

An Introduction to the U.S. legal system

By Gabriel Arkles

Understanding core aspects of the U.S. legal system provides a necessary foundation for further legal knowledge and skills. This introduction will first give an overview of types of government relevant to our study of law. The powers of these governments and how they interact with one another is one of the central themes in U.S. law. Next, we will briefly consider different types of law governments create, dispelling a few common misconceptions along the way. Finally, we will look more in depth at the function of federal, state, and territorial courts, with attention to the concepts of judicial hierarchy and federalism.

Government

To understand law, we need to understand government. In the U.S., unlike many countries, federal and state governments function independently. Their authorities coexist; they are “co-sovereigns.” Each government operates under constitutional guidelines that dictate how the government may and must act—either alone or with other governments.

Federal law is the “supreme law of the land” when it conflicts with state law, but often federal and state law control the same issues. The U.S. constitution was initially primarily about the powers and limitations of the federal government, but it has become more relevant to limiting state powers since the passage of the post-Civil-war amendments, particularly the Fourteenth Amendment.

The U.S. also differs from a number of other countries because of its colonial legacy. The U.S. continues to have a complex relationship with indigenous tribes. While the federal government has significantly undermined the sovereignty of tribes within the external borders of the U.S., they remain separate nations with their own powers. The U.S. also still has several territories, which are neither states nor independent countries. The legal relationships within and among all of these different forms of government add complexity to U.S. law.

From this U.S. perspective, the categories of government below concern us the most.

Federal Government

The federal U.S. government includes the President, Congress (House and Senate), the federal courts (including the U.S. Supreme Court, Circuit Courts, and District Courts), and federal administrative agencies (such as the Department of Health and Human Services, the Department of Homeland Security, and the Department of State). The federal government can make law that is binding throughout the whole country and on everyone the U.S. claims power over; it can also

make much more specific laws that affect a smaller area or group—even laws that apply only to a single individual. The power of the federal government is limited by the U.S. Constitution.

The States

The 50 states of the U.S. have their own governments, with their own powers protected in and limited by the U.S. Constitution. People born in any of the 50 states are citizens of the U.S. Almost all U.S. citizens residing in the 50 states have the right to vote in state and federal elections, unless they are under the age of 18 or, in many states, convicted of felonies. State rules may differ for voting in primaries; for example, in many states, people may not vote in a primary election unless they are registered as members of the party holding the primary election. Other states have “open primaries” in which people may vote regardless of party affiliation or non-affiliation. Every state has representation in Congress, including two senators and a number of representatives proportionate to the population of the state. Most states have a system of government organized under a state constitution that includes a legislature, a governor, state courts, and numerous agencies. States also typically organize counties, municipalities, and other local governments to which they accord some powers. Local governments do not have the same relationship to the state government as the states have to the federal government—they are not “co-sovereigns.” For many purposes, local law “counts” as state law.

The District of Columbia

The District of Columbia is not a state, but is a part of the U.S. Residents of D.C. may vote in federal presidential elections, but have no representation in Congress. People born in D.C. are U.S. citizens.

The Territories

When the U.S. has acquired additional land from indigenous people and other colonial powers through conquest or purchase, it has treated those new acquisitions in a few different ways. Sometimes, it has incorporated the new area into the U.S. as a state. Sometimes, as with the Philippines, it has treated the area as a “protectorate” and eventually granted it its independence, but maintained a military presence within its borders. Other times, the U.S. has retained the area as a territory. Current U.S. territories include Puerto Rico, the U.S. Virgin Islands, the Northern Mariana Islands, American Samoa, and Guam. The way the U.S. has treated its territories has changed over time and is not identical for each territory. It is true across the board, though, that residents of the territories have no representation in Congress, and that residents of the territories may not vote in federal elections, including presidential elections. However, political parties may permit people in the territories to vote in their caucuses and primaries.

People born in territories like the U.S. Virgin Islands and Puerto Rico are U.S. citizens. Federal law applies to and in the territories, and the territories have no control over their foreign affairs. However, they do have power to govern their own internal affairs. Thus, the territories

elect their own governors and create their own internal legal systems, which may or may not resemble legal systems of other territories or the states.

The Tribes

“Indian Law” refers to federal U.S. laws about tribes within the external borders of the U.S., the treaties between and among the U.S. government and tribal governments, and tribal laws, along with all of their complex interrelationships. These are the laws and the relationships that have arisen out of European and U.S. conquest, genocide, and forced relocation of, as well as negotiation with, tribes and Native peoples--and out of the traditions, resistance, and adaptation of the tribes.

Tribes within the external borders of the U.S. remain sovereign nations with their own systems of laws. Each tribe’s legal system is its own, and may not resemble the legal system of other tribes or of the U.S.; however, because certain tribal legal systems (particularly the Iroquois confederacy) influenced the structure of the U.S. government, and because U.S. legal systems have in turn influenced the evolution of many tribal legal systems, correspondences exist. Tribal legal systems generally predate the existence of the U.S., although of course they have evolved and continue to evolve over time.

The U.S. federal government has claimed significant authority over the tribes. The full extent of tribal sovereignty continues to be contested, both in court and out of it. The U.S. Supreme Court has decided significant cases about tribal sovereignty in its recent terms.

Members of tribes have tribal citizenship. If born within the external borders of the U.S., they also have U.S. citizenship. In federally-recognized tribal lands, tribal and federal laws generally apply, but state laws do not.

International Bodies

International tribunals and entities, including the United Nations, also play a significant role in making law. The extent of their power to enforce those laws is varied and in flux.

Foreign governments

Like the tribes within the external boundaries of the U.S., other sovereign nations outside of U.S. borders have their own legal systems. These legal systems may not resemble the legal system of other countries or of the U.S.

Types of Law

Many people think that laws are statutes, and that courts interpret statutes. It’s true that statutes are laws, but they aren’t the only kind of law. It’s also true that courts interpret statutes, but that’s not all that courts do. Every state in the U.S. other than Louisiana uses a common law system. That means that judges *make* law.

Some areas of law are purely judge-made; there are no statutes at all. Judges have just decided cases; developed principles for deciding them; and continued to refine, change, interpret, and

apply those principles in more cases over time. Areas of law that are purely common law are much rarer now than they once were, as legislatures have passed more statutes to supplement, codify, or replace common law. Some areas of law are still mostly common law, though, and many of those that aren't have their roots in common law. The following table shows some common sources of law and the types of entities that create that sort of law.

Type of law	Government bodies that create that law	Example
Constitutions	Usually multiple types or levels of government (ex. federal legislature plus states)	United States Constitution
Statutes	Legislatures	Affordable Care Act
Regulations	Agencies	Occupational Health and Safety Administration (OSHA) regulation requiring employers to have employees wear helmets when at risk of injury from falling objects
Rules	Courts, or committees designated by courts	Federal Rules of Civil Procedure
Cases	Courts or agencies	Roe v. Wade
Executive orders	An executive, like a president or governor	Executive Order 9066, which permitted “relocation” of Japanese Americans during World War II
Treaties	Two or more sovereign nations	Treaty on the Non-Proliferation of Nuclear Weapons

All of these things are laws. For most of your first year, you will likely focus on the first five types of laws: constitutions, statutes, regulations, rules, and cases.

In legal research and writing, any law counts as a “primary source.” Anything that is not law, but that talks about law, counts as a “secondary source.” This chapter is a secondary source. So is a dictionary, a treatise, a law review article, a newspaper article, an empirical study, a legal encyclopedia, a Wikipedia entry, and so on. Statutes, constitutions, regulations, cases, executive orders, and treaties are all primary sources.

Secondary sources can be helpful tools for finding and understanding primary sources. However, they are not binding on courts, and they do not have the force of law. If you want to say something about what the law is, it is almost always best to rely on the law itself by using a primary source.

Judicial hierarchy and federalism

You are probably already familiar with the basic idea of judicial hierarchy. You may know that higher courts, like the U.S. Supreme Court, can make decisions that lower courts are supposed to follow. That's judicial hierarchy. You may also have heard of people appealing a decision to a higher court. That's judicial hierarchy, too.

While the basic idea of judicial hierarchy is very simple, it gets a lot more complicated. For now, we will just deal with one of the most important wrinkles, and only in its most basic form.² That wrinkle is about federalism—the relationship between the federal government and state or territorial governments.

To understand this wrinkle, the first step is to know that state courts and territorial courts can hear cases based on *state law*, *territorial law*, or *federal law*. They can even hear cases based on the law of a different state or territory. Federal courts can also hear cases based on state law, territorial law, or federal law. There are limits on when federal courts can hear cases on state and territorial law, but don't worry about those for now.

Which Courts Issue Decisions that Bind Which Other Courts

Not every court has to follow the decision of every other court. We call a decision that a court is supposed to follow *binding*, *controlling*, or *mandatory*. We call a decision that a court may consider, but does not have to follow, *non-binding* or *persuasive*.

Decisions of higher courts are generally binding on lower courts within the same jurisdiction. That means that if a court of intermediate or ultimate jurisdiction in Ohio says something about what the law means, an Ohio trial court usually shouldn't say something different. The actual way that jurisdictions get divided up can be a little complicated. At this point, it is most important to get familiar with the federal system.

² Courses like Civil Procedure, Constitutional Law, and Federal Courts will give you a much deeper understanding of this topic.



Supreme Court

- Highest court in the federal system
- Nine Justices, meeting in Washington, D.C.
- Appeals jurisdiction through *certiorari* process
- Limited original jurisdiction over some cases



Courts of Appeal

- Intermediate level in the federal system
- 12 regional “circuit” courts, including D.C. Circuit
- No original jurisdiction; strictly appellate

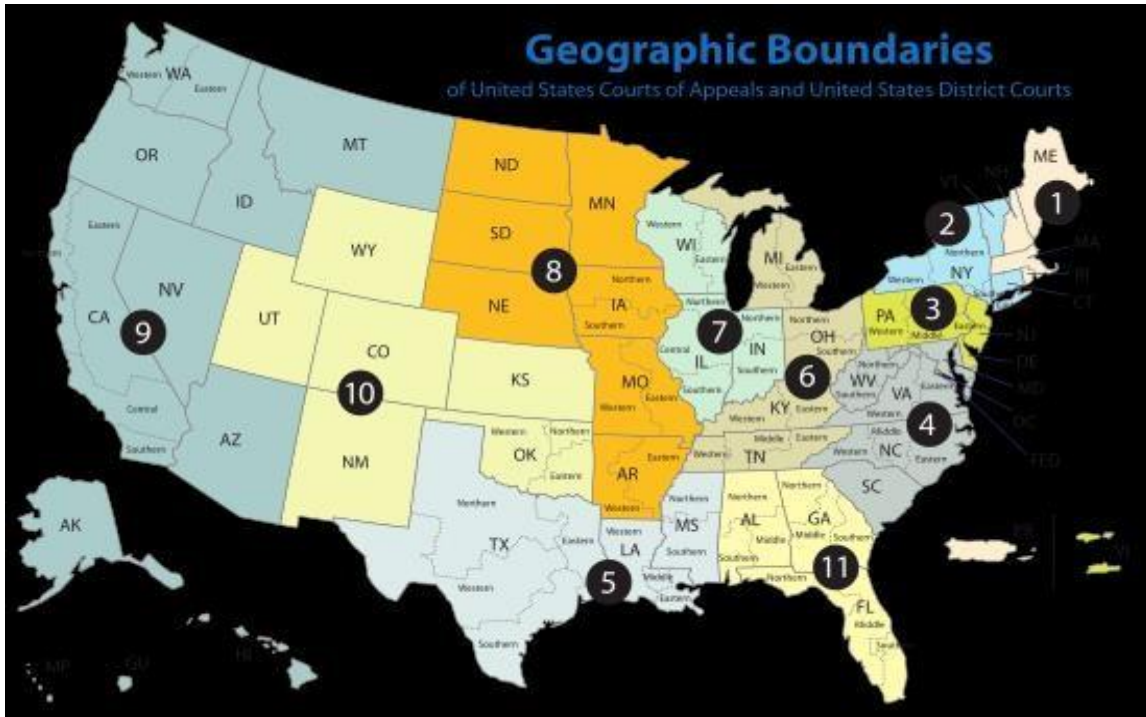


District Courts

- Lowest level in the federal system
- 94 judicial districts in 50 states & territories
- No appellate jurisdiction
- Original jurisdiction over most cases

[image description: Three tiers appear. On the top tier, there is a picture of the outside of the U.S. Supreme Court and the text: Supreme Court / Highest court in the federal system / Nine Justices, meeting in Washington D.C. / Appeals jurisdiction through certiori process /Limited original jurisdiction over some cases. On the middle tier, there is a picture of the inside of a court of appeal and the text: Courts of Appeal / Intermediate level in the federal system / 12 regional “circuit” courts, including D.C. Circuit / No original jurisdiction; strictly appellate. On the bottom tier, there is a picture of the outside of a district court and the text: District Courts / Lowest level in the federal system / 94 judicial districts in 50 states and territories / No appellate jurisdiction / Original jurisdiction over most cases.]³

³ Curtis D. Edmonds, *Federal Court Concepts, Structure of the Federal Courts*, GEORGIA TECH, <http://www.catea.gatech.edu/grade/legal/structure.html> (last visited July 28, 2015).



[image description: a map of the United States that highlights states and territories in different colors, and assigns each color a number. The information in this image is restated in the table below.]⁴

District courts are the trial courts—the lowest courts—in the federal system. Their names come from the part of the state, district, or territory from which in they hear cases. For example, there is one district court in Massachusetts. It is called the District Court of Massachusetts. There are four district courts in New York. They are called the Northern District of New York, the Southern District of New York, the Eastern District of New York, and the Western District of New York. It is not important to remember the number of district courts in the country or in each state or territory. But, you should become familiar enough with the terms that if you hear that a court is called “the Central District Court of California,” you guess that it is probably a federal trial court. While it is located in California, it is not a California court.

There are also 13 circuit courts, called Courts of Appeal, in the federal system. Most of their names are just numbers (First through Eleventh, plus the D.C. and federal circuit). They cover appeals from certain district courts, based on state or territory, and their decisions are binding on those same courts. Thus, if the First Circuit interpreted the law in a certain way, a district court in Massachusetts or Puerto Rico would have to follow that interpretation—but a district court in the Virgin Islands (Third Circuit), California (Ninth Circuit), or Texas (Fifth Circuit) would not have to follow that interpretation. The fact that the First Circuit is a higher court in the federal system than those district courts wouldn’t make the law binding, because they are not within the same

⁴ Andrew Sullivan, *More Good News for Marriage Equality*, THE DISH (Oct. 8, 2014 10:09 AM), <http://dish.andrewsullivan.com/2014/10/08/more-good-news-for-marriage-equality/>.

jurisdiction. Above is a map that shows where the circuits are, and below is a table listing which states and territories are within each circuit. You don't need to memorize the information in the map and chart; just refer to it as needed.

Circuit	States and Territories
First Circuit	Massachusetts, Maine, New Hampshire, Puerto Rico, Rhode Island
Second Circuit	Connecticut, New York, Vermont
Third Circuit	Delaware, New Jersey, Pennsylvania, Virgin Islands
Fourth Circuit	Maryland, North Carolina, South Carolina, Virginia, West Virginia
Fifth Circuit	Louisiana, Mississippi, Texas
Sixth Circuit	Michigan, Kentucky, Ohio, Tennessee
Seventh Circuit	Illinois, Indiana, Wisconsin
Eighth Circuit	Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota
Ninth Circuit	Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Northern Mariana Islands, Oregon, Washington
Tenth Circuit	Colorado, Kansas, New Mexico, Oklahoma, Utah, Wyoming
Eleventh Circuit	Alabama, Florida, Georgia
D.C. Circuit	District of Columbia
Federal Circuit	Nationwide for certain subjects (patents, veterans' benefits, certain money claims against U.S. government, etc.)

Even that explanation simplifies the federal court system, and of course does not touch on the state systems. At the end of this chapter you can see a more complete chart of the federal system and one state system (Indiana). When you look over those charts, do not try to memorize or even fully understand them—just try to get a sense for the ways judicial hierarchy can work, and some of the variety and complexity you may need to look out for in the future.

With those basics covered, here is another core rule to remember: **A state's highest court is the highest authority on questions of that state's law.** Its decisions are *binding* on all other courts—even federal courts—if they consider a question of that state's law. The same is true of territorial courts with regard to the territory's own law.

Similarly, **the U.S. Supreme Court is the highest authority on questions of federal law.** Its decisions are *binding* on all other courts—even state and territorial courts—if they consider a question of federal law.

This rule supersedes the rule that a court has to follow decisions from higher courts within its own jurisdiction. So, if the First Circuit has said that a law in Massachusetts means one thing, but then the Supreme Judicial Court of Massachusetts says it means something else, the District Court of Puerto Rico *must follow the Massachusetts court’s decision* about the meaning of the Massachusetts law, not the decision of the First Circuit—even though the District Court of Puerto Rico is a lower federal court in the First Circuit.

How Cases Move Up the Hierarchy

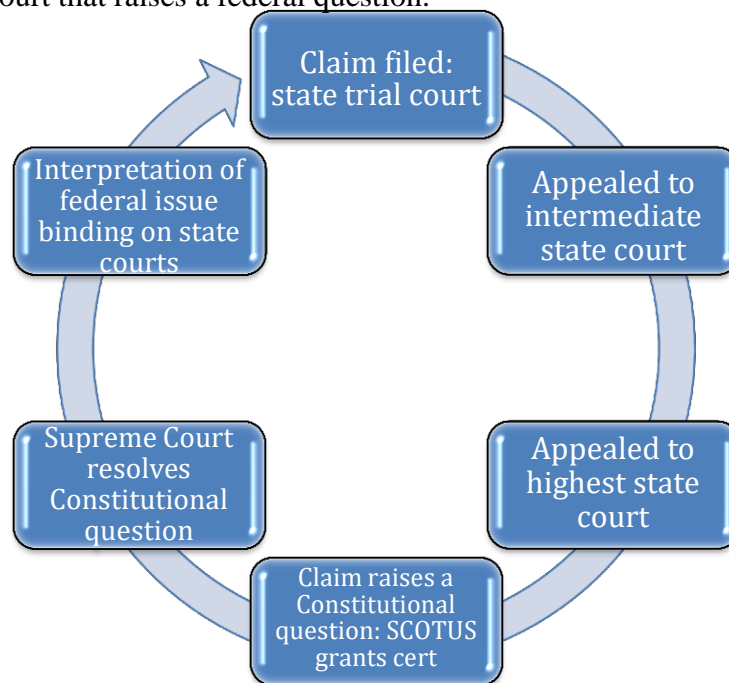
Generally, one can appeal cases up within the same court system in which one brought the case to begin with. The following chart shows a very simplified version of judicial hierarchy. Notice that the courts at each level have different names in different systems.⁵

	Federal	New Jersey	Massachusetts
Court of Ultimate Jurisdiction	U.S. Supreme Court	Supreme Court of New Jersey	Supreme Judicial Court of Massachusetts
Appeal (often only with permission)	↑	↑	↑
Court of Intermediate Review	U.S. Courts of Appeal	Appellate Division of Superior Court	Massachusetts Appeals Court
Appeal (often as of right)	↑	↑	↑
Court of Initial Jurisdiction (Trial Court)	U.S. District Courts	Superior Court	Superior Court

⁵ This chart is adapted from the NYU Lawyering Program.

However, if the highest court in a state or territory hears a question of federal law, it is possible that the U.S. Supreme Court would “grant certiorari” to review the decision. Grant certiorari, or grant cert, means that the Supreme Court has agreed to hear a case. Most cases that people try to bring to the U.S. Supreme Court (by “petitioning for certiorari”) never make it there—the Supreme Court only grants cert for a handful of the possible cases each year. If it had to hear every case, it would be overwhelmed with the number of cases to decide.

The U.S. Supreme Court can only review a decision of a state high court if the case involves a federal issue. If a state high court hears a case that is only about state law, the U.S. Supreme Court cannot hear the case on appeal. It would make no sense—the state high court is already the highest authority on a state’s law. The U.S. Supreme Court would not have the power to say that that court was wrong about the state law (unless the state law conflicted with a federal law, in which case it would really be a question of federal law). The figure below shows the process for a case in state court that raises a federal question.



[Image description: Text boxes are placed evenly on a circle with an arrow. The top box says “Claim filed: state trial court.” The next: “Appealed to intermediate state court.” The next: “Appealed to highest state court.” The next: “Claim raises a Constitutional question: SCOTUS grants cert.” The next: “Supreme Court resolves Constitutional question.” The next: “Interpretation of federal issue binding on state courts.” Then the arrow points back to the first text box, indicating that the cycle may begin again.]⁶

⁶ This visual is drawn from a document created by Prof. Wendy Parmet.

Review: Key Points

1. **Constitutions, statutes, regulations, rules, cases, executive orders, and treaties are all primary sources of law.**
2. **In the U.S., some areas of law are purely judge-made.**
3. **A state's highest court is the highest authority on questions of that state's law.**
4. **The U.S. Supreme Court is the highest authority on questions of federal law.**
5. **Otherwise, decisions of higher courts are generally binding on lower courts within the same jurisdiction.**

Comprehension Quiz

Questions

Feel free to review the previous pages as much as you like as you answer these questions. When you have finished, check your answers.

Which of the following describes the Third Circuit Court of Appeals?

- Trial court
- Intermediate appellate court
- Court of ultimate jurisdiction

Which of the following describes the Third Circuit Court of Appeals?

- Federal court
- State court
- Tribal court
- Territorial court
- International tribunal

The Superior Court of New Jersey (a lower state court) is considering whether the state minimum wage act applies to domestic workers. Previously, the Third Circuit ruled that it does not, and the Appellate Division of the Superior Court of New Jersey (an intermediate appellate state court) ruled that it does. Which of the following is true?⁷

- The Superior Court must follow the Third Circuit decision; the minimum wage act does not apply.
- The Superior Court must follow the Appellate Division decision; the minimum wage act does apply.
- The Superior Court may consider both decisions, but does not need to follow either of them.
- It is impossible to answer this question without knowing whether the Third Circuit decision or the Appellate Division decision was more recent.

The Supreme Judicial Court of Massachusetts (SJC) is considering whether failing to promote an employee because she is a mother with young children constitutes

⁷ This question is purely hypothetical for purposes of the exercise, and does not reflect the true state of the law for domestic workers in New Jersey.

“discrimination on the basis of sex” in violation of a federal statute commonly known as Title VII. The Supreme Court of the United States (SCOTUS) has previously ruled that such conduct does constitute discrimination on the basis of sex in violation of Title VII. Which of the following is true?

- SJC must follow the SCOTUS ruling.
- SJC may consider the SCOTUS ruling, but does not have to follow it.

A Colorado state trial court is hearing a case based on California law. Which court’s rulings are most authoritative in this case?

- Those from the highest Colorado court.
- Those from the highest California court.
- Those from the U.S. Supreme Court.
- A Colorado state court could not hear a case on California law.

At a protest in New York, police officers arrest Clara. In a New York trial court, the district attorney charges Clara with violating the section of the New York Penal Code on parading without a permit. Clara argues that her conduct did not meet the statutory definition of parading without a permit, and that, even if it did, her right to engage in the conduct was protected by the First Amendment of the U.S. Constitution. The court rules against her on both issues, and she is convicted. She appeals the decision to the intermediate appellate court in NY, and then to the highest court in NY (the New York Court of Appeals). Both of them rule against her on both issues. She petitions the U.S. Supreme Court to review her case. Which of the following is true?

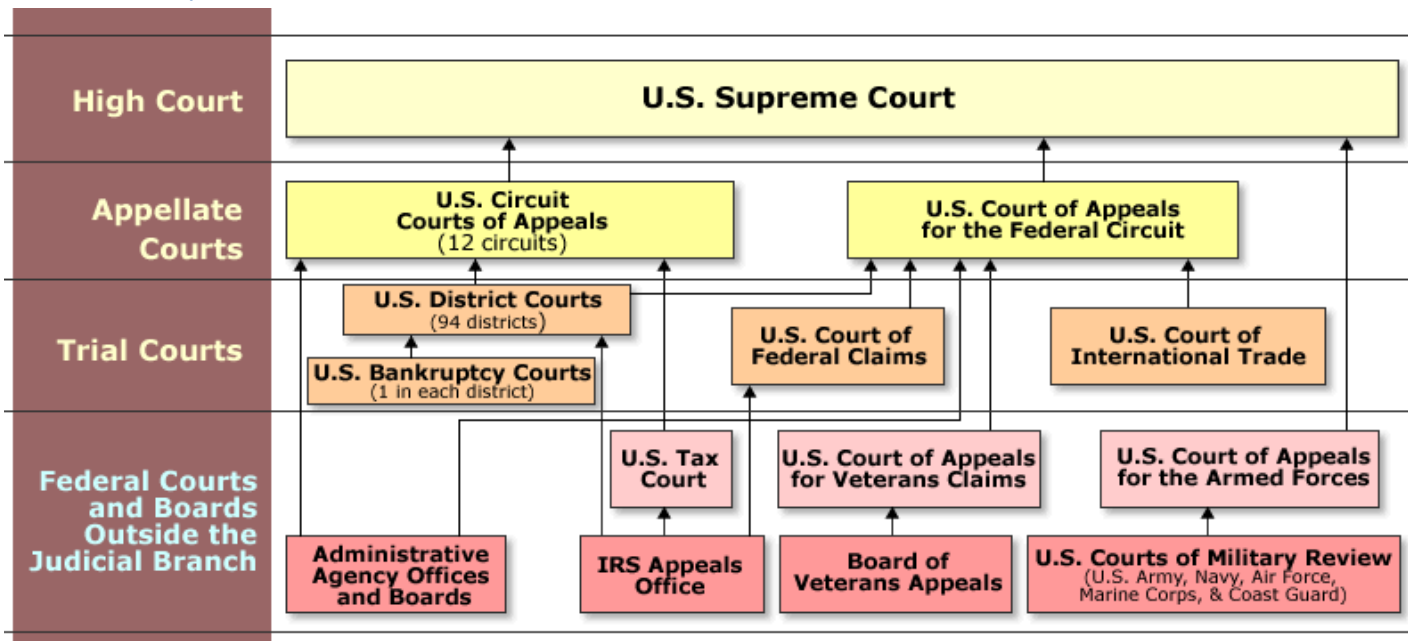
- The Court must grant certiorari and review both issues.
- The Court may grant certiorari and review both issues.
- The Court may grant certiorari, but may only consider the First Amendment issue; the Supreme Court must accept the NY Court of Appeals decision on the scope of the NY statute.
- The Court does not have the power to grant certiorari because the case involves a question of state law.

Answers

1. B. The Third Circuit is an intermediate court of appeals. Cases can be appealed from a district court to the Third Circuit, and cases can be appealed from the Third Circuit to the U.S. Supreme Court—putting the Third Circuit in the middle, or intermediate, position.
2. A. A court called [Number] Circuit Court of Appeals is a federal court.
3. B. The question says that the case is about a state statute, and is being considered in a state trial court. The state trial court must follow the decision of a higher state court on a matter of that state’s law.
4. A. While the SJC is the highest court in the state, it is considering a question of federal law. SCOTUS is the highest authority on federal law, so SJC must follow it.
5. B. The highest court in California is the highest authority on California law, no matter which court applies that law. States may hear cases based on another state’s law.
6. C. The First Amendment of the U.S. Constitution is an issue of federal law. The meaning of parading without a permit is a question of state law. So, SCOTUS could grant cert, but would have to accept what the New York Court of Appeals said on the question of state law.

Images of Court systems in greater detail

Federal Court System⁸

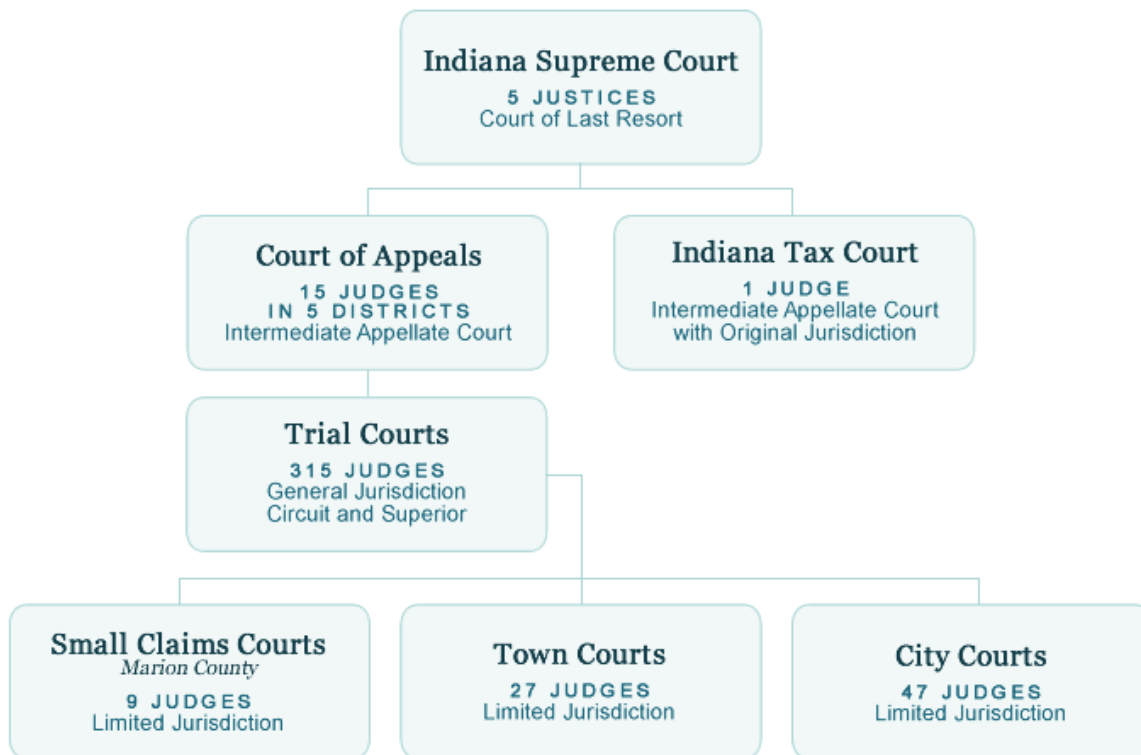


[Image description] The image is divided into four rows, labeled on the left. The first (top) row is labeled “High Court.” In that row on the right, only “U.S. Supreme Court” is listed. The second row from the top is labeled “Appellate Courts.” In that row on the right, “U.S. Circuit Courts of Appeals (12 circuits)” and “U.S. Court of Appeals for the Federal Circuit” are listed, with arrows pointing from them to the U.S. Supreme Court. The third row from the top is labeled “Trial Courts.” In that row on the right, the following four are listed: “U.S. District Courts (94 districts)” with arrows pointing up to U.S. Circuit Courts of Appeals and U.S. Court of Appeals for the Federal Circuit; “U.S. Bankruptcy Courts (1 in each district)” with an arrow pointing up to U.S. District Courts, “U.S. Federal Court of Claims” with an arrow pointing up to U.S. Court of Appeals for the Federal Circuit, and “U.S. Court of International Trade” with an arrow pointing up to the U.S. Court of Appeals for the Federal Circuit. The fourth and last (bottom) row is labeled “Federal Courts and Boards Outside the Judicial Branch.” In that row on the right, the following seven are listed: “Administrative and Agency Offices and Boards” with two arrows pointing up to U.S. Circuit Courts of Appeals and U.S. Court of Appeals for the Federal Circuit; “U.S. Tax Court” with an arrow pointing up to U.S. Circuit Courts of Appeals; “IRS Appeals Office” with an arrow pointing up to U.S. Tax Court; “Board of Veterans Appeals” with an arrow pointing up to U.S. Court of Appeals for Veterans Claims; “U.S. Court of Appeals for Veterans Claims” with an arrow pointing up to U.S. Court of Appeals for the Federal Circuit; “U.S. Court of Appeals for the Armed Forces” with an arrow pointing up to U.S. Court of Appeals for the Federal Circuit; and “U.S. Courts of Military Review (U.S. Army, Navy, Air Force, Marine Corps, & Coast Guard)” with an arrow pointing up to U.S. Court of Appeals for the Federal Circuit.

⁸Ana Clarkson, *The U.S. Court System*, GONZAGA UNIVERSITY SCHOOL OF LAW RESEARCH GUIDES: LOCATING FEDERAL AND WASHINGTON CASE LAW MATERIALS (June 9, 2015), <http://libguides.law.gonzaga.edu/case-law>.

Office” with three arrows pointing up to U.S. District Courts, U.S. Tax Court, and U.S. Court of Federal Claims; “U.S. Court of Appeals for Veterans Claims” with an arrow pointing up to U.S. Court of Appeals for the Federal Circuit; “Board of Veterans Appeals” with an arrow pointing up to U.S. Court of Appeals for Veterans Claims; “U.S. Court of Appeals for the Armed Forces” with an arrow pointing up to the U.S. Supreme Court; and “U.S. Courts of Military Review (U.S. Army, Navy, Air Force, Marine Corps, and Coast Guard)” with an arrow pointing up to U.S. Court of Appeals for the Armed Forces.

Indiana Court System⁹



[image description: On top, a box contains the text: “Indiana Supreme Court, 5 Justices, Court of Last Resort.” Below it, connected with lines, are two boxes on the same level. One contains the text: “Court of Appeals, 15 Judges in 5 Districts, Intermediate Appellate Court.” The other contains the text: “Indiana Tax Court, 1 Judge, Intermediate Appellate Court with Original Jurisdiction.” On the next level down, connected only to the Court of Appeals box, is a box with the text: “Trial Courts, 315 Judges, General Jurisdiction, Circuit and Superior.” On the next and lowest level, all connected with lines to Trial Courts, are three boxes. They are labeled: “Small Claims Courts, Marion County, 9 Judges, Limited Jurisdiction,” “Town Courts, 27 Judges, Limited Jurisdiction,” and “City Courts, 47 Judges, Limited Jurisdiction.”]

⁹ Judicial Branch of Indiana, *Organizational Chart of the Indiana Judicial System*, <http://www.in.gov/judiciary/2681.htm> (last visited July 28, 2015).