

Elements of Law

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Goals

- Provide context for what you will be learning in law school
- May be a review for some and new information for others
- Level the playing field
- Have some fun and get to know each other

What do we mean when we say law?

- **Black's Law Dictionary definition**

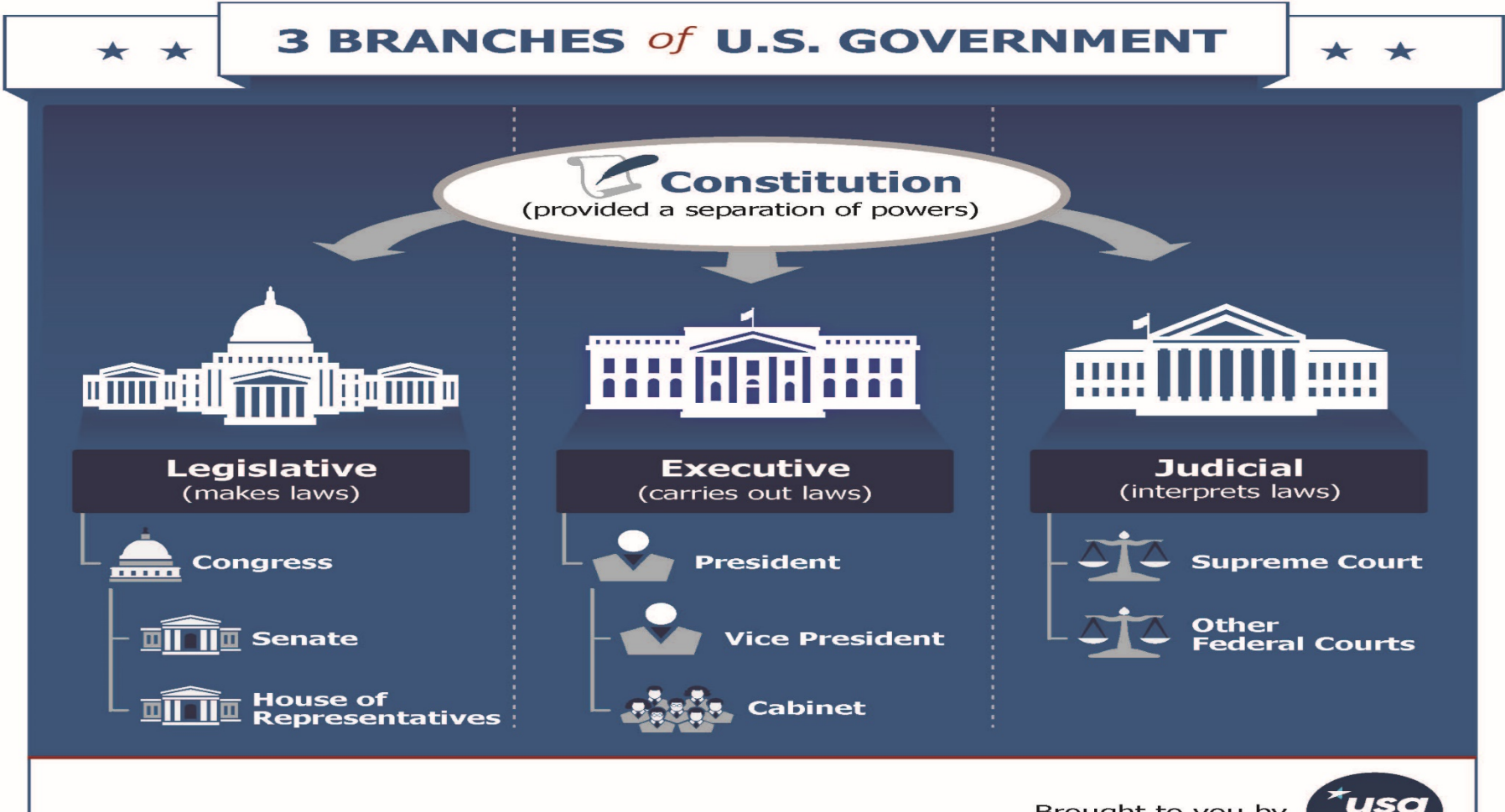
1. The regime that orders human activities and relations through systematic application of the force of politically organized society, or through social pressure, back by force, in such a society.
2. The aggregate of legislation, judicial precedents, and accepted legal principles; the body of authoritative grounds of judicial and administrative action; esp. the body of rules, standards, and principles that the courts of a particular jurisdiction apply in deciding controversies brought before them.

We will be focusing on definition 2!



- The three branches of government
- The structure of the Federal and state legal systems
- How a bill becomes a law
- Sources of law
- How lawyers and courts use the law

The three branches of government





www.owcase.com



Sources of Law

- **Enacted law**

- Constitutions
- Statutes
- Regulations

- **Case law**

- Judicial decisions Interpreting enacted law
- Common law: law developed by courts when there is no statute

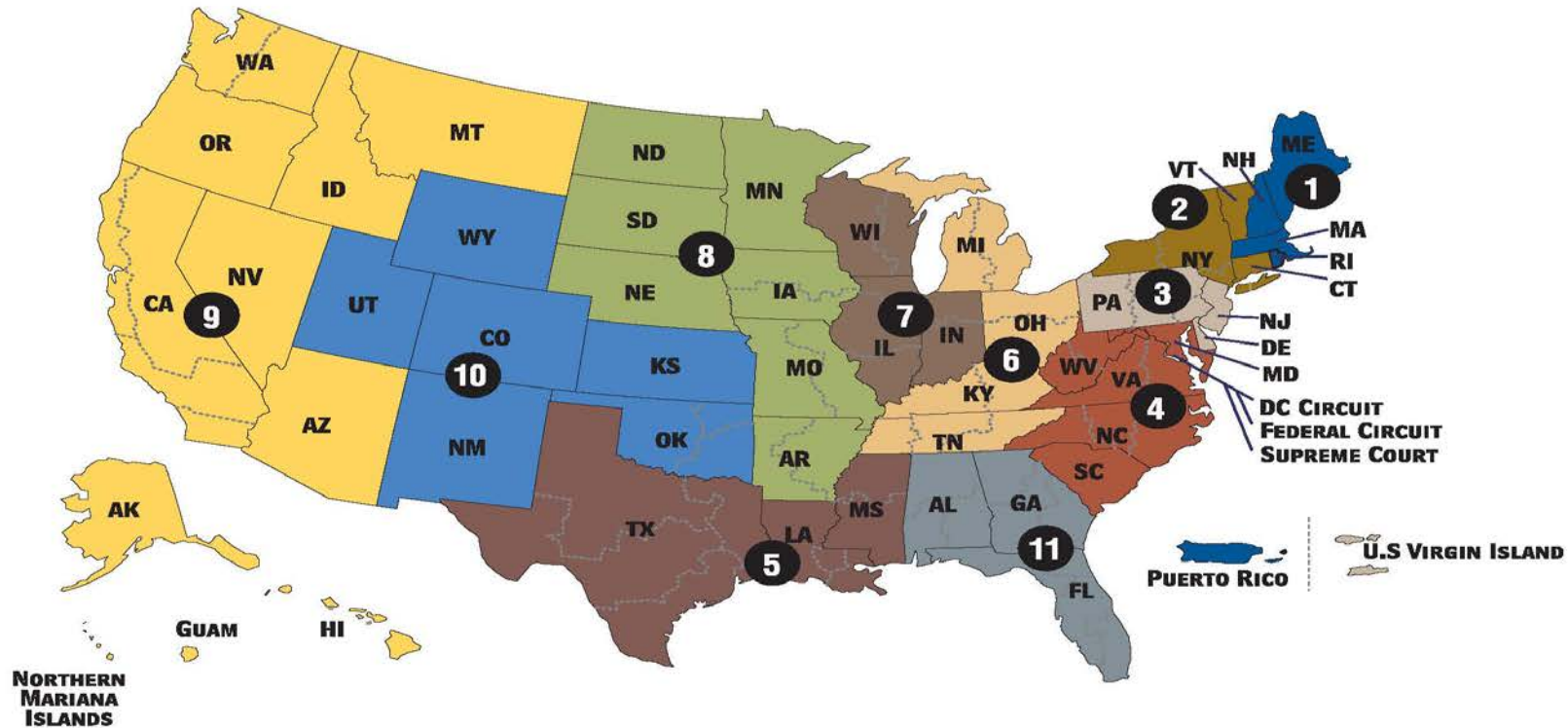
EPISODE 9

HOW A BILL BECOMES A LAW

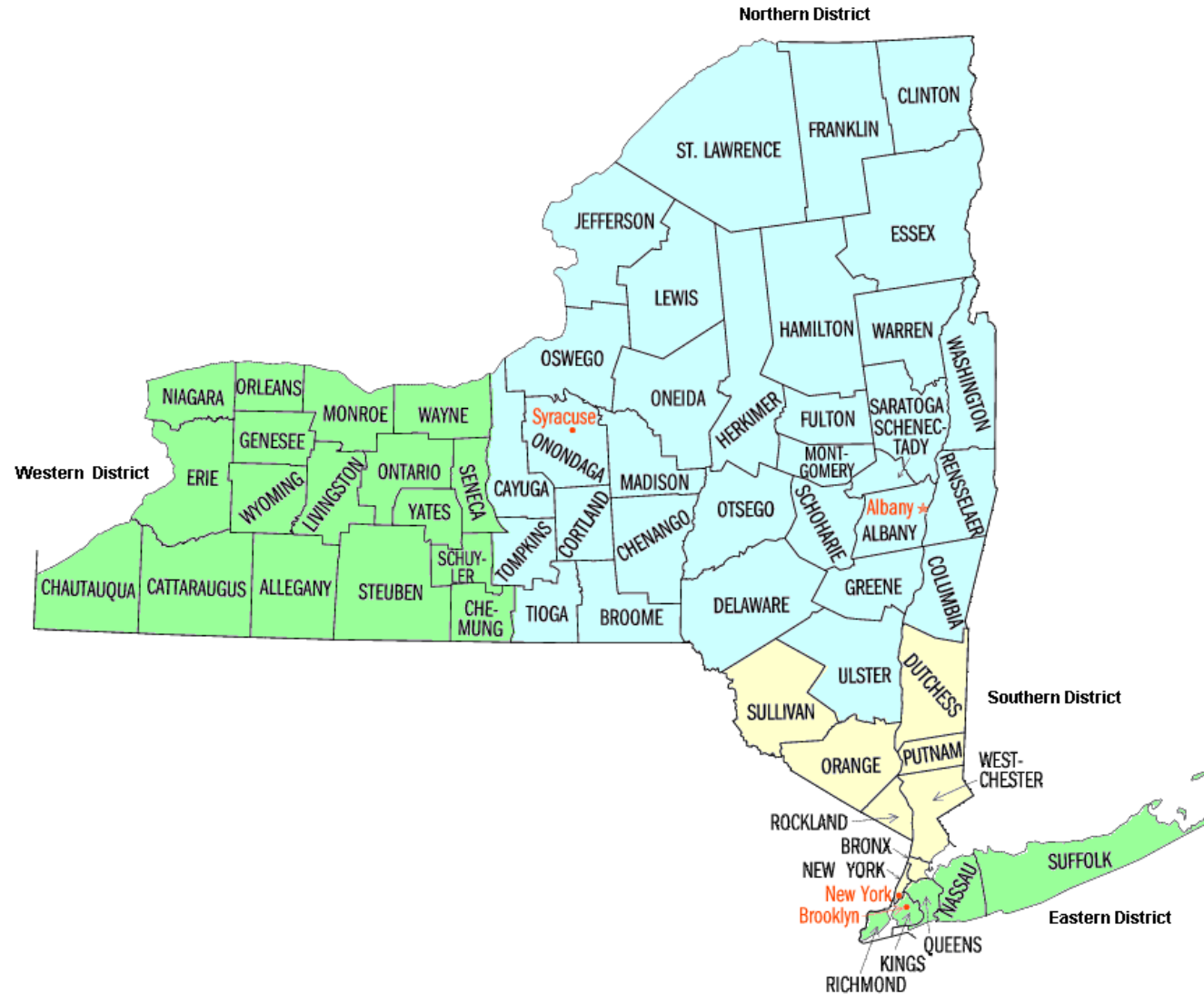


Structure of Federal Court System

Geographic Boundaries
of United States Courts of Appeals and United States District Courts



New York District Courts



Federal Courts

- **Trial Level**

- 94 District Courts (4 in New York)
- Each District also has a Bankruptcy Court
- Court of International Trade
- Court of Claims

- **Intermediate Level of Appeal**

- 13 Courts of Appeal (New York is in Second Circuit)

- **United States Supreme Court**

Subject Matter Jurisdiction of Federal Courts

- Federal Question

- Cases concerning US Constitution, Federal statutes and regulations, disputes between states, disputes between the US and foreign countries

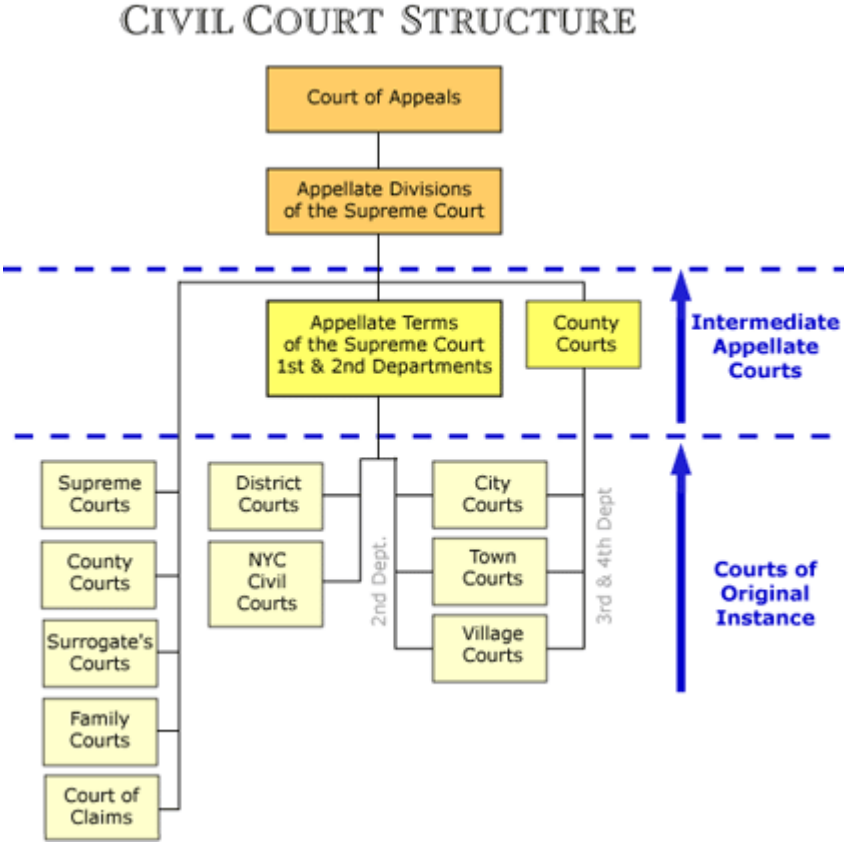
- Diversity (minimum amount in controversy: \$75,000)

- Disputes between citizens of different states
- May also be litigated in State court

- Specialized courts

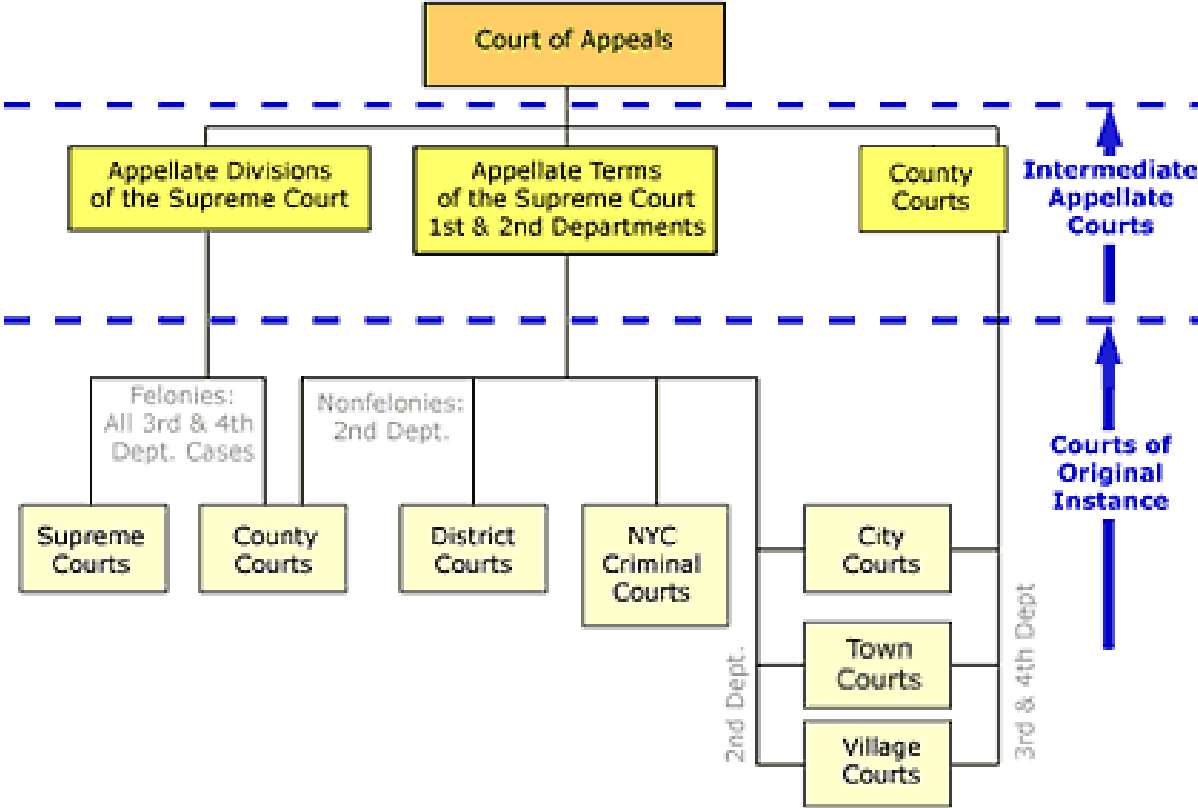
- International Court of Trade
- Court of Claims

