I. CONTRAST WITH THE CRIMINAL JUSTICE SYSTEM

The first way we can understand the civil justice system is by understanding what it is not. It is not the criminal justice system. In fact, this is the great divide in our legal system - a matter is either criminal or it is civil. Civil justice is not criminal justice. This is a very important distinction because most first year law students’ vicarious experience of the American justice system - what you see on television and in the movies - is the criminal justice system. That’s what most Americans know about the justice system. Law and Order has a special victims version, a criminal intent version. There is no Law and Order contracts version or Law and Order tort version.

So let’s just briefly look at the criminal justice system and contrast it with the civil justice system. In the criminal justice system, the government, or the state is always a party. It can be the federal government, the United States, acting through the department of justice and the local United States attorney's office, or it can be the individual states, such as Pennsylvania, acting through the district attorney of any Pennsylvania county or the Attorney General for the Commonwealth of Pennsylvania. But the government, either federal or state, is always there in the criminal justice system because the government and only the government can bring criminal charges against someone.

That someone, called the criminal defendant, can be either an individual person, which is the usual case, or it can be a corporation. Corporations are legal persons in our legal system and as such they can commit crimes. You may recall that as part of the Enron scandal, the federal government charged the accounting firm of Arthur Andersen with obstruction of justice in regard to its destruction of records. The firm was convicted criminally, it was fined, and worst of all, because of the publicity attendant upon its conviction, it lost all its clients and went out of business.

But in most cases, the criminal defendant is an individual. So the adversaries in the criminal justice system are always the state government or the federal government on one side and a criminal defendant on the other. In a criminal justice proceeding, the one adversary, the government is always trying to establish that the other adversary, the defendant violated a criminal statute.

As a matter of fact, that is how we define crime in the United States. A crime is a violation of a criminal statute. We don’t define crime as an immoral act or an evil act. It is simply an act in violation of a criminal statute. Although we might like to think that the criminal law is about right and wrong, it is not. It is about acts that the law defines as crimes, without reference to morality or good and evil, although to be sure, in our legal history, some criminal statutes did have their origin in what society perceived as right or
wrong, moral or immoral. Earlier laws making adultery, fornication or sodomy between adults into crimes very clearly had a basis in the then prevailing morality, but those laws are no longer enforced or enforceable.

So a crime is simply an act that is defined as a crime by statute. And every criminal statute will have two parts. It will specify the mental state that the crime requires, such as purposefully, knowingly, recklessly and so forth. It will also specify the acts themselves - causing the death of another, breaking into the home of another and so forth. And the standard of proof in criminal matters is always “beyond a reasonable doubt.”

Another critical distinction to understand about the criminal justice system in contrast with the civil justice system is that it is a form of public law. It is public law because the state, the government, the people, are always a party. One of the adversaries is always the government, the public.

II. CIVIL JUSTICE SYSTEM IS ADVERSARIAL AND LAWYER DRIVEN

Civil justice is by contrast a form of private law. As a matter of fact, in all the European countries except for the United Kingdom, what we refer to as the civil justice system in the United States, they call the private law system. It is “private” because the adversaries are private parties. The government is typically not involved, except that the government provides the court system for these private adversaries.

The adversaries in the civil justice system are mainly individuals or corporations. The government can sue or be sued in the civil justice system, but that does not make the case into a matter of public law, because when it sues or is sued in a civil proceeding, the government is there simply as a party in a lawsuit, even when the purpose of that lawsuit is to enforce some public law.

Note the use of the word “adversaries” here. That is a critical term, an important point to understand about the civil justice system: It is adversarial. A basic feature of the civil justice system in the United States is that it is an adversarial system where the initiative for starting a case and presenting the case in court rests primarily with advocates - lawyers - who act on behalf of the opposing parties, the adversaries.

And that is what you will be learning to be in this law school – adversaries - because that’s what lawyers are in the civil justice system. They are adversaries. Because the civil justice system is adversarial, it is lawyer driven. It is the role of the lawyer for the plaintiff to analyze the facts and the legal basis of the claim that is the basis of a lawsuit suit, to choose the right legal theory on which the claim is based, to draft a proper complaint, to gather the evidence that supports that complaint and to present it at trial through the appropriate witnesses and documents, and at the end of the trial to urge a finding for his or her client.
The lawyer for the opposing party, the defendant, has the role to oppose all of this, to controvert the legal theories presented by the plaintiff’s advocate, to cross-examine the plaintiff’s witnesses, to present rebuttal witnesses, to question documents or present contrary documents, to present counter evidence and to argue for a conclusion in favor of his or her client.

The judge sits there and makes rulings. He or she interprets the law, but the judge does not ask questions. The judge’s role is a neutral one.

All right, you are saying, what’s the point? We all know that trials are run by lawyers and so forth, that judges don’t interfere in the presentation of the case.

III. CONTRAST WITH EUROPEAN INVESTIGATING JUDGE SYSTEM:
EUROPEAN CIVIL LAW

The point is that this system of civil justice is unique in all the world, our Anglo-American system of adversarial civil justice. The rest of the world, including all the countries of continental Europe and Japan, with their advanced economies, do not know this system. Their system is not lawyer driven. It is not adversarial. It is judge driven.

To make things a bit confusing, the judge driven legal system used in continental Europe is called the civil law system, but they are using the term “civil law” to contrast it with the common law, the legal system of England and the United States. The common law system refers to the fact that in our legal system, the American system, judges, by interpreting the law, may change the law. That is what makes the law common. It is affected by our common experience of it.

In the continental civil law system, the European system, judges do not interpret the law, they simply apply it. The civil law system had its origins in the Code of Justinian, formulated by the Roman emperor Justinian in the sixth century, and carried forward in the middle ages and renaissance through the canon law of the Roman Catholic Church and the scholastic legal tradition.

After the French Revolution, this body of law was formulated into the Napoleonic Code, also called the Civil Code (Hence the continental term for their legal system as the civil system, based on the name of the Code that they used, the Civil Code). The Civil Code in France, which was soon imitated in most European countries, was a product of the Enlightenment and its belief that the human intellect could solve any problem.

It was the idea of the jurists who wrote these European civil codes that they could put down in one place, in one code, all the laws governing both criminal and civil matters. Then, when someone brought a claim, all the judge had to do was ask a few questions of the parties and the witnesses, determine the facts, see what section of the Code applied, apply it, and voila, justice was done.
This is an important role of the judge in the European civil law systems. The judge asks the questions. The judge directs the inquiry. The judge decides what witnesses to talk to and what questions to ask. Even more importantly, in terms of differences with our system, once the judge has ascertained the facts, the judge makes the decision. There is no jury. The judge determines the facts, takes the Civil Code out, applies it to those facts, and announces his/her decision, which is simply an application of the civil code to those facts.

This is called the investigating judge or the inquisitorial judge system, and it is why the European civil law system is described as judge-driven as opposed to the American system of civil justice which is lawyer-driven or adversarial. Before you dismiss this European system of civil justice as a bit wacky - having the judge do everything including fulfilling the role of the jury, you need to know that European lawyers and judges think that the United States civil law system is itself a bit wacky, asking twelve men and women off the street to determine complex matters like anti-trust violations or patent violations. That, they think requires experts, like judges, and not wholly uneducated parties. And of course, there is the old Norb Crosby joke: Who would want to have their fate decided by 12 people too stupid to get out of jury duty?

So in the European civil law system, the initiative lies with the investigating judge, while in the American system of civil justice it lies with the adversaries. That is why we refer to our civil law system as an adversary system.

IV. HISTORICAL DEVELOPMENT OF THE AMERICAN ADVERSARIAL SYSTEM OF CIVIL JUSTICE

But the use of the adversary system in jury trials was a rather late development in Anglo-American law. Just as Europe gets its idea of a Civil Code from the Romans, who were their legal ancestors, we get our ideas about our legal system from the English who were our legal ancestors. When trials first developed in England, the function of the jury was not to decide the facts. Rather the jury was a form of collective witness.

The jurors were selected from the place where the dispute arose and would have knowledge of the facts, either direct information or information derived by common account. They drew on their collective knowledge to give a verdict. So you can see, in this kind of a procedure, there was little use for advocates to present the evidence.

But over time, the jury’s function shifted from that of evidence givers to that of neutral assessors of evidence provided by others. This shift in the jury’s role is complete by the 18th century, and it was at the same time that advocates came into play, as presenting evidence to the jury. The jury was now expected to decide the case on the basis of the evidence presented to it. Gathering the evidence was not the role of the judge, who was only concerned with the procedural integrity of the process. And by
the way, this is what we will be primarily studying in the courses on Civil Procedure – the procedural integrity of a trial process.

But back to history. The parties gathered and presented the evidence themselves, and in doing so, they found the use of professional advocates most helpful. Hence the birth of our adversarial system. Now since this was the system in place when the colonies were established by England in North America, it was the legal system that we inherited, and it has grown and flourished here ever since. The right to a jury trial in both civil and criminal matters is enshrined in our Constitution. So our civil law system is adversarial. It is lawyer driven in the sense that the lawyers assemble the evidence, the lawyers present the evidence, the lawyers decide the legal theory on which a case will proceed.

V. THE ROLE OF THE JUDGE IN AN ADVERSARIAL SYSTEM

That does not mean that the role of the judge in our civil law system is not important. The judge does perform some very important functions. The judge supervises the seating of the jury from among the people summoned for jury duty, at the start of the trial, the judge describes to the jury the general nature of the case and their responsibilities in deciding issues of fact. The judge also serves as a type of umpire or referee during the trial, restraining the advocates, the lawyers, the adversaries from violations of the rules. At the start, in the pleading stage, the motion stage and information gathering stage of a trial, the judge applies the rules of civil procedure. Then, during the trial, the judge applies the rules of evidence. After the adversaries have presented their cases to the jury, the judge tells the jury what legal principles to apply in making their decisions. Once the verdict is in, the judge can also rule on whether there were any mis-steps or misconduct at trial such that the verdict is not valid and a new trial must be held.

The American adversarial system of civil justice is not without its critics. It has been criticized for nurturing rabid partisanship, for making the pursuit of truth and justice into a game, and for giving unfair advantage to affluent parties. But of these, perhaps only the last is valid. Any procedure to establish a claim against another party is by its nature partisan; any procedural pursuit of truth and justice must have rules - you may call that a game if you want to; but it is a game with rules. It is those rules that we will be studying this year – the rules of civil procedure. And the rules of civil procedure that we will be studying are the federal rules – the rules used in the federal courts.

VI. THE DUAL COURT SYSTEM IN THE UNITED STATES

For you to understand what a federal court is you have to understand the court system of the United States. You may not appreciate it, but as you are reading this, you are the subject of two sovereigns. One sovereign is the Commonwealth of Pennsylvania; the other sovereign is the United States of America. Each of these
sovereigns has its own set of laws, both civil and criminal, and you are subject to both of them.

A good example of this, although it is taken from the criminal law, is from California over a decade ago in the infamous Rodney King beating case. You may recall that incident was caught on video tape and was a very brutal beating of Rodney King by the Los Angeles police. The police were indicted and tried by the state of California for the beating and they were acquitted in state court.

Everybody thought that case was over. But then the federal government indicted the Los Angeles policemen and tried them in federal court for violating Mr. King’s civil rights and they were found guilty and sentenced to prison. People were wondering - how can this be - how can you be tried twice for the same crime - isn’t that double jeopardy and isn’t double jeopardy prohibited by the Fifth Amendment to the U.S. Constitution?

Yes, double jeopardy is prohibited by the 5th Amendment in the Bill of Rights, but the restriction only applies to the same sovereign. It doesn’t apply to a different sovereign. So even though California had tried the officers, double jeopardy did not bar a second sovereign, the federal government, from trying them again. It only barred the same sovereign, California, from trying them again.

And this is the point I want to make as I introduce you to the court system that exists in the United States. Because there are two sovereigns, there are two court systems - the federal system, the court system of the United States government, and the state system of the individual fifty states plus the District of Columbia. It is important to remember that these two court systems, federal and state, do have overlapping jurisdiction in many areas. As explained above, we are subject to two sovereigns.

Before we talk specifically about the federal court system, though, we need to clarify three important terms that are used in both federal and state court systems: These are claim - plaintiff - and defendant. A claim is a statement of legal injury for which a legal remedy is sought. The claim is stated by the plaintiff in the plaintiff’s complaint. A plaintiff is the party bringing the lawsuit. A defendant is the party against whom the lawsuit is brought.

VII. THE FEDERAL COURT SYSTEM

The United States Constitution makes provision for the federal courts in Article III, Section 2, which states “The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish.” Article III contemplated that Congress by statute should specify the composition of the Supreme Court and should establish a system of subordinate courts.
Immediately after the adoption of the Constitution, Congress passed the Judiciary Act of 1789. That act created a supreme court of seven members, to sit at the seat of government, and a lower court system consisting of a district court in each state to exercise trial court jurisdiction and circuit courts in which two judges would sit as a trial court in important cases.

Over the years, alterations have been made in that system, but the basic outline is still the same. Hopefully, some of you recognized, for example, that we no longer have a seven member U.S. Supreme Court. Congress raised the number to nine in 1869.

The federal court system is composed of three tiers:

The first tier is the federal district courts acting as trial courts - these are as provided in the 1789 act, except that now, instead of there being just one district court or federal trial court per state, the more populous states have a number of districts. For example, Pennsylvania has three districts - western, where we are, middle and eastern. New York has four - southern, northern, eastern and western. California has four - southern, northern eastern and central.

The federal district courts are courts of “first instance.” That means that they hear the case first. It is a fancy way of saying that they are trial courts. These federal district courts are also courts of limited jurisdiction. This is an important concept - courts are courts of either limited or general jurisdiction as to the matters they can hear - as to their subject matter- if they have limited jurisdiction, we must look to the statute that gives them subject matter jurisdiction to determine what kind of cases they can hear. Courts of limited jurisdiction can only hear the kinds of cases that their enabling statute or statutes allow them to hear.

In the case of the federal district courts, since the U.S. Constitution left it up to Congress to create these courts, and did not specify how they should function or what kinds of cases they could hear, Congress has by statute limited their subject matter jurisdiction to basically two kinds of cases: They can hear federal question cases and they can hear federal diversity cases.

Federal question cases are cases that involve a claim that “arises under” a federal statute, a federal treaty, or the U.S. Constitution itself. “Arises under” has generally been taken to mean that the plaintiff’s claim must be based on a right created by federal law, treaty or the U.S. Constitution. Civil rights cases for example are federal question cases because there are federal laws protecting people’s civil rights.

The second major type of federal case is the federal diversity case. When the U.S. was young, the federal government thought that it would be necessary to protect the citizens of one state from having to go to another state to defend a claim in the local state courts, where they might be the victim of some in-state prejudice against citizens
of another state. As a result, in the Judiciary Act of 1789, based on language in Article III Section 2 of the U.S. Constitution, Congress created federal diversity jurisdiction.

Federal diversity jurisdiction said that when a citizen of one state sued a citizen of another state, and the amount was in excess of the statutory amount (originally it was $1,000), then the case could be heard, not by the state courts, but by the federal courts. That law is still with us. When the plaintiff and the defendant are citizens of different states, and when the claim is in excess of $75,000, the claim may be heard by the federal courts.

This is federal diversity jurisdiction. It has been severely criticized as being no longer necessary, now that state courts are more professional and less likely to manifest an in-state bias, but Congress has kept this statute, although every so often it does raise the jurisdictional amount necessary to get into federal court, most recently in 1996 from a claim of in excess of $50,000 to a claim in excess of $75,000.

Note that when we talk about the kinds of cases that a court can hear, we are talking about their subject matter jurisdiction, in other words, what types of claims are they allowed to hear. There are two kinds of jurisdiction that a court must have in order to hear a case. It must have subject matter jurisdiction over the type of claim being litigated and it must also have personal jurisdiction over the defendant. We will discuss personal jurisdiction over the defendant when we look at the state court system, since for purposes of personal jurisdiction over the defendant, the federal courts use the state court rules for personal jurisdiction over the defendant. It works this way: if a person can be sued in the state courts of the state where the federal court sits, that is to say, the state courts have “personal jurisdiction” over that person, then the same person can also be sued in the federal courts located in that state. The idea of “can be sued” is another way of saying that the court has personal jurisdiction over the defendant.

But in terms of subject matter jurisdiction - what kinds of claims a federal district court can hear - the major categories are federal question jurisdiction and federal diversity jurisdiction, since those are the cases that Congress, by statute, has said the federal courts can hear. Congress has, in fact, limited the jurisdiction of the federal courts to these two types of claims.

The next tier up in the federal court system, after the federal district courts, are the federal appeals courts. As their name implies, these courts have appellate jurisdiction. They are courts of “second instance” as opposed to the federal district courts which are courts of first instance. The federal courts of appeal are primarily organized on a geographical basis, in territories called circuits. The term circuit derives from the fact that in the early days of the federal court system, judges traveled from one district to another in what was called “riding the circuit.”

The basis of this territorial organization for the federal appeals courts is the boundaries of the states. For example, the territory of the U.S. Court of Appeals for the Third Circuit, which covers Pennsylvania, consist of the states of New Jersey,
Pennsylvania and Delaware, together with the territory of the U.S. Virgin Islands. There are twelve such territorial circuits of federal appeals courts, eleven numbered circuits, the First through Eleventh Circuits, plus one more for the District of Columbia called the United States Court of Appeals for the District of Columbia but usually referred to as the D.C. Circuit. Judges on the federal circuits sit in panels of three judges to hear each appeal. There are also two specialized federal courts of appeals, the Court of Appeals for the Federal Circuit which has jurisdiction over patent, trademark cases, and certain other cases, and the Court of Claims, which has jurisdiction over various kinds of cases against the federal government. You should also understand, for the sake of completeness, that at the trial level there is also the federal Tax Court for tax claims, and that every federal district also has a bankruptcy trial division as well.

Sitting above all of this, in the federal court system, is the only court actually created by Article III of the U.S. Constitution, namely, the U.S. Supreme Court. Our Supreme Court is primarily a court of discretionary appeal, that is to say, the court itself decides what appeals from the Circuit Courts it will hear. It does so in a process called “certiorari,” Latin for “to make more clear or certain.” It takes the votes of four U.S. Supreme Court justices to grant “cert.” as it is called (short for “certiorari”), to an appeal from the federal circuit courts of appeals. It can also happen that the U.S. Supreme Court can hear appeals from the decisions of the supreme courts of each of the fifty states when those state supreme court decisions raise questions on the proper interpretation by the states of the U.S. Constitution.

VIII. THE STATE COURT SYSTEM

The state courts - the court system of the 50 sovereign states - are primarily courts of general jurisdiction. That is they can hear any claim that the plaintiff brings against the defendant, no matter what the subject matter. That’s what general jurisdiction means, that the court can hear a claim involving any subject matter.

In general, the state court system is divided into four kinds of courts. They are, starting from the top: (1) a supreme court or court of last resort; (2) intermediate appellate courts, which are also called courts of second instance; (3) trial courts of general subject matter jurisdiction, which are also called courts of first instance; and (4) trial courts of limited subject matter jurisdiction.

The highest court of the state is normally called the state supreme court, except for New York, which peculiarly calls its supreme court the Court of Appeals, and refers to its trial courts as supreme courts, but that is New York.

Pennsylvania is more normal and more typical. Our Supreme Court, or our court of last resort is called the Supreme Court of Pennsylvania. It is made up of seven members elected for ten year terms. And it always sits as a body of the whole. Every Pennsylvania Supreme Court case is decided by all seven justices. And that is what
judges are called when they are on the supreme court - justices. At all lower levels, including the lower appeal levels, they are called simply judge.

And by the way, just as a matter of historical interest, the Pennsylvania Supreme Court is the oldest appeals court in the Western Hemisphere. It was founded in 1722. It is sixty seven years older than the U. S. Constitution and the U.S. Supreme Court.

State supreme courts, or courts of last resort, hear two kinds of cases - mandatory appeals and discretionary appeals. Mandatory appeals are appeals that the state’s law or constitution require must be heard by the supreme court of the state. Those states which still have death penalties, for example, all have mandatory review by the state’s supreme court of a death penalty case.

Discretionary appeals are just that. The state supreme court has the discretion to hear the case or not hear the case. It can choose to or it can choose not to. Usually cases are selected for hearing when the law is not clear on a particular subject or when the court wants to make new law. And that is an important part of our American common law system that does not exist in the rest of the world that relies on civil codes to determine the law. In the United States, by interpreting the law in a case, an appeals court can make new law binding on all lower courts. This is called creating a precedent, which then binds future cases. The principle of controlling appeals court-made precedent, binding on the lower courts, is sometimes referred to by its Latin name “stare decisis” - which means, “Let what has been decided stand.”

For discretionary appeals, there is always a process by which a supreme court decides which cases it will hear. For the U.S. Supreme Court, as we saw, this is the certiorari process. In Pennsylvania, the discretionary appeals process at the state Supreme Court is referred to as the “allocator” process. “Allocatur” is also a Latin word which means “It is given a place, or it is allocated, a place.” – where? On the court’s docket.

Going down our level of courts, after the state supreme court is the intermediate appeals court. These are courts of second instance. They hear the case after the court of first instance, the trial court. In Pennsylvania, the intermediate appeals court is called the superior court. The Pennsylvania Superior court is made up of 15 regular members, plus it has three or four senior members, semi-retired members who still help in hearing cases. The Superior Court hears cases in panels of three judges. In rare cases, the court can also hear appeals en banc - that’s French for as a panel - in which case all 15 judges sit together. (We still have a few French terms in our legal system because the roots of the common law system that we inherited from England were in the king’s courts started by William the Conqueror, who you may recall was Norman French, and whose officials brought certain Norman (French) legal terms and concepts with them to the England they had conquered. “Tort” is another one of those French terms; it simply means “wrong” in French.)
The superior court hears all cases that are appealed from the trial courts, or courts of first instance. Their review is not discretionary. If you ask for it - and if you pay for it - you get it. “Pay for it” because to get the Pennsylvania superior court to review a trial court case, the appellant has to pay to have the record of the trial court - all the transcripts of the testimony - reproduced for the appeals court - and that can be a very expensive process.

You will recall that at the trial court level, the parties are the plaintiff who brings the claim and the defendant against whom the complaint is brought. On the appeals level, the names of the parties change. The person bringing the appeal - the person who lost at the trial level - is called the appellant. The party who won below is called the appellee - the party appealed against.

On some levels of appeal – appeal to the U. S. Supreme Court for example, the names of the parties are a bit different. At the U. S. Supreme Court, the appellant, the party who filed the appeal is called the Petitioner, and the appellee, the party appealed against, is called the Respondent.

Some, but not all, states have intermediate appeals courts for a special purpose. Pennsylvania has such an intermediate appeals court, which is called the Commonwealth Court, and it has a special purpose, and hence limited subject matter jurisdiction. The Pennsylvania Commonwealth Court hears appeals of cases brought against governmental bodies. If you read the Commonwealth Court docket, most of their appeals are zoning appeals or appeals against public utilities or public boards. There are nine members on the Commonwealth court and it also sits in panels of three.

IX. WHAT DO APPEALS COURTS DO?

It is important to understand what appeals courts do and do not do. They do not rehear the case. They are not allowed to. They read the case as tried below (hence the need for the reproduction of transcripts) and they are stuck with the facts as they are found by the trial court or court of first instance. The appeals court cannot find new facts or change the facts as determined at trial.

What an appeals court can do is perhaps change the emphasis on the facts, but mostly they examine how the trial court applied the law to the facts. That is their role on appeal - was the law applied correctly? Sometimes they will find out that the law was correct but it was misapplied. Sometimes they will find that the wrong law entirely was used. Sometimes they will find that the law was right, but that circumstances call for a change in the law in this case. Almost all of the cases that you will be reading in law school are appeals court cases – state or federal appeals. And because they are appeals court cases, the facts tend to be neatly presented and all of the focus is on the law – which is why they are great teaching tools for law professors – since they are heavy on legal analysis.
In any event, appeals tend to be law driven and not fact driven. In our legal system, once a court of first instance has decided the facts, they remain the facts through all levels of appeal.

X. PENNSYLVANIA TRIAL COURTS

And that brings us to the trial courts or courts of first instance. These are the courts who actually hear the case. As mentioned, there are two types of courts of first instance - courts of general jurisdiction and courts of limited jurisdiction.

In Pennsylvania, the county courts of common pleas are trial courts of general jurisdiction. They can hear any kind of case. The county courts break up into divisions to do this - family division hearing family cases, juvenile division hearing juvenile cases, criminal division hearing criminal cases and civil division - by far the largest - hearing everything else.

This system is replicated throughout every state with trial courts of general jurisdiction usually functioning at the county level.

But there are also state trial courts of limited jurisdiction. What would those be? A common example of a state court of limited subject matter jurisdiction is the traffic court which can only hear traffic cases, or Magisterial District Courts, such as we have in Pennsylvania, with jurisdiction over certain types of civil and criminal cases, such as summary offenses, most preliminary hearings, certain DUI cases, certain third-degree misdemeanors and some ordinance violations. Civil cases heard by Magisterial District Courts include certain landlord/tenant cases and some general civil claims subject to a $12,000 financial limit.

XI. SUBJECT MATTER JURISDICTION

When a plaintiff brings a claim, the plaintiff has to make sure that he or she is in the right court. This means that they have filed their claim in a court with subject matter jurisdiction over the claim. For example, a person who filed a claim for civil damages against a defendant for $15,000 in a Magisterial District Court in Pennsylvania is in the wrong court. That court does not have subject matter jurisdiction over claims in excess of $12,000.

A court's subject matter jurisdiction is conferred by statute, saying what cases certain courts can hear. The state courts, with exceptions like magistrate's court or traffic court that we saw, are courts of general jurisdiction. They are able to hear any claim against a defendant over whom they have personal jurisdiction. The federal courts, on the other hand, can only hear claims within the limited subject matter jurisdiction given them by Congress - federal question cases and federal diversity cases above $75,000.
So if you, as a citizen of Pennsylvania were to file a claim against a citizen of Ohio for a claim of $50,000 and you filed it in federal court, you are in the wrong court - There is diversity, one party from Pennsylvania, one from Ohio, but the statutory amount - in excess of $75,000 - is not met. The federal court will dismiss that claim for lack of subject matter jurisdiction. Your claim will have to be filed in state court in either Pennsylvania or Ohio.

XII. PERSONAL JURISDICTION

How will the plaintiff decide where to go, between Pennsylvania and Ohio, to bring the suit? That will depend on another type of jurisdiction - personal jurisdiction over the defendant. In order to find the right court, you need a court that will have both subject matter jurisdiction over your claim and personal jurisdiction over the defendant.

Personal jurisdiction over the defendant against whom a complaint is brought must exist before a court can hear the claim. It must exist in addition to the court's jurisdiction over the subject matter of the claim. And personal jurisdiction means exactly what it says - jurisdiction over the person of the defendant.

We don't worry about personal jurisdiction over the plaintiff, the party who brought the claim, because the plaintiff chose the court when he or she filed the claim. They are in that court because they chose to be. The defendant however did not choose to be there - he or she was hauled there by the plaintiff - so we must ascertain that the court has personal jurisdiction over him or her because if a court issues a decision over a defendant who is not subject to the court's personal jurisdiction, that judgment is void and unenforceable.

The question of jurisdiction - subject matter jurisdiction or personal jurisdiction over the defendant - may seem highly technical, and in a way it is, but it is critical. Courts who proceed to hear claims over which they lack subject matter jurisdiction or in which they lack personal jurisdiction over the defendant cannot issue a valid judgment. Such judgments issued in want of jurisdiction are constitutionally infirm - they lack due process - and they are unenforceable. In other words, they are an expensive waste of time.

You may ask, why would a court proceed to hear a case where it lacked the proper jurisdiction? It proceeds because it thinks it has jurisdiction. There are tons of appellate cases, numerous U.S. Supreme court cases holding the judgments of lower courts to be invalid because the court lacked the proper jurisdiction.

Back to personal jurisdiction. Personal jurisdiction over the person being sued, the defendant, must be based on some relationship that the defendant has with the state where the plaintiff has brought the claim. Even the federal courts rely on the
defendant’s relationship with the state where the federal court is located to determine if the federal courts have personal jurisdiction over the defendant.

It is considered a requirement of the Due Process clause of the 5th and 14th amendments that courts - federal or state - must have personal jurisdiction over the defendant to render a valid judgment. If they do not have personal jurisdiction, the enforcement of any judgment that they render is a violation of the defendant’s due process rights and can be voided on those grounds.

Let’s talk about personal jurisdiction. How is it created? Personal jurisdiction over the defendant is created in a state in one of four ways: (1) you are present in the state and served with process; (2) you are domiciled in the state; (3) you consent to jurisdiction in the state or (4) you have sufficient contacts with the state and the claim that you are being sued on arises from those contacts.

So to sum up jurisdiction - there are two kinds - subject matter jurisdiction over the claim and personal jurisdiction over the defendant - and a court must have both to proceed. If the court proceeds without one or the other, any judgment it renders will be void because the due process rights of the defendant have been violated.

XIII. VENUE

How do we decide in what court to bring the lawsuit? This is where the rules of venue come in. These rules help us to determine which of the possible courts is the proper one to hear the case. Venue is the territorial determination of which court (among those that have both subject matter jurisdiction over the claim and personal jurisdiction over the defendant) should hear the plaintiff’s claim. Venue is a fancy way of saying it’s a choice of court question.

In the state system, the rules of venue tells us in which county court to file the lawsuit. In the federal system, the rules of venue tells us in which federal district to file the lawsuit. The venue rules or statutes are not complicated. On the state level, venue normally lies in the county where the defendant lives or where the actions complained of by the plaintiff occurred.

In the federal court system, the venue statute says that venue is proper in the federal district where the defendant resides, where the actions complained of by the plaintiff occurred, or where personal jurisdiction over the defendant can be obtained.

XIV. PERSONAL SERVICE

Another important requirement to get personal jurisdiction over the defendant is the requirement that the defendant have proper notice of the lawsuit and the opportunity to be heard. This is also a requirement of due process. The Due Process clause of the
14th amendment has been interpreted to require that the defendant, as a general rule, must have adequate written notice of the claims against them and an opportunity to be heard on those charges before any judgment can be rendered against the defendant.

There are federal rules of civil procedure that specify how a plaintiff is supposed to serve a defendant and there are state law rules of civil procedure on the same topic. In commencing a lawsuit, it is important that plaintiff’s counsel comply with these rules, since improper service may result in the court not having personal jurisdiction over the defendant, and a judgment rendered without proper jurisdiction over the defendant is, as we have seen, void. It is worth nothing.

Notice of the claim given to the defendant in the way prescribed in the state or federal rules of civil procedure - depending upon whether the claim is filed in state or federal court - is how a lawsuit starts. Notice can happen in a number of ways specified in the rules of civil procedure. A process server can hand the defendant a summons to court and a copy of the complaint - or in the federal rules - personal service can be substituted by certified mail service.

Normally proper service involves providing the defendant with a summons to court and a copy of the complaint in enough time before the hearing that the defendant has adequate time to respond. This complaint that the plaintiff has served on the defendant must have been filed with the court prior to service on the defendant.

Personal jurisdiction - subject matter jurisdiction - proper venue - personal service - are all requirements that must be met in order to start a lawsuit.

XV. THE PHASES OF A TRIAL

Pre-Trial Phase

Once a lawsuit is commenced with the filing of the complaint by the plaintiff, the rules of civil procedure apply. In a civil justice proceeding, the plaintiff is claiming that he/she has suffered some legally cognizable injury at the hands of the defendant and it is asking the court to make the defendant repair the injury, usually with money damages, but also sometimes with conduct by way of an injunction, a court order requiring the defendant to either affirmatively do something or stop doing something.

Every civil proceeding has three major phases: the pre-trial phase, the trial phase, the post-trial phase.

The pre-trial phase is sometimes also called the discovery phase of the proceeding because a major purpose of this phase is for the parties to find out, to “discover” what the opposing party’s case consists of. And this is important. First year law students should understand on the first day of law school that all the cases in all the casebooks they will be reading in law school are there because two arguably
reasonable parties looked at the same set of facts and came away with two different conclusions.

That is what the discovery phase is for - to learn how the other side sees the case - what their version of the story is. But more than simple discovery happens in the pre-trial phase. Before the actual discovery begins, as we have seen, the plaintiff must have filed a complaint and, through proper service, must have notified the defendant that he or she has a claim against the defendant. [In Pennsylvania, a lawsuit may be commenced by filing a precipe with the clerk of courts and serving a writ, minus a complaint, on the defendant. But we will focus on federal civil procedure in this course.]

The complaint is a statement of the plaintiff’s claim against the defendant. There are two different ways to plead the claim in a complaint - notice pleading or fact pleading. Notice pleading is the simplest form. It requires only that the complaint state enough facts to give the defendant adequate notice of the claim against the defendant. Fact pleading is more complex. In fact pleading, the complaint must detail all of the facts that comprise the claim and the legal theories relied on. Federal court uses notice pleading. Pennsylvania uses fact pleading. At the very start of our course, we will be looking at the federal rules of civil procedure for the adequacy of a complaint – does it give the defendant enough notice as to what claims the defendant is being sued on.

Once the defendant has the complaint, the defendant must respond, usually in 21 days, although extensions of time are common. Before a defendant answers the complaint, however, the defendant can file what are called preliminary objections to the complaint.

Let’s talk about what those preliminary objections might be. You can probably already guess some of them. One preliminary objection is that the court lacks jurisdiction - either subject matter jurisdiction over the plaintiff’s claim - or personal jurisdiction over the defendant. That will stop the lawsuit dead in its tracks. Another preliminary objection is venue. Jurisdiction may exist, but the plaintiff is in the wrong courthouse. That can be remedied by a change of venue.

Another preliminary objection is improper service - the defendant was not served with notice of the lawsuit in accordance with the rules for service. Another preliminary objection is failure to state a claim - the complaint may contain a lot of facts but all together they don’t add up to a legally cognizable claim. Or the complaint may not contain enough facts, not enough notice, to let the defendant know what claims the plaintiff is suing on. These preliminary objections are ruled on by the court. Some of them, like lack of jurisdiction or failure to state a claim, are fatal to the lawsuit. Others, like improper service or venue can be cured, and the lawsuit can proceed. Once the preliminary objections are taken care of - and assuming that they were not fatal to the case - the defendant must answer the complaint.

The answer must do two things. It must, of course, respond to the plaintiff’s complaint point by point. It must also raise what are called affirmative defenses to the
complaint. What are affirmative defenses? There are three main kinds - claim
preclusion, issue preclusion, and the statute of limitations.

Claim preclusion simply says that this is the second time that the plaintiff has
brought this claim. The plaintiff lost the claim the first time. The plaintiff cannot bring it
again. The claim is precluded. In Storming the Court, you will read that Professor Koh
had some initial concerns that the law students could not bring their case against the
federal government because a suit raising a very similar claim had been brought and
decided in the federal courts in Florida, which means that the law students’ claim would
have been precluded. That case, Haitian Refugee Center, Inc. v. Baker, is the first case
that we will read together this year, after we are done discussing Storming the Court.

Issue preclusion is very similar. It says that this is the second time that the
plaintiff is litigating this issue. The plaintiff lost the issue the first time. The plaintiff
cannot bring it again. The issue is precluded.

Another important affirmative defense is the statute of limitations. Every civil
claim has a legal life after which it expires and can no longer be brought. Although
there are specific rules, in each state, which may differ from state to state, normally torts
have a two year statute of limitations, and contract actions a four year statute. The
typical exceptions are torts for defamation, slander (oral defamation) and libel (written
defamation) which in a number of states have a shorter, one year statute.

In addition to affirmative defenses, the defendant’s answer must also raise any
counterclaim that the defendant has against the plaintiff arising out of the same set of
facts that formed the basis for the plaintiff’s complaint. These are called compulsory
counterclaims, and if not raised, they are lost. As a simple example, if a plaintiff sues a
defendant in a tort action arising from a car accident, and the defendant believes that it
was the plaintiff’s negligence that caused the accident, then the defendant must in
his/her answer to the plaintiff’s complaint include this counterclaim. It is compulsory to
do so, which is a way of saying that, if the defendant fails to raise it, he or she loses it.
It cannot be brought in a subsequent lawsuit that the original defendant (now acting as
a plaintiff) might file against the original plaintiff (now being sued as a defendant).

Once the defendant’s answer is filed with the court and sent to the plaintiff, the
discovery process can begin.

In federal court, discovery begins with a case management conference with the
judge assigned to the case. The parties and their lawyers attend and under the
guidance of the judge attempt to settle the plaintiff’s claims before the case goes any
further. If that does not work, through either an agreed settlement or by using an
alternative means of settling the suit, such as mediation or arbitration, then the parties,
again under the guidance and control of the judge, will agree to a discovery schedule.

Discovery in a law suit can be both complex and time consuming. Just like in the
trial, the discovery process is lawyer driven. If the plaintiff wishes to interrogate the
defendant in a deposition before trial, plaintiff simply gives written notice to the defendant’s counsel specifying a time and place for the deposition. Of course, the plaintiff and potential witnesses for either side can also be deposed.

Any party wishing to receive written documents or other tangible evidence in the possession of the other party simply makes a written demand identifying the type of documents or evidence to be presented to them. You will recall in *Storming the Court*, that Joe Tringali, the lawyer from the law firm of Simpson Thacher and Bartlett who was helping the law students had requested a very important piece of evidence from the government’s lawyers, namely the surveillance videotapes of Camp Bulkeley that the government had taken, especially the tapes of the fire hose riot. Do you recall when Lauri Filppu actually gave that tape to Tringali?

The parties may also send written interrogatories to each other. These are lists of questions, sometimes very long, that the other side must respond to, also in writing, and send back. Interrogatories can also request the production of any documents or other tangible evidence referred to in the responses.

Another discovery device is demands for admissions. Demands for admission permit a party to propound proposed statement of facts to the opposing party and demand that the statements be admitted as true. Admissions thus obtained are conclusive in the litigation. If a party refuses to make an admission and the other side proves the facts at trial, the costs of making the proof are assessed against the other side who refused the admission.

The discovery process proceeds through the initiative of the lawyers for each side through the mechanism of demand and response. Depositions occur in front of a court reporter, but without a judge being present. Disputes over the propriety of discovery are usually worked out through negotiation of the parties, although some time the judge may be needed to referee. Discovery in a civil case has a broad scope. Basically, anything is discoverable that is not privileged so long as it is relevant to the matter being litigated.

Once discovery is complete, either side may ask the court to grant them a summary judgment. This is a form of judgment on the pleadings, which means that, after examining the complaint, answer and all the documents produced in discovery, the court concludes that either the plaintiff’s case lacks a necessary element, or that the defendant has no real defense to the claim, and as a result there are no triable issues to proceed on. In that case the judge can award the other side a summary judgment.

Summary judgments can be partial - they only deal with some but not all of plaintiff’s claims or some but not all of defendant’s defenses - or they can be total, resulting in a complete dismissal of the whole case.

It happens very often during the discovery phase that the case is also being mediated. In the federal courts, it is not unusual for the judge assigned to the case to
appoint a neutral mediator to hammer out a settlement between the parties so that no trial is necessary. Or sometimes, the judge may him/herself act as a mediator trying to bring the parties to an agreement.

It also happens often enough during the discovery phase that the case falls apart— a claim is found not to really exist; a defense is found not to be available.

Either because of mediation or of what happens during discovery or a combination of both, most complaints that are filed (around 95% of them) never see a courtroom. For that reason, even those of you who plan to be trial lawyers will have, as your major area of exposure to the civil justice system, the pleadings and discovery phase only. Seldom, if ever, will you get to the trial phase.

Trial Phase

Once discovery is over, assuming that there is no summary judgment or no settlement, a civil suit will proceed to the second phase—the trial phase. In the trial phase, facts are proven by the presentation of the evidence by the lawyers for each side to the trier of fact. Normally, the trier of fact is the jury. But in a bench trial, that is a trial without a jury, the trier of fact is the judge. In federal court, it is the right of either party to request jury trial.

Every trial starts with an opening statement by the plaintiff’s lawyer. This is followed by an opening from the defendant’s lawyer. Each of them will highlight the facts they mean to establish in trial and the principles of law that will prove their side of the case. After the opening statements comes the plaintiff’s case in chief. In the plaintiff’s case in chief, the plaintiff’s lawyer presents to the trier of fact the evidence that will establish the plaintiff’s case.

This is done through the testimony of witnesses. In a civil proceeding, there are two types of witnesses: Fact witnesses and expert witnesses. A fact witness, as you might guess, testifies to the facts of the case which they have from their direct knowledge. Second hand information cannot come in. That is hearsay. They can only testify on matters that go to prove the plaintiff’s case. Other matter that is not probative of plaintiff’s case is deemed irrelevant or immaterial. A fact witness can also be used to authenticate to the court probative documents or other matter that the attorney wants to have admitted into evidence. These are called, as you might guess, “exhibits.” Every exhibit must be authenticated by a witness. An expert witness has no direct knowledge of the facts of the case. Rather he or she has a certifiable expertise in the area of the litigation and is so qualified by the court, usually after hearing preliminary questions on their professional credentials asked by both sides. The expert can then testify, within their expertise, on the meaning of the evidence.

Of course, during the plaintiff’s case in chief, the defendant’s lawyer can cross examine the plaintiff’s witnesses.
After the plaintiff's case in chief, the defense will typically move to the court that, as a matter of law, the plaintiff has not proven some or all of his or her claims against the defendant. If the court agrees, the unproven claims are dismissed in what is called a judgment as a matter of law. A judgment as a matter of law can apply to some or all of the plaintiff’s claims. Obviously, if all of the plaintiff’s claims are so dismissed, the case is over. Assuming that this does not happen, the second phase of the civil proceeding, the trial phase moves on to the defendant’s case in chief.

In the defendant’s case in chief, the defendant’s lawyer presents witnesses to prove that the defendant is not liable to the plaintiff on the plaintiff’s claims. As with the plaintiff’s witnesses, the defendant’s witnesses can be both fact witnesses and expert witnesses. And, of course, the plaintiff’s lawyers have the right to cross-examine the defendant’s witnesses. And the same rules of evidence apply against hearsay, irrelevant or immaterial evidence.

Once the defendant’s case in chief is in, the plaintiff’s lawyer will move to the court for judgment in his or her client’s favor as a matter of law, arguing that the defendant has not, in fact, proven a legitimate defense on plaintiff’s claim or claims. If this motion is granted, the trial ends. If it is not granted, then the plaintiff has the right to present rebuttal witnesses; after the plaintiff’s rebuttal witnesses, the defense can call its rebuttal witnesses.

Once the sides are done presenting all of their witnesses, the trial phase comes to a close, with the parties offering their closing statements to the jury or judge if the trial is a bench trial. The plaintiff closes first. The defendant gets to go last. After the closing statements, the judge addresses the jury on the legal principles that govern plaintiff’s claims and how they apply to the facts of the case. These are called the judge’s instruction to the jury. Very often, a judge will ask both sides to suggest what his/her instructions to the jury should be, and the judge can pick and choose among them. There are also reference works of standard jury instructions that judges may use, based on instructions that have been used in the past and that have stood up to appellate review. Obviously, in bench trial, where there is no jury and the trial judge acts as the trier of the facts, there are no instructions to the jury, just opposing closing arguments.

In jury trials, following the judge’s instructions to the jury, the jury returns to the jury room to deliberate. In civil trials, unlike criminal trials, a unanimous verdict is not required by the Constitution, so it is up to state or federal law to require it. In fact, federal law does require unanimity, but it does not require twelve person juries in a civil case. Once the jury or the judge, as trier of fact in a bench trial, has reached a conclusion on the evidence, the verdict is announced in court.

In a civil trial, a verdict is a conclusion, based on the facts as found by the trier of the facts, that the defendant is or is not liable to the plaintiff on the plaintiff’s claims. Civil trials are all about the civil liability of one party to another. In criminal trials, the verdict is all about whether or not the government has established the guilt of the
defendant; hence the verdicts in a criminal trial are either guilty or not guilty. No one is ever found “innocent.” Civilly, they are either liable or not liable. Criminally, they are either guilty or not guilty.

Post-Trial Phase

At that point, the second part of the civil law proceeding, the trial phase is over, and the third or last phase, the post-trial phase begins. Once a verdict is reached, the parties have a limited time (10 days in federal court) to make motions to the trial court against the verdict. These are motions such as a motion for judgment as a matter of law - basically no matter how you look at the facts, the law requires a certain result. Or there might be a motion for a new trial based on the fact that there were serious errors or misconduct in the original trial or because new evidence, not previously knowable, has come to light that will change the facts.

If none of these motions are granted by the trial court, then the third phase of the civil law proceeding moves onto the appeals process.

As noted earlier, most of the states and the federal government have an intermediate appeals court, a court of second instance as compared to the trial court which is a court of first instance. After losing a verdict, the losing party, plaintiff or defendant can appeal the judgment of the trial court, the court of first instance to this appeals court, the court of second instance.

And, as you already know, at the appeals level, the names of the parties change. The losing party at trial, whether it is the plaintiff or the defendant, who files the appeal is called the appellant. The party appealed against, the party who won below, is the appellee. Appeals courts do not rehear the case. There is no retrial of the facts. Once the facts are established at the first instance by those who saw the witnesses, saw the documents and so forth and have judged their credibility directly, those facts are fixed. They remain the facts through all levels of appeal.

As a result, what most appeals argue is that the law was improperly applied to the facts below. The trial judge gave the wrong principles of law to the jury in his or her instructions, so the wrong law was applied and a wrong result was reached. Or an appellant can argue that, as a matter of law, the facts established in the trial court are not legally sufficient to support the verdict. Or an appellant can argue that there were serious procedural errors in the conduct of the trial - improper evidence was allowed in, for example - which led to a wrong result.

What appeals court judges do - all they can do, really - is to apply the law to these allegations of the appellant to see if they wash. The appeals court cannot call witnesses, they cannot rehear the facts, all they can do is look at the record established below, read the appellant and appellee’s briefs, and hear their legal arguments.
This is an important part of most appeal processes, the ability of the appellant and appellee to make an oral argument to the appeals court. And usually, these are very short arguments, sometimes as brief as 15 or 20 minutes for each side, and they are interrupted by the appeals court judges who ask questions of them. The appellant goes first, followed by the appellee. Parties can reserve some of their allotted time for rebuttal arguments. A number of appeals court judges dispute the effectiveness of oral argument by the parties, to the point where, for example, at the Pennsylvania Superior Court, most cases are decided on the briefs, without an oral argument by the parties, although the parties do have a right to an oral argument if they wish one.

So what an appeals court can do is scrutinize, re-apply and perhaps even change the legal principles that were used at the trial level, and on that basis either affirm or overturn the result at trial. After the intermediate level of appeals court, there is usually a final level of appeal, a state supreme court, or the U.S. Supreme Court, which is the highest level of appeal. These courts at the highest or last level of appeal are normally courts of discretionary appeal. This means that, except for cases that the law requires them to hear – for example - capital punishment appeals in states with the death penalty.

Except for the cases that the law requires them to hear, the courts at the highest level of appeal can pick and choose the appeals they will hear, and they usually only hear a small part of those cases which seek review. The U.S. Supreme Court for example might hear 80 cases a year out of thousands that seek to be heard. Discretionary appeals - that is appeals only with the approval of the appeals court - tend to allow the appeals courts at the highest levels to focus on cases where the court thinks the law needs clarification -

At the U.S. Supreme Court, for example, the Court might accept an appeal where there is a disagreement on a point of law by the federal circuit courts, or perhaps in an area where the law needs to be reformed - Brown v Board. Or a case where a novel principle of law was propounded below that the Court wishes to affirm or reject.

So, the first thing to do when you read a case is discern from the caption who the parties are and what court they are in. Once you have done that, you are ready to start reading the case. During your first year of law school, you must read every case with a law dictionary at your side. While reading a case, you will come across many unfamiliar and technical legal terms that judges use habitually in writing their opinions. You cannot "bleep" over these unfamiliar words or attempt to infer their meaning from the context. That will very often get you the wrong meaning for the word, and, as a result, the wrong meaning for the case. Don’t guess. Look up unfamiliar words and concepts in a legal dictionary. Without these words in your own legal lexicon, you will not be able to adequately read or understand a case.

Whenever a case refers to case law, a rule of civil procedure, a statute, or a part of the Constitution, you will not be able to understand that case unless you understand that reference. Just as you must look up unfamiliar legal terms, you must also look up
those key cases, rules, statutes, etc. Be sure that you understand how the outside source has influenced the final decision of the case you are reading. Don’t presume that you can understand a reference in a case without looking it up and reading it for yourself. This method is especially useful when reading the cases in this book because many citations and footnotes have been omitted during the editing process. If a citation still remains within a case used in this book that outside source was crucial to bringing about the ruling in the case you are reading. You can always greatly increase your understanding of a case by knowing the historical decisions that predated that case.

Because every appellate case re-examines (though cannot change) the facts of a case, every appellate case tells a story. As you read through a case, you need to keep your mind on the story that it is telling. The story will always be about a dispute. That, after all, is why the parties are in court to begin with. The parties have both looked at what are essentially the same facts (the story) and have come away with different legal conclusions as to the import of that story.

So, in reading a case, you will want to pay attention to the story that it is telling. Somebody did (or failed to do) something to somebody else. As a result of that act or omission, a dispute has arisen. One of the parties, the plaintiff, is arguing that certain legal rights have been violated by the other party, the defendant. The story is routinely referred to as “the facts of the case.” When a professor asks you to recite the facts, he or she is really asking you to re-tell the story of the case.

In addition to telling a story, each case articulates a rule of law that the appeals court has applied to the story in order to determine the rights of the parties. As you read your first cases, you will want to pay strict attention to what the story of each case is and what rule of law the court has applied to each story. Sometimes, the rule of law is expressed as a statute. Other times it is a statement of a legal principle that the court has derived from earlier, similar cases. These earlier, similar cases are, as we already know, referred to as “precedent.”

**Exercises:**

1. Compare and contrast the American civil justice system with the American criminal justice system.

2. Can a corporation commit crimes? How?

3. How is crime defined? Are all crimes immoral acts?


5. What does it mean to say that the American legal system is adversarial?
6. What is the role of a plaintiff’s lawyer in an adversarial system?

7. What is the role of a defendant’s lawyer in an adversarial system?

8. Why is the Anglo-American system of justice called “the common law”?

9. Why is the European system called “the civil law system”? Explain its historical roots.

10. How do European civil codes work? How do judges apply a civil code?

11. What is the role of the judge in the European civil law systems?

12. Explain the concept of the investigating judge and contrast it to the role of the judge in an American civil proceeding.

13. Are juries used in the European civil justice system? Why or why not?

14. Explain the notion of the jury in the civil justice system, starting with its historical roots to what it has evolved to today.

15. What is the role of a judge in the American adversarial civil justice system?

16. What criticisms have been made of the American adversarial civil justice system? Do you agree or disagree with these criticisms? Explain.

17. What does it mean to say that we live under two sovereigns in the United States? How many court systems does that give us? Explain its effect on double jeopardy.

18. What is the source of judicial power in the United States? How many justices are on the U.S. Supreme Court today? How did we arrive at that number historically?
19. What are the three tiers of the federal court system?

20. What does it mean to be a court of first, second or third instance?

21. What are the two kinds of cases that federal courts can hear?

22. Explain the notion of “subject matter jurisdiction.”

23. Explain the notion of “personal jurisdiction.”

24. What is the role of a federal district court?

25. What is the role of a federal appeals court? What are federal appeals courts called?

26. How many territorial circuits are there? Where do they sit?

27. Besides the territorial circuits, what are the other types of federal appeals courts? What is their subject matter jurisdiction?

28. What are the four different types of state courts?

29. What is the make-up of the Pennsylvania Supreme Court? How many members does it have? How does it function? How old is it?

30. What is the difference between mandatory and discretionary appeals? What is the discretionary appeals process called at the U.S. Supreme Court? At the Pennsylvania Supreme Court?

31. What are the two different intermediate appeals courts in Pennsylvania called? Explain their different subject matter jurisdictions?

32. What does it mean to say that state courts are courts of general jurisdiction while federal courts are courts of limited jurisdiction?
33. Why do we have French terms in our civil justice system? Besides the two mentioned in the essay – en banc and tort – can you think of any others?

34. What are the two different ways that the Pennsylvania Superior Court hears cases? How many members does the Superior Court have?

35. What do you have to do to have a case heard on appeal by the Pennsylvania Superior Court?

36. What do appeals courts do?

37. At the trial level, what are the typical subject matter divisions of the courts of common pleas?

38. What is a state court of limited jurisdiction? Give a Pennsylvania example.

39. How does the nature of a plaintiff’s claim indicate to the plaintiff in which court to bring his/her lawsuit? Give some examples.

40. How does a court get personal jurisdiction over a plaintiff?

41. How does a court get personal jurisdiction over a defendant?

42. What is the value of a judgment issued by a court that lacks subject matter jurisdiction over the plaintiff’s claim?

43. What is the value of a judgment issued by a court that lacks personal jurisdiction over the defendant?

44. What is venue in a court system? How does venue work? How is venue decided?

45. What is personal service?

46. Why is notice to the defendant a necessary part of due process?
47. What does proper notice of a lawsuit involve, i.e., what are its elements?

48. What are the three phases of a trial?

49. What is a complaint?

50. What is the difference between fact pleading and notice pleading? Which is used where?

51. What do preliminary objections to a complaint involve? What are some typical preliminary objections?

52. What is an answer to a complaint? What must an answer do?

53. What is an affirmative defense?

54. What does claim preclusion mean?

55. What does issue preclusion mean?

56. What does the statute of limitations mean?

57. Explain the purpose of the discovery process.

58. Explain what a deposition is. Does the judge need to be present?

59. What is a request for documents?

60. What is an interrogatory?

61. What is a demand for admissions?
62. What is summary judgment? Who can request it? Who decides it? Must summary judgments be total?

63. Why do cases settle before trial? How, usually?

64. What is a bench trial? Are they normal?

65. What is an opening statement? Who makes it?

66. What is the plaintiff’s case in chief?

67. What are the two kinds of witnesses? Explain the differences between them.

68. What is the direct examination of a witness? What is the cross examination? Who does which?

69. What is a judgment as a matter of law? What is the difference between a total or partial judgment as a matter of law? Who can ask for a judgment as a matter of law? When can they ask for it?

70. What is the purpose of a defendant's case in chief?

71. Explain the closing process of the trial phase. Who does what, and in what sequence?

72. What is a verdict? Explain the different kinds of verdicts.

73. What is a motion against the verdict? When is it made? Give examples.

74. Explain the change in what the parties are called at the appeals level.

75. What do appeals courts do with the facts of a case as determined at trial?

76. What do appeals courts do with the law of a case as established at trial?
77. What is the purpose of oral argument to an appeals court? How do oral arguments proceed?

78. What happens after a case is heard at the intermediate appeals level?