INTRODUCTION TO THE
U.S. LEGAL SYSTEM AND PROCESS

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Spring 2019
OVERVIEW OF COURSE
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• Synthesis of the U.S. Legal System

• The U.S. Constitution

• U.S. Judicial Systems:
  • Federal Judiciary
  • State Judiciaries

• Sources of Law, Especially:
  • Precedent and stare decisis; and
  • Synthesizing case law

• Civil Dispute Resolution
SYNTHESIS OF THE U.S. LEGAL SYSTEM
SYNTHESIS: OVERVIEW

• The U.S. Constitution:
  • Historical antecedents/underpinnings
  • Essential attributes

• The U.S. Judicial Systems:
  • Why “systems”?
  • The federal courts
  • The state courts

• The Importance of Case Law
• Synthesizing Case Law
• Civil Litigation in the U.S.
U.S. CONSTITUTION: HISTORY

• Historical Antecedents:
  • American Revolution
  • Articles of Confederation: “League of Friendship”
  • Need for stronger national government:
    • Military protection
    • National commerce
    • Meeting to amend articles became Constitutional Convention

• Historical Underpinnings:
  • Fear of distant, centralized government
  • States had all the power and would be asked to relinquish some authority
  • Popular comfort with state governments
U.S. CONSTITUTION: ESSENTIAL ATTRIBUTES

• Short and Enduring:
  • Short:
    • Preamble
    • 7 Articles
    • 27 Amendments
  • Enduring:
    • More than 200 years old

• Connection:
  • Ambiguities and gaps to be filled in by the courts; reflects fundamental role of the courts in common law system
  • Constitution as a “living” document rather than static as of time of ratification (“originalist” interpretation)
U.S. CONSTITUTION: ESSENTIAL ATTRIBUTES

• Reflects Fundamental Mistrust of Governmental Power:
  • Separation of powers between national government and state governments (federalism)
  • Separation of powers and checks and balances within the national government
  • Protection of individual rights and liberties (via amendments)
U.S. JUDICIAL SYSTEMS

• “Systems”:
  • Product of federalism
  • Integrated federal system
  • Independent, autonomous system in each state
FEDERAL COURT SYSTEM

- Courts of Limited Jurisdiction:
  - Consistent with federalism

- Courts of General Jurisdiction:
  - Few specialized courts

- Supreme Court as Highest Federal Judicial Authority:
  - Final judicial arbiter of federal law

- Power of Congress to Create Lower Federal Courts:
  - Hierarchical divisions
  - Geographical divisions

- Federal Judges:
  - Nomination process inherently political
  - Strong guarantees of judicial independence
STATE COURT SYSTEMS

• State Courts:
  • 50+ autonomous, sovereign state court systems
  • Established and operate pursuant to state law
  • State courts of last resort are final judicial arbiters of state law
IMPORTANCE OF CASE LAW

• Most Important Source of Law in the U.S.
• History of the “Common Law”
• Types of Case Law:
  • Cases interpreting constitution
  • Cases interpreting statutes
  • Pure decisional law
• Stare Decisis: Tendency of U.S. Courts to Follow Principles of Law Announced in Earlier-Decided Cases:
  • Binding/mandatory/controlling cases
  • Persuasive cases
• Case Law Synthesis
U.S. CIVIL LITIGATION: SOME BASIC ATTRIBUTES

• Prominence of Settlement and Alternatives to Traditional Dispute Resolution Mechanisms

• Adversarial Process:
  • Important role of parties and attorneys in fact investigation and defining legal issues
  • Trial court judge relatively passive

• Role of the Jury as Finder of Fact
• Trial = Single, Continuous Event
• Detailed Rules of Evidence
• Extensive Pre-Trial Fact Discovery
• Possibility of Punitive Damages
• No Attorney Fee Shifting
• Modest Court Fees
• Possibility of Contingency Fees
U.S. CONSTITUTION

THE NATIONAL CHARTER
COMPONENTS OF THE CONSTITUTION

• Preamble:
  • Thematic/aspirational
  • Not important textual source

• 7 Articles:
  • Structure, organization, and powers of national/federal government
  • Relationship between federal government and states/among states
  • Amending the Constitution
  • Ratification of the Constitution