New York Civil Court Structure



New York Criminal Court Structure

CRIMINAL COURT STRUCTURE



How “law” develops

- Adjudication of Disputes

- Interpretation of statutes
- Common law: judge-made law when no statute applies
 - Much common law has been enacted into statute, especially criminal law

How do cases get to court: Civil

- Plaintiff files a law suit: complaint
 - Must state a claim
 - Court must have jurisdiction: right court
 - Geographic
 - Subject Matter
- Defendant files an answer or motion to dismiss
- Case may be disposed of at this stage

Discovery

- If case is not dismissed, parties generally conduct “discovery”
 - Exchange of relevant information to narrow the issues
 - Depositions (interview under oath) of parties and witnesses
- If no disputed facts after discovery, parties may file a motion for summary judgment
- If there are disputed facts after discovery, case will go to trial

Settlement

- Vast majority of cases are settled
- Cases can settle at any time
- Settlement encouraged: Why?

Trial

- May be before a jury or judge only (generally decision of plaintiff)
- Jury (or judge) decides facts
- Judge instructs the jury about the law
- No right to counsel in civil cases, generally

Appeal

- Losing party generally may appeal to intermediate appellate court as of right
- Appeals heard by more than one judge – Why?
- Appeals are heard on the trial record – no new information presented
- Further appeals may be limited by statute.

How to cases get to court: Criminal

- A person is charged with a crime (state or Federal)
- The Government (US Attorney or District Attorney) represents “the People” when prosecuting the case
- The Defendant has a right be represented in cases where the sentence could be more than one year (“right to counsel”).

Settlement - Criminal

- Many cases get resolved without trial: plea bargain

Appeal – Criminal

- Defendant has the right to appeal a criminal conviction
- The government may have the right to appeal a decision to dismiss the case before a trial, but generally is not able to appeal a not guilty verdict – Why not?

How judges decide cases

- Must decide the issue presented by the case
 - Holding: Judgment + relevant facts
 - Dicta: Discussion of the court which is not necessary to the resolution of the case

Precedent – *Stare Decisis*

- Consideration of similar cases in the past
- Binding precedent: very similar case in same court or higher court in same jurisdiction
- Persuasive authority: cases in different court or court in a different jurisdiction

Hierarchy of persuasiveness of precedent

- Binding

- Higher court in same jurisdiction; very similar facts
- Court in same jurisdiction; very similar facts; no higher court decision on point

- Persuasive

- Court in same state, different jurisdiction, very similar facts
- Highest court in another jurisdiction, very similar facts
- Intermediate court in another jurisdiction, very similar facts
- Same level court in another jurisdiction, very similar facts

When will a court overrule a prior decision?

- May only overrule the decision of a lower court in the same jurisdiction
- May overrule its own prior decision only if there is no controlling decision from a higher court or legislation
- Happens very rarely
- More likely that Court will distinguish facts in case before it from facts in controlling case

Appellate court decisions

- Majority opinion
- Concurring opinion
- Dissenting opinion
- *Per curiam* opinion

Legislatures may overrule or respond to a court decision by statute

- Americans with Disabilities Act
- Family Health Care Decisions Act

Hierarchy of enacted law: Federal

- US Constitution
- Federal statutes and treaties
- Federal executive orders and administrative regulations
- State constitutions
- State statutes
- State administrative regulations
- Municipal enactments

Citation

- Formula for referring to authority (primary sources)
- *Blue Book* contains the rules that are generally used in legal scholarship and in law school writing
- Courts have their own rules for citation – don't forget this!

Citations – Why?

- Demonstrate assertions are supported by authority
 - In legal writing, most factual and all legal assertions require citations
- Supply bibliographic information so that reader can find the source
- Attribute borrowed words and ideas: avoid plagiarism