

# UNIT THREE

## THE FEDERAL JUDICIARY

**JUDICIARY**

**CLASSIFICATION OF LEGAL ISSUES**

TYPE OF CASE	DESCRIPTION
<b>CIVIL CASES</b>	covers issues of claims, suits, contracts, and licenses.
<b>CRIMINAL CASES</b>	covers illegal actions or wrongful acts and can result in fines and imprisonment

**KINDS OF LAW**

TYPE OF LAW	DESCRIPTION
<b>COMMON LAW</b>	laws that are derived from precedents set by courts of the past.
<b>STATUTORY LAW</b>	laws created by legislative bodies.
<b>ADMINISTRATIVE LAW</b>	“laws” that agencies create as rules and regulations that concern their area of influence.
<b>CONSTITUTIONAL LAW</b>	laws created due to the interpretation of the constitution established under the judicial review.

**DUAL COURT SYSTEM**

FEDERAL LAW	STATE LAW		
<p>Exclusive Jurisdiction:</p> <ul style="list-style-type: none"> <li>• Federal civil disputes are heard in specific federal courts or federal district courts</li> <li>• Federal criminal cases are usually heard in federal district courts</li> </ul> <p>Examples of exclusive jurisdiction:</p> <table border="1"> <tr> <td>-Citizens of one state sue citizens of another -Counterfeiting U.S. currency -Kidnapping -Mail fraud -Interstate trade conflicts -National banking conflicts</td> <td>-Conflicts with federal officials, agencies and federal government -U.S. Border issues -Crossing state lines to commit crimes -Denying civil rights of citizens -Conflicts or patents &amp; copyrights</td> </tr> </table>	-Citizens of one state sue citizens of another -Counterfeiting U.S. currency -Kidnapping -Mail fraud -Interstate trade conflicts -National banking conflicts	-Conflicts with federal officials, agencies and federal government -U.S. Border issues -Crossing state lines to commit crimes -Denying civil rights of citizens -Conflicts or patents & copyrights	<p>State Jurisdiction:</p> <ul style="list-style-type: none"> <li>• Most civil disputes between citizens are settle in state civil courts</li> <li>• Most criminal disputes in the United States are settled in state criminal courts</li> <li>• Appeals from state courts are sent to state supreme courts (usually thought of as “court as last resort”)</li> </ul>
-Citizens of one state sue citizens of another -Counterfeiting U.S. currency -Kidnapping -Mail fraud -Interstate trade conflicts -National banking conflicts	-Conflicts with federal officials, agencies and federal government -U.S. Border issues -Crossing state lines to commit crimes -Denying civil rights of citizens -Conflicts or patents & copyrights		
<p>-<b>Jurisdiction</b> is the right to hear a case.                      --States have the power to create their own laws so they need their own court system. The national government has the power to create laws so they also need their own court system.                      --<b>Concurrent Resolution</b> is when Federal Law and State Law overlap. If a citizen commits a crime that violates both federal and state laws, the case might be heard by either level of the judicial system.</p>			

**JUDICIARY**

**LAYERS OF FEDERAL COURTS**

LAYER	TYPE OF JURISDICTION	DESCRIPTION OF JURISDICTION
<b>District Courts</b>	Original Jurisdiction	There are 94 district courts in across the United States. This is where a case is heard for the first time. Created by Article III of Constitution.
<b>Courts of Appeals (Circuit Courts)</b>	Appellate Jurisdiction	There are 12 courts of appeals. A previously tried case to check for fairness. Created by Congress.
<b>Supreme Court</b>	Original Jurisdiction Appellate Jurisdiction	Some cases can be appealed to Supreme Court which has the final say. Created by Congress.

--Over 90% of the Supreme Court's cases are ones being reviewed (appellate jurisdiction) but there are some cases are being heard for the first time in the Supreme Court (original jurisdiction). Cases that may start with the Supreme Court are ones that involve ambassadors, public ministers or state suing other states. In modern times, such cases are usually limited to state disputes concerning boundaries, water, or mineral rights.  
 --The Supreme Court was established by Article III of the U.S. Constitution. Congress was given the power to create any inferior courts.  
 --The **Judiciary Act of 1789** established the basic three-tiered structure of the federal court system.

**CONSTITUTIONAL COURTS VERSUS LEGISLATIVE COURