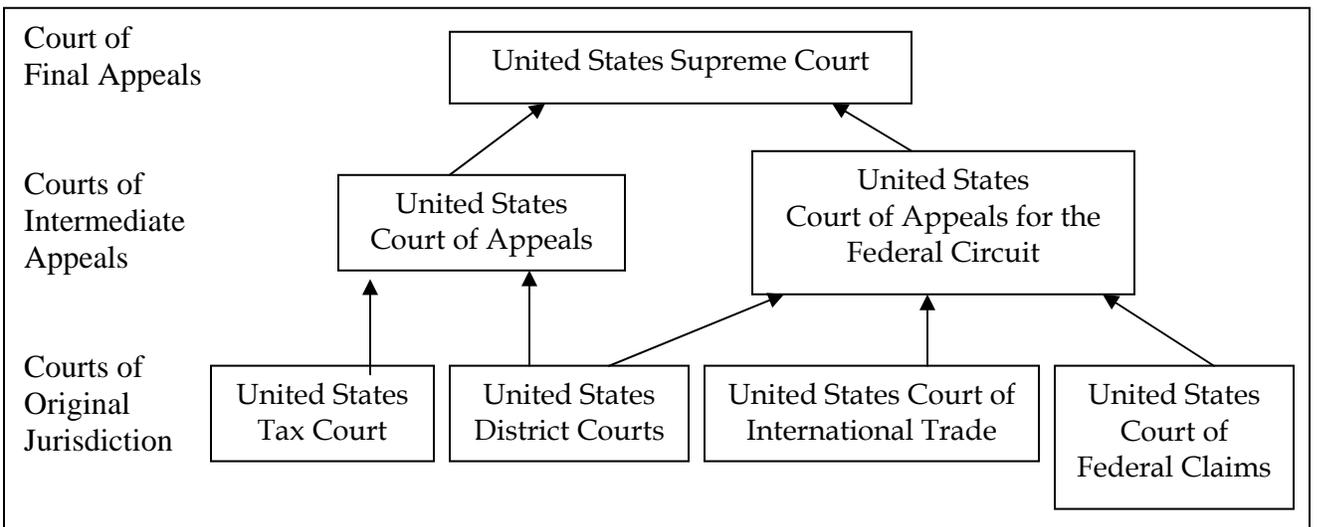
The Thirteen Federal Judicial Circuits



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Exhibit 1.4

The Federal Court System



c. State Courts

A number of courts operate within the states. At the lowest level are courts of limited jurisdiction. These courts can hear only certain types of cases or cases involving only limited amounts of money. Municipal or city courts are courts of limited jurisdiction, as are county or district courts and small claims courts.

At the next level are courts of general jurisdiction. These courts have the power to review the decisions of courts of limited jurisdiction and original jurisdiction over claims arising under state law, whether it be under the state constitution, state statutes, or state common law.

About three-quarters of the states now have an intermediate court of appeals. These courts hear appeals as of right from the state courts of general jurisdiction, and the bulk of their caseload is criminal appeals. Because of the size of their workload, many of these courts have several divisions or districts.

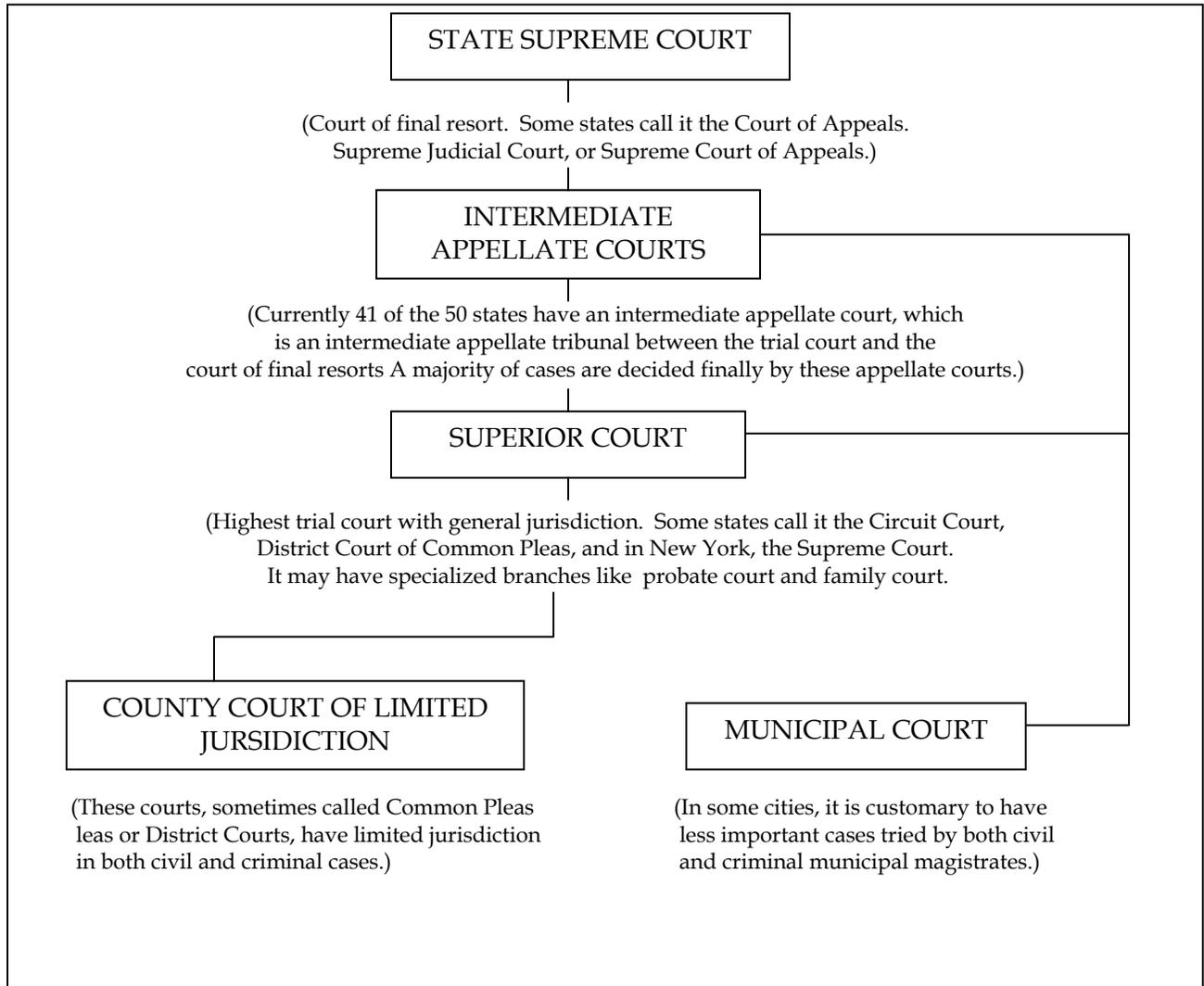
Every state has a state supreme court. These courts review the decisions of the state trial courts and courts of appeals and are the final arbiters of questions of state constitutional, statutory, and common law.

Decisions of state trial courts are not usually published. In addition, because of the volume, not all decisions of intermediate state courts of appeals are published. Those that are, and all decisions of the state supreme court, appears in one of West Publishing Company's regional reporters and the state's official reporter, if one exists.

Exhibit 1.5 illustrates the typical relationship among the various state courts.

Exhibit 1.5

The State Court System



d. Other Courts

There are also several other court systems. As sovereign entities, many Native American tribes have their own judicial systems, as does the United States military.

§1.2 The Relationship between the Federal and State Governments

It is not enough, however, to look at our system of government from only the perspective of its three branches. To understand the system, you must also understand the relationship between the federal and state governments.

§1.2.1 A Short History

Like most things, our system of government is the product of our history. From the early 1600s until 1781, the “United States” were not united. Instead, the “country” was composed of independent colonies, all operating under different charters, and each having its own laws and legal system. Although the colonies traded with each other, the relationship among the colonies was no closer than the relationship among the European countries prior to 1992. It was not until the Articles of Confederation were adopted in 1781 that the “states” ceded any of their rights to a federal government.

Even though the states ceded more rights when the Constitution became effective in 1789, they preserved most of their own law. Each state retained its own executive, its own legislature and laws, and its own court system.

Thus, our system of government is really two systems, a federal system and the fifty state systems, with the United States Constitution brokering the relationship between the two. See Exhibit 1.6.