• 27 Amendments:
  • Structural changes
  • Individual rights and freedoms
PREAMBLE

- Aspirational
- Not Important Textual Source
  - Does not grant rights or impose obligations
- Important Elements:
  - “We the People…”
  - “In order to ....”
  - “United States of America”
ARTICLES: OVERVIEW

• Article I: Legislative Branch
  • NB Section 8 = limits on powers of Congress
• Article II: Executive Branch
• Article III: Judicial Branch
• Article IV: Full Faith and Credit
• Article V: Amending the Constitution
• Article VI: Supremacy of Federal Law
• Article VII: Ratifying the Constitution
ARTICLES: WHAT THEY DO

• Establish/Organize/Empower the Federal Government:
  • Separation of powers
  • Checks and balances

• Allocate Powers Between Federal and State Governments and Among States:
  • System of shared powers – federalism:
    • Federal government of limited/“enumerated” powers
    • States with remaining governmental powers
  • Resolving federal/state conflicts: supremacy and preemption
  • Resolving state/state conflicts: full faith and credit

• Process for Amending the Constitution

• Process for Ratifying the Constitution
STRUCTURE OF THE FEDERAL GOVERNMENT: OVERVIEW

• Federalism:
  • Division of power between federal government and states
  • “Vertical” separation of powers

• Separation of Powers:
  • Division of power among branches of federal government
  • “Horizontal” separation of powers
  • Coupled with “checks and balances”

• Selections from National Federation of Independent Business v. Sebelius
STRUCTURE OF FEDERAL GOVERNMENT: SEPARATION OF POWERS

• Each Branch has its own Designated Functions:
  • Article I – federal legislative branch:
    • Bicameral institution composed of Senate and House of Representatives
    • Makes federal law
    • Limited to powers enumerated, e.g., in Article I section 8
  • Article II – federal executive branch:
    • President, Vice President, and other unspecified officers
    • Administers/enforces federal law
  • Article III – federal judicial branch:
    • Resolve legal conflicts between/among parties
    • “Say what the law is”
    • More below
STRUCTURE OF FEDERAL GOVERNMENT: CHECKS AND BALANCES

• Each Branch Exercises Authority over Other Branches to Prevent the Accumulation of Too Much Power in One Branch

• Overlapping Authority to Avoid Tyranny/Abuse of Power
STRUCTURE OF THE FEDERAL GOVERNMENT: FEDERALISM

• Defined:
  • Division of power between federal government and states
  • “Vertical” separation of powers

• Federal Government as a Government of Limited Powers
  • Powers are limited to those that are “enumerated” in Constitution, for example:
    • Article I section 8 (NB Interstate commerce clause (clause 3))
    • 13, 14, and 15 Amendments
  • No federal police power:
    • Residual governmental power resides with the states
  • National Federation of Independent Business v. Sebelius
FEDERALISM:
TRADITIONAL AREAS OF STATE AUTHORITY

• Criminal Law
• Tort Law
• Contract Law
• Corporate Law
• Education Law
• Real Property/Zoning Law
• Family Law
• Licensing of Professionals
• Trust and Estate Law
• Etc.
FEDERALISM: TRADITIONAL AREAS OF FEDERAL AUTHORITY

- War Powers
- Treaty Powers
- Tax and Spend
- Borrow Money on U.S. Credit
- Print Money
- Copyright and Patent Law
- Bankruptcy
- Immigration/Naturalization
- Civil Rights
- Regulate “Commerce among the several States”*
- “Necessary and Proper” Clause*
- Etc.
FEDERALISM:
CONGRESS’ INTERSTATE COMMERCE POWER

• “Interstate Commerce”:  
  • “channels of interstate commerce”  
  • “instrumentalities of” and “persons or things in interstate commerce”  
  • “activities having a substantial relation to interstate commerce,” or that “substantially affect” interstate commerce *  

• Illustrative Cases:  
  • Wickard v. Filburn  
  • United States v. Lopez  
  • United States v. Morrison*  
  • Gonzalez v. Raich*  
  • National Federation of Independent Business v. Sebelius
NECESSARY AND PROPER CLAUSE

• Gives Congress broad discretion in means it uses to execute its enumerated powers

• “Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional.” McCulloch v. Maryland.
FEDERALISM: LIMITS ON THE POWERS OF THE STATES

- Supremacy and Preemption (Article VI)
- Dormant Commerce Clause
FEDERALISM: SUPREMACY AND PREEMPTION

• Supremacy:
  • Federal law trumps state law when inconsistent

• Preemption:
  • Federal and state governments have overlapping authority in some areas
  • Federal law may preempt (preclude, displace, withdraw) state law
  • Types of Preemption (Arizona v. United States):
    • Express
    • Implied:
      • Field preemption:
        • Pervasive federal framework
        • Dominant federal interest
      • Conflict preemption:
        • Impossibility preemption
        • Obstacle preemption
    • Courts do not lightly find that traditional police powers of the states have been preempted
FEDERALISM: DORMANT/NEGATIVE COMMERCE CLAUSE

• Constitution gives Exclusive Power over the Regulation of Interstate Commerce to the Federal Government
• States may not Unduly Burden or Restrict Interstate Commerce
• Exceptions Apply
• City of Philadelphia v. New Jersey
FULL FAITH AND CREDIT: ARTICLE IV

• Relationship Between/Among States
• Defined:
  • States must recognize and enforce judgments, public acts, records, and proceedings of other states.
• Examples:
  • Enforcement of judgments
  • Recognition of marriages
AMENDING THE CONSTITUTION: ARTICLE VI

• Cannot be Accomplished by Congress Alone:
  • Requires approval of super-majority of the states
• Difficult to Achieve
• Disfavored by U.S. Public
• Not Essential Given “Living Constitution”
RATIFYING THE CONSTITUTION: ARTICLE VII

- Historical Interest Only
- Required Approval of 9 of Original States
- Controversial:
  - Articles of Confederation could be amended only unanimously
AMENDMENTS

• Why Not in Body of Constitution?

• What do the Amendments Do?
  • Refine governmental structure
  • Personal rights and liberties:
    • Bill of Rights (I - X):
      • A note about due process
      • Reconstruction Amendments (XIII - XV)

• Doctrine of Incorporation – McDonald v. City of Chicago
CONSTITUTIONAL INTERPRETATION

• Originalism:
  • Only external tool of interpretation = English common law at the time of the ratification of the Constitution

• Living Constitution:
  • Lawrence v. Texas; Obergefell
  • And the special case of the 8th Amendment – Atkins v. Virginia
U.S. JUDICIAL SYSTEMS

STATE AND FEDERAL COURTS
SEVERAL INDEPENDENT JUDICIAL SYSTEMS

- Product of Federalism
- Federal Judiciary:
  - Created and empowered by federal law
- 50 State Judicatures:
  - Created and empowered by state law
- Parallel Systems:
  - Federal and each state judicial systems operate independently
  - Litigants go through one system or the other, with some exceptions:
    - Certiorari review from state court of last resort when case decided on basis of federal question
    - Certification of legal issue to state court
    - Writ of habeas corpus
ATTRIBUTES OF THE FEDERAL JUDICIARY

• Selection of Federal Judges:
  • No Constitutional qualifications
• Selection Procedure:
  • Nominated by President
  • Confirmed by the Senate
  • Increasingly politicized in recent years

• Judicial Independence:
  • No diminution in salary
  • Tenure during “good behaviour” = life tenure, absent conviction on impeachable offense

• Decentralized System
• Courts of Limited Jurisdiction
• Courts of General Jurisdiction:
  • Few specialized courts
ORGANIZATION OF THE FEDERAL COURTS

• Hierarchical – 3-tiered pyramid
• Geographical – districts and circuits around nation
HIERARCHICAL STRUCTURE OF THE FEDERAL JUDICIARY

• One Supreme Court
• Congress Power to Establish “Inferior” Federal Courts:
  • District Courts = courts of first instance; trial courts
  • Courts of Appeals:
    • (Mostly) geographically-based intermediate appellate courts
    • Hear appeals from district court cases
    • Hear some cases on direct review of agency action
Hierarchical Structure of the Federal Judiciary

