

Chapter 7

The Legal System in the United States

At the conclusion of this chapter, students will be able to:

1. Understand how the legal system works
2. Explain why laws are necessary
3. Discuss how cases proceed through civil and criminal courts

Law

What is a law?

A **law** is a statement or rule that tells us what we may or may not do. In order for a law to be legal, it must have a clear definition and a penalty. There are two broad sets of laws known as criminal and civil.

All laws must follow the broad limits of the United States Constitution. The purpose of any law is to help regulate a nation (federal), geographic area (state, city, or local). Laws create order out of chaos. Without laws, citizens would be unable to enjoy the benefits of their freedom.

Why do we need laws?

1. To peacefully resolve conflict
2. To limit government
3. To promote rights
4. To promote citizens' welfare
5. To control crime (**crime: An act that breaks a law**)

What makes a good law?

Good laws are:

1. just
2. reasonable
3. understandable, and
4. enforceable

Types of law

Constitutional law

Criminal law

Administrative law

International law

Tort law

Contract law

Corporate law

Family law

Property law

Successions (Inheritance) law



Courtroom Members

1. Judge: The chief executive of a courtroom. Official who is usually elected who supervises trials, decides cases, protects citizens' constitutional rights, and manages the flow of cases. Providing justice is the most critical duty of a judge.
2. District attorney or prosecutor: Represents the interest of the state. As an officer of the state, his or her duty includes protecting society and individual victims and ensuring that innocent people are not charged with crimes.
3. Plaintiffs attorney: Represents the party filing suit against another.
4. Defense attorney or public defender: Represents the citizen accused of a crime or a wrong.
5. Bailiff: Security officer in the courtroom who protects the judge, jurors, witnesses, and the public. He/She also gives directions and helps with prisoners.
6. Court reporter: Court staff responsible for recording everything said in court and typing transcripts if appealed. The finished product is known as an official record of a trial and is often put in the form of a document.
7. Clerk of court: An administrator who aids the judge in running the court. Record keeper and "paper pusher," the clerk performs many behind-the-scenes-duties, such as preparing a jury list, that keep the court operating efficiently.
8. Law clerks: Aid the judge in keeping the docket up-to-date. (You should explain "docket.") Conduct research and supply the judge with the applicable research to aid the judge in rendering decisions.

9. Witnesses: There are two types: lay and expert. A **lay witness** is also known as a character or eyewitness and is permitted to speak about non-scientific issues in court.

An **expert witness** will testify about an area in which he or she has a specialized skill. Fingerprinting, handwriting analysis, and blood testing are examples of scientific evidence.

10. Jurors: Citizens qualified to decide the facts of civil and criminal cases. Amendments VI and VII to the Constitution provide for a jury trial in most criminal and civil cases. A grand jury of 12 to 23 members usually considers the evidence and determine whether a trial is justified. A petit jury, usually of 12 members, sits at the trial proper and, after hearing the evidence, reaches a verdict.

11. Deputy clerks of court: Clerk's staff who help in the office and the court and keep up with all the clerk's functions.

12. Defendant and victim: They are the reason for having all of the other actors present in court. The victim is the person who is pursuing the lawsuit. The defendant is the person accused of committing the crime. Together, each person fulfills a necessary role in the pursuit of justice.

Methods of Selecting Judges



1. Through a popular election
2. By appointment by governor or President
3. Selection on the basis of qualifications
4. The state legislature decides who will be a judge (Used in three states)

Criminal Law

Criminal law focuses on acts that offend someone, that person's property, or society. Such acts are called **crimes** or offenses and are ranked according to their severity. **Crimes** are public wrongs directed at society.

The most serious category of crime is a **felony**. Examples of felonies include arson, robbery and murder. A **misdemeanor** is a lesser type of crime. The punishment for a misdemeanor is less severe than that for a felony. Bicycle theft, petty theft and forging someone's name on a check are misdemeanors. **Capital punishment**, or the death penalty, is the penalty for committing higher degrees of murder. The state is the plaintiff, and the offender is the defendant.

In order for a criminal law to be valid, it must include two features: 1) a clear definition of a crime, and 2) a reasonable punishment. Criminal laws deter people from committing crimes, and they reform some of those found guilty of crimes. Additionally, they give society a level of safety and protection from people who refuse or are unable to live within the law.

Civil Law

Civil law deals with the personal and property rights of people, such as signing a contract to buy a car, getting married or divorced, and inheritance rights. A **lawsuit** is mechanism by which a dispute over one or more of these rights is resolved.

The **plaintiff** is the person who decides to sue someone. The **defendant** is the person who is sued. If a plaintiff wins a lawsuit, he may be awarded money to be paid by the defendant, who is the loser in the lawsuit.

Either or both parties could be an organization or a corporation. Also, a lawsuit may involve more than one plaintiff and/or more than one defendant.

Progression of Civil Actions

Petition filed

Service perfected

Answer filed

Discovery proceedings

Motions filed

• Pretrial proceedings

Trial by judge or jury

Judge or jury reaches decisions

Progression of Felony Criminal Trials

Defendant arrested (Discuss *Miranda*)

Filing of Bill of Information or

Indictment Motions filed

Discovery answered

Hearings on motions

Trial

- a. Selection and swearing of jury;
- b. Reading of indictment or bill of information;
- c. Reading of defendant's plea on arraignment;
- d. Opening statements of the state and the defendant;
- e. Presentation of the evidence of the state, of the defendant and of the state in rebuttal
- f. Argument of the state, the defendant and the state in rebuttal;
- g. The court's charge;
- h. Announcement of the verdict or mistrial in jury cases or of the judgment in non-jury cases; and
- i. Discharge of the jury in jury cases. .

Sentencing

Steps in a Criminal Court Case

1. Investigation: The police investigate a reported crime.
2. Arrest: The suspect is arrested.
3. Booking: The suspect is detained at a jail, fingerprinted, photographed, and told of the charges against him or her.
4. Initial appearance: The defendant makes his or her first court appearance. The defendant is told of his or her rights, the charges are read aloud, and bail is decided.
5. Indictment: Documents issued by a prosecutor (information) or grand jury (indictment) that list all of the charges against a suspect. Some states use a grand jury trial to determine whether or not the government should prosecute an accused person. Some states use a preliminary hearing, where a judge reviews the evidence to see if there is enough to continue toward a trial.
6. Arraignment: Defendant pleads "guilty" or "not guilty" to the charges. Charges may be dismissed at this point.
7. Trial or guilty plea: Someone who tries to get the crime reduced or changed in exchange for a guilty plea is plea bargaining. Almost 90 percent of all criminal cases are resolved in this way. Very few persons accused of a felony ever seek a trial to determine guilt or innocence.
8. Sentencing: The judge determines the punishment.
9. Appeal: A convicted person may appeal his or her conviction to a court of appeal.

Reserved

Criminal or Civil? - Exercise

Identify each as either "criminal," "civil," or "both."

1. A bank employee pockets your cash deposit. _____

2. A neighbor accidentally backs his car over your bike. _____

3. There are rats in the kitchen of a restaurant. _____

4. A drug company uses false advertising. _____

5. You are caught hunting without a license. _____

6. A person takes a friend's car without permission. _____

7. A factory dumps toxic waste into the water supply. _____

8. A pickpocket steals a wallet. _____

9. A car manufacturer knowingly makes defective cars. _____

10. A hospital overcharges for its services. _____