§1.2.2 The Relationship between Laws Enacted by Congress and Those Enacted by the State Legislatures

As citizens of the United States, we are subject to two sets of laws: federal law and the law of the state in which we are citizens (or in which we act). Most of the time, there is no conflict between these two sets of laws: Federal law governs some conduct; state law, other conduct. For example, federal law governs bankruptcy proceedings, and state law governs divorce.

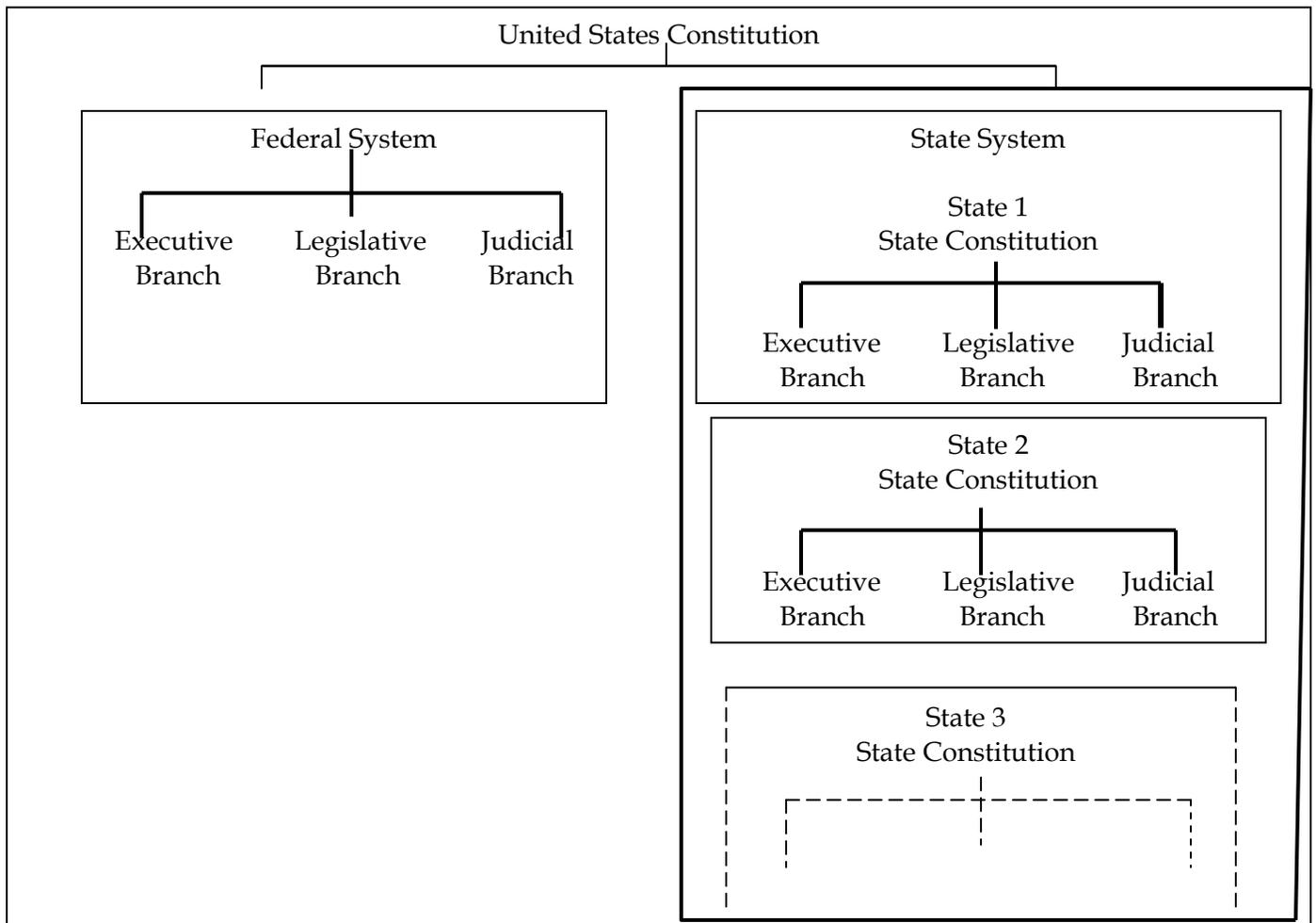
Occasionally, however, both Congress and a state legislature enact laws governing the same conduct. Sometimes these laws coexist. For example, both Congress and the states have enacted drug laws. Acting under the power granted to it under the Commerce Clause, Congress has made it illegal to import controlled substances or to transport them across state lines; the states, acting consistently with the powers reserved to them, have made the possession or sale of controlled substances within the state illegal. In such instances, citizens are subject to both laws. A defendant can be charged under federal law with transporting a drug across state lines and under state law with possession.

There are times, however, when federal and state law do not complement each other and cannot coexist. An act can be legal under federal law, but illegal under state law. In such instances, federal law supersedes state law, provided that the federal law is constitutional. As provided in the Supremacy Clause (Article VI, Clause 2), laws enacted by Congress under the power granted to it under the Constitution are the “Supreme Law of the Land; and the Judges in every State shall be bound thereby....”

The answer is different when the conflicting laws are from different states. Although there are more and more uniform laws (the Uniform Child Custody Act, the Uniform Commercial Code), an activity that is legal in one state may be illegal in another state. For instance, although prostitution is legal in Nevada as a local option, it is illegal in other states.

Exhibit 1.6

The Relationship between the Federal and State Systems



§1.2.3 The Relationship between Federal and State Courts

The relationship between the federal and state court systems is complex. Although each system is autonomous, in certain circumstances the state courts can hear cases brought under federal law, and the federal courts can hear cases brought under state law.

For example, although the majority of cases heard in state courts are brought under state laws, state courts also have jurisdiction when a case is brought under a provision of the United States Constitution, a treaty, and certain federal statutes. Similarly, although the majority of cases heard in the federal courts involve questions of federal law, the federal courts have jurisdiction over cases involving questions of state law when the parties are from different states (diversity jurisdiction).

The appellate jurisdiction of the courts is somewhat simpler. In the state system, a state's supreme, or highest, court is usually the court of last resort. The United States Supreme Court can review a state court decision only when the case involves a federal question and when there has been a final decision by the state's supreme, or highest, court. If a state has an intermediate court of appeals, that court has the power to review the decisions of the lower court within its geographic jurisdiction.

In the federal system, the United States Supreme Court is the court of last resort, having the power to review the decisions of the lower federal courts. The United States Court of Appeals has appellate jurisdiction to review the decisions of the United States District Court and certain administrative agencies.

§1.2.4 The Relationship among Federal, State, and Local Prosecutors

The power to prosecute cases arising under the United States Constitution and federal statutes is vested in the Department of Justice, which is headed by the Attorney General of the United States, a presidential appointee. Assisting the United States Attorney General are the United States Attorneys for each federal judicial district. The individual United States Attorneys' offices have two divisions: a civil division and a criminal division. The civil division handles civil cases arising under federal law, and the criminal division handles cases involving alleged violations of federal criminal statutes.

At the state level, the system is slightly different. In most states, the attorney for the state is the state attorney general, usually an elected official. Working for the state attorney general are a number of assistant attorney generals. However, unlike the United States attorneys, most state attorney generals do not handle criminal cases. Their clients are the various state agencies. For example, an assistant attorney general may be assigned to the department of social and health services, the department of licensing, the consumer protection bureau, or the department of worker's

compensation, providing advice to the agency and representing the agency in civil litigation.

Criminal prosecutions are handled by county and city prosecutors. Each county has its own prosecutor's office, which has both a civil and criminal divisions. Attorneys working for the civil division play much the same role as state assistant attorney generals. They represent the county and its agencies, providing both advice and representation. In contrast, the attorneys assigned to the criminal division are responsible for prosecutions under the state's criminal code. The county prosecutor's office decides whom to charge and then tries the cases.

Like the counties, cities have their own city attorney's office, which, at least in large cities, has civil and criminal divisions. Attorneys working in the civil division advise city departments and agencies and represent the city in civil litigation; attorneys in the criminal division prosecute criminal cases brought under city ordinances. State, county, and city prosecutors do not represent federal departments or agencies, nor do they handle cases brought under federal law. See Exhibit 1.7.

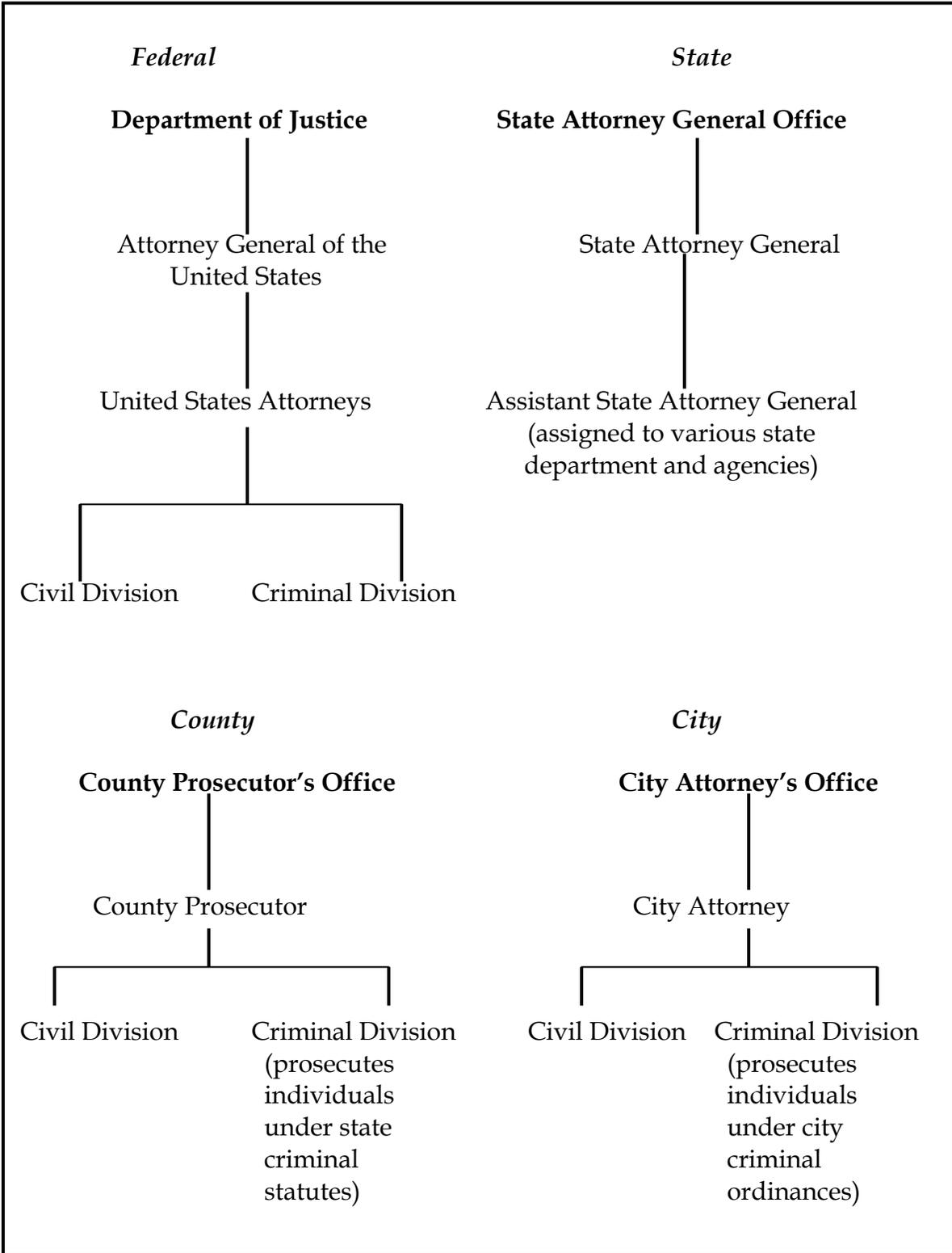
§1.3 A Final Comment

Although there are numerous other ways of analyzing the United States system of government, these two perspectives—the three branches perspective and the federal-state perspective—are the foundation on which the rest of your study of law will be built. Without such a foundation, without a thorough understanding of the interrelationships among the parts of the system, many of the concepts that you will encounter in law school would be difficult to learn.

This is particularly true of legal writing. Without understanding both the role each branch plays and the relationship between state and federal government, you cannot be effective researcher or an effective legal analyst. You must understand the United States system of government so that you can determine which sources to look at in the library. In addition, you must understand the United States system of government before you can tackle the topic of the next chapter, determining whether a particular case or statute is mandatory or persuasive authority.

Exhibit 1.7

Federal, State, and Local Prosecutors



FLORIDA COURT SYSTEM