Federal Court of Last Resort

Intermediate Appellate Courts

Trial Level Courts

Supreme Court

Courts of Appeals/Circuit Courts

District Courts

12/13

94

1-4 per State
GEOGRAPHIC STRUCTURE OF THE FEDERAL JUDICIARY

• Nation Divided into Federal Judicial Districts and Circuits.
  • 94 judicial districts:
    • Each state has one, two, three, or four judicial districts
    • Each judicial district has one district court
  • 12 regional circuits:
    • Each circuit contains one court of appeals and all the district courts within that geographic area
    • Circuits critical to operation of stare decisis rules
• One Supreme Court:
  • Nationwide jurisdiction
GEOGRAPHIC STRUCTURE OF THE FEDERAL JUDICIARY
FEDERAL JUDICIARY:
LIMITED COMPETENCE

- Limited Competence - Article III, section 2, clause 1:
  - Subject matter jurisdiction = Authority to decide only certain kinds of cases
  - Justiciability = the “case or controversy” requirement
- May be raised sua sponte by the court
COMPETENCE OF THE FEDERAL JUDICIARY: SUBJECT MATTER JURISDICTION

• Federal Court Subject Matter Jurisdiction:
  • May not be Waived
  • U.S. a party
  • Federal question jurisdiction
    • Cases “arising under” a federal statutory or constitutional question
  • Diversity jurisdiction (Hertz v. Friend)
    • Parties citizens of different states (complete diversity required); and
    • At least $75,000 in controversy
  • Variants – Derivative forms of subject matter jurisdiction:
    • Removal jurisdiction
    • Supplemental jurisdiction
COMPETENCE OF THE FEDERAL JUDICIARY: JUSTICIABILITY

• The “Case” or “Controversy” Requirement (Roe v. Wade):
  • Standing – proper plaintiff?
    • Injury in fact – “what’s it to you?”:
      • Concrete and particularized
      • Actual or imminent, not conjectural or hypothetical
    • Causal connection/fairly traceable
    • Likely that injury will be redressed by favorable decision
  • Ripeness – too soon?
  • Non-Mootness – too late?
• Political Question Doctrine – violation of separation of powers?
PROCEEDING THROUGH THE FEDERAL COURTS

• District Courts:
  • Courts of first instance/trial level courts

• Courts of Appeals:
  • First level appellate court
  • Right of appeal
  • Hear some appeals directly from agencies

• Supreme Court:
  • Federal court of last resort
  • Mainly discretionary review
PROCEEDING THROUGH THE U.S. DISTRICT COURT

- Trial Court
- Court of First Instance in Most Cases
- Players:
  - Jury – finders of fact
  - Judge – rulings on law
  - Attorneys – adversarial system
- Presentation of Evidence (see below)
PROCEEDING THROUGH THE U.S. COURT OF APPEALS

- First Level Federal Appellate Court
- Appeal to Court of Appeals in Circuit of District Court
- Appeal of Right
- Reviews only Legal Issues Preserved Below
  - Issue = did trial level court commit reversible error….
- Three Judge Panel
- Briefs and Oral Argument
- No Evidence Presented
- Review Limited to Material in Record
- Discretionary en banc review
PROCEEDING THROUGH THE U.S. SUPREME COURT

• Jurisdiction:
  • Small original jurisdiction
  • Small mandatory appellate jurisdiction
  • Most is discretionary appellate jurisdiction via writ of certiorari

• Seeking the Writ – the “Rule of Four”

• Nine Justices, Sitting En Banc

• Legal Issues Only
  • Except for cases on original jurisdiction

• Briefs and Oral Argument

• No Evidence Presented

• Review Limited to Record Below
STATE JUDICIAL SYSTEMS

• Each State has Independent Court System:
  • Product of state constitution and laws
  • Own rules of procedure and evidence, court structure, judicial selection
  • Most structured like federal judiciary
  • More specialized courts
  • Judges are appointed or elected
  • High state court is the ultimate arbiter of state law
SELECTING A COURT

- Three Main Issues:
  - Subject matter jurisdiction
  - Personal jurisdiction
  - Venue

- Related Issue:
  - Choice of law
SELECTING A COURT: SUBJECT MATTER JURISDICTION

• **Issue:**
  - Does the Case go to State or Federal Court?

• **Impact of Federalism:**
  - Federal courts as courts of limited authority

• **Jurisdictional Possibilities:**
  - Exclusive federal court jurisdiction
  - Exclusive state court jurisdiction
  - Overlapping/concurrent jurisdiction
SELECTING A COURT: FEDERAL COURT
SUBJECT MATTER JURISDICTION [REVIEW]

• U.S. a Party
• Federal Question Jurisdiction:
  • Cases “arising under” a federal statutory or constitutional question
• Diversity Jurisdiction (civil cases):
  • Parties citizens of different states; and
  • At least $75,000 in controversy
• Variants – Derivative forms of Subject Matter Jurisdiction:
  • Removal jurisdiction
  • Supplemental jurisdiction
SELECTING A COURT: PERSONAL JURISDICTION

• Issue:
  • Whether Court can Compel Presence of Out-of-State Defendant(s) in that Court

• Two-Step Test:
  • State long arm statute; and
  • Due process: “Minimal purposeful contacts with forum state so as not to offend fundamental notions of fair play and justice.”

• May be Waived by Defendant:
  • Objection must be made in first appearance
SELECTING A COURT: VENUE

• Defined:
  • “Place”

• Issue:
  • Geographic distribution of cases within a particular jurisdiction

• Statutes often Contain Venue Provisions
  • Often where Cause of Action Arose
**RELATED ISSUE: CHOICE OF LAW**

- **Issue:**
  - Regardless of court, what law applies?
  - Two questions:
    - Which procedural law applies?
    - Which substantive law applies?

- **Procedural Law:**
  - Use procedural law of forum

- **Substantive Law:**
  - Federal law – which? Rules of stare decisis (more below)
  - State law – which?
    - Often stipulated by contract
    - Most interest in or connection to the litigation
THE POWER OF JUDICIAL REVIEW

• Important Check on Political Branches:
  • Power to rule that actions of legislature or executive are unconstitutional

• Decentralized Power:
  • Can be exercised by virtually any court

• Marbury v. Madison
U.S. SOURCES OF LAW

SPECIAL RULES OF PRECEDENT & STARE DECISIS
SOURCES OF LAW: OVERVIEW

• Primary versus Secondary Sources
• Priority of Sources of Law
• Mandatory/Binding/Controlling versus Persuasive Authorities
• Legislation and Statutory Interpretation
• Case Law:
  • Especially Precedent and Stare Decisis
Primary Sources of U.S. Law:
- Positive sources of law – create rights and obligations
- Federal and state
- Examples: Constitutions, statutes, administrative rules and regulations, case law
- May be binding

Secondary Sources of U.S. Law:
- Not positive sources of law – do not create rights or obligations.
- Describe, summarize, criticize, seek changes to law
- Examples: legal encyclopedias, law review articles, restatements, uniform and model laws
- Never binding
PRIORITY OF SOURCES OF LAW

• Primary Sources:
  • Supremacy = All valid federal law is supreme to any state law
  • Within sovereignties:
    • Constitution
    • Legislation
    • Executive issuances
    • Case law

• Secondary Sources:
  • Some secondary sources are better than others
  • Restatements, treatises, law reviews are good secondary sources of law
  • Wikipedia, etc. are not good sources of law
BINDING VERSUS PERSUASIVE AUTHORITIES

• Issue:
  • How should courts treat specific sources of law?

• Binding/Mandatory/Controlling:
  • Must be followed by court
  • Examples: Applicable constitutions, statutes, administration regulations
  • Case law may be but is not necessarily binding – depends on rules of stare decisis (to come)
  • Secondary sources are never binding

• Persuasive:
  • Legal authorities that a court is not compelled to apply but should consider and may apply in the absence of binding/mandatory authority
  • Include secondary sources and non-binding primary sources

• See Hart v. Massanari
PRECEDE N T AND STARE DECISIS

• Precedent = Earlier Decided Cases

• Stare Decisis:
  • “Let it stand” [“it” = precedent]
  • The tendency of courts in the U.S. to follow rules of law announced in earlier decided cases
  • Stare decisis reflects “the principle that carefully considered [decisions]... should not be revisited absent circumstances more compelling than a change in the identity of the individuals who authored the interpretations in question.”
    Professor Laurence Tribe
RATIONALE FOR STARE DECISIS

• Historical Dearth of Legislation:
  • Courts looked to other decisions as a way of developing fair and consistent rules.
  • Far more legislation today but:
    • Legislation vague, often with gaps and ambiguities.
    • Courts do not use broad rules for statutory construction to resolve gaps and ambiguities.
    • Instead look to common law – decisions of other judges whose collective wisdom would inform a fair and equitable result.

• Fairness, Predictability, and Integrity of the Judicial System – “Liberty finds no refuge in a jurisprudence of doubt.” Planned Parenthood.

• Efficiency for the Parties and the Judicial System

• Well-Reasoned Judicial Decision-Making
APPLICATION OF *STARE DECISIS*: FACTORS

- **Scope of Precedent**
  - Legal Issue
  - Facts
  - Holding/Rationale versus Dictum

- **Relationship with Issuing Court(s):**
  - Jurisdiction; and
  - Hierarchy
SCOPE OF PRECEDENT: LEGAL ISSUE

• **Threshold Question:**
  - Whether the same or a similar legal issue was presented in the earlier decided case(s) and in the case currently before the court
  - If the legal issue is not the same or similar, then the entire principle of *stare decisis* becomes irrelevant
SCOPE OF PRECEDENT: FACTS

- U.S. Courts Base Rulings on the Specific Facts Presented by the Parties before Them
  - Court decisions thus apply to narrow set of facts presented

- Courts must Undertake to Determine which Facts were Material or Relevant to the Outcome of the Precedent:
  - Analogize – find that those facts are present in the current case; or
  - Distinguish – find that those facts are not present in the current case or facts that vary materially between the cases
SCOPE OF PRECEDENT: HOLDING VERSUS DICTUM

• Holding and Rationale:
  • Holding = Answer to question presented
  • Rationale = Reasoning that explains holding

• Dictum:
  • Court statements that are beyond the scope of the facts and issues squarely presented to the court; “stray observations”
  • Not always easy to identify. The lawyers’ role in drawing the line between holding/rationale/dictum
  • Not desirable in adversary system
  • Use/impact in future cases may be disputed
RELATIONSHIP WITH ISSUING COURT(S)

- Binding versus Persuasive Precedent:
  - Precedent may be binding on another court, or it may be merely persuasive
  - Depends on the relationship between the court or courts that issued the relevant precedent and the court currently considering a similar case
  - Consider geographical relationship and hierarchical relationship
RELATIONSHIP WITH ISSUING COURT(S)

• Decisions of the Supreme Court of the United States:
  • Binding on all courts in the nation

• Decisions of the United States Courts of Appeals:
  • Binding within that circuit = district courts and court of appeals itself
  • Subject to Supreme Court or en banc court of appeals review

• Decisions of the United States District Courts:
  • Nonbinding precedential effect
  • Binding only on the parties before the court

* On questions of federal law.
STARE DECISIS AND STATE LAW

• State Court of Last Resort is the Ultimate Judicial Arbiter of State Law

• State Policies re Stare Decisis Vary

• Courts Interpreting State Law:
  • “Stand in the shoes” of the state court of last resort to determine what state law is and how it should be applied in specific cases
STARE DECISIS AS TENDENCY, NOT IMMUTABLE RULE

• Judicial Rules May Be Changed:
  • “The doctrine of stare decisis is of fundamental importance to the rule of law, [but] our precedents are not sacrosanct. We have overruled prior decisions where the necessity and propriety of doing so has been established.” Patterson v. McLean Credit Union
  • “The obligation to follow precedent begins with necessity, and a contrary necessity marks its outer limit.” Planned Parenthood v. Casey
WHEN WILL SUPREME COURT OVERRULE ITSELF?

• More Likely in Constitutional Cases than Statutory Cases:
  • Congress is considered to have “acquiesced” in the Court’s interpretation of a statute if Congress does not take corrective action in response to a judicial interpretation of that statute.
  • Constitutional cases – legislative action to undo the decision not possible and constitutional amendments extremely rare.
WHEN WILL SUPREME COURT OVERRULE ITSELF?

• Supreme Court Generally Insists on some Special Considerations when Overruling its Precedent:
  • The Court has “long recognized that departures from precedent are inappropriate in the absence of a ‘special justification.’”
  • “[W]hen this Court reexamines a prior holding, its judgment is customarily informed by a series of prudential and pragmatic considerations designed to test the consistency of overruling a prior decision with the ideal of the rule of law, and to gauge the respective costs of reaffirming and overruling a prior case”

• Is the Court’s Application of Principle Consistent?
  • Citizens United v. Federal Election Commission
  • Planned Parenthood v. Casey
  • Lawrence v. Texas
  • Kimble v. Marvel Entertainment
SYNTHESIZING SOURCES OF LAW

• Synthesis = process of bringing together various rules and authorities
• Goal = develop statement of rule of law and the various factors/elements that go into it
• Avoid = case-by-case description of individual cases
SYNTHESIZING CASE LAW

• Step 1: Read and Analyze Individual Cases

• Step 2:
  • Identify the rule
  • Break the rule into elements
  • Note any policy implications behind the rule

• Step 3: Analyze the Rule
  • For each element of the rule, identify examples
  • Note facts that are relevant to each element

• Step 4: Synthesize the Rule
  • “Outline” all of the above
  • Come up with one general rule that combines the specific rules from specific cases

• Next: Apply the Law to the Facts
SYNTHEIZING CASE LAW

• An Exercise in Case Law Synthesis
  • English
  • Woolley
  • Preston
  • Nicosia
  • Vanderhoof
U.S. CIVIL LITIGATION

BASIC PROCESSES OF
CIVIL LITIGATION AND APPEALS
PARTIES TO U.S. CIVIL LITIGATION

• Attorneys/Parties:
  • Adversarial system

• Judge:
  • Decides questions of law

• Jury:
  • Decides questions of fact
LAWYER-CLIENT RELATIONSHIP

• Fee Structure
• Client Confidentiality
• Engagement Letter
OTHER INTRODUCTORY MATTERS

• Minimal Court Fees
• Availability of Punitive Damages
• Settlement and Alternatives to Traditional Dispute Resolution Mechanisms
PRE-TRIAL PROCEDURES

• Complaint:
  • Parties
  • Jurisdiction and venue
  • Facts
  • Claim(s)/cause(s) of action
  • Jury demand
  • Prayer for relief
  • [Certificate of service/summons]
• **Answer or Motion to Dismiss:**
  - **Paragraph-by-Paragraph Response:**
    - Admit allegation(s)
    - Deny allegation(s)
    - Insufficient information to admit or deny allegation(s)
  - **Answer may include counter- or cross-claims.**
    - Counter-claim = against original plaintiff
    - Cross-claim = against other defendant
PRE-TRIAL PROCEDURES

• Answer or Motion to Dismiss:
  • Motions to dismiss under FRCP 12b:
    • (1) lack of subject-matter jurisdiction;
    • (2) lack of personal jurisdiction;
    • (3) improper venue;
    • (4) insufficient process;
    • (5) insufficient service of process;
    • (6) failure to state a claim upon which relief can be granted; and
    • (7) failure to join a party under Rule 19

• Pre-Trial Conferences
PRE-TRIAL PROCEDURES

• Discovery:
  • Scope and nature:
    • Compulsory disclosure of information at a party’s request
    • Anything “reasonably calculated to lead to the discovery of admissible evidence”
  • Methods of discovery:
    • Interrogatories
    • Requests for production
    • Depositions
    • Requests for admission
    • Physical or mental evaluation
PRE-TRIAL PROCEDURES

• Discovery:
  • Privileges:
    • Attorney-Client Confidential Communications:
      • Communication
      • Between privileged persons
      • In confidence
      • For the purpose of seeking, obtaining, or providing legal assistance to client
    • Attorney Work Product:
      • Elements:
        • Documents and tangible things otherwise discoverable
        • Prepared in anticipation of litigation
        • Prepared by or for a party/party’s representative
        • Mental impression work product never discoverable.
      • Other work product may be discoverable if:
        • Substantial need; and
        • Inability to obtain without undue hardship
PRE-TRIAL PROCEDURES

• **Discovery:**
  • **Limited Judicial Recourse:**
    • Motion for protective order
    • Motion to compel
  • **E-Discovery Rules:**
    • As of December 1, 2006
    • Provides for discovery of electronically stored information
PRE-TRIAL PROCEDURES

• **Summary Judgment Motions – Rule 56:**
  • “The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”

• **Other Pre-Trial Motions**
  • Especially motions in limine

• **Trial (see below)**
STAGES OF A CIVIL TRIAL

• Jury Selection
• Opening Statements
• Presentation of Proof
• Trial Motions
• Closing Statements
• Jury Instructions
• The Verdict
• Appellate Review
JURY SELECTION: VOIR DIRE

• Screening of Potential Jurors:
  • Potential jurors screened for basic eligibility to serve (age, citizenship, language ability, physical and mental fitness, residence, etc.)

• Questioning of Potential Jurors:
  • Questioning potential jurors to assess their ability to decide on the basis of facts presented and not bias or prejudice

• Who Conducts:
  • State courts – often lawyers
  • Federal courts – often judge

• Challenges:
  • For cause: Concern about prospective juror’s neutrality due to some verifiable fact
  • Peremptory: Limited ability to exclude jurors for other reason (with prohibitions)
OPENING STATEMENTS

• Each Party’s Summary of the “Story”:
  - Overview/summary of what is to come
  - Allows jury to have context for factual evidence to be presented
  - Not evidence in itself
  - Who starts? Party with burden of proof:
    - Civil cases – plaintiff
    - Criminal cases – prosecutor

• Goal = Predispose Jury to Lawyer’s Side
PRESENTATION OF PROOF

• **Goals:**
  - Build one’s own case; and
  - Tear down opponent’s case

• **Who starts? Party with burden of proof:**
  - Civil cases – plaintiff
  - Criminal cases – prosecutor

• **Types of Evidence:**
  - Testimonial evidence
  - Real evidence
  - Demonstrative evidence
  - Writings
MOTIONS FOR JUDGMENT AS A MATTER OF LAW

• When Made?
  • At the end of presentation of evidence by one or both sides

• How Decided:
  • Looks at all credible evidence
    • All presumptions made in favor of the non-moving party

• When Granted?
  • Rarely
  • More often for defendants than plaintiffs
  • Judge may also grant after jury verdict:
    • If reversed on appeal, jury verdict can be reinstated
CLOSING STATEMENTS

• **Order of Presentation:**
  - Party of burden of proof (plaintiff, prosecutor) goes first
  - Defendant goes next
  - Plaintiff/prosecutor often has final word

• **Goals:**
  - Draw together the evidence heard in an intelligible manner
  - Convince the jury that it must find for the client
JURY INSTRUCTIONS: THE CHARGE

• Judge Instructs Jury on the Law

• When:
  • Usually after closing arguments
  • Before closing arguments in some state courts

• Goals:
  • Explain substantive law
  • Allocate and define burdens of proof
  • Admonitions about the way in which deliberations should be conducted
  • Instructions on evidentiary matters:
    • Not consider certain excluded evidence ("curative" instruction)
    • Consider certain evidence as proof of one point but not another
    • Decide certain points before others
THE VERDICT

• Delivered in Open Court:
  - Jury foreperson hands written verdict to judge or clerk
  - Judge or clerk (or jury foreperson) reads verdict into record
  - Polling the jury: judge or clerk may ask jurors to confirm the verdict

• General versus Special Verdict:
  - General verdict most common
    - Who wins and – if appropriate – damages
    - N.B. Jury does not decide punishment in criminal cases (except death penalty cases)
  - Special verdict:
    - Specific questions about specific findings
APPELLATE REVIEW

• Final Judgment Rule:
  • Appeals typically only at end of case
  • Very limited interlocutory review in most courts

• Limited to Legal Issues

• Record on Appeal:
  • Appellate courts will consider only issues properly preserved
  • No new facts on appeal

• Standard of Review:
  • Error must have affected substantial rights of the appellant
  • No reversal for “harmless” error

• Stay Pending Appeal:
  • By order upon request of party
THANK YOU!

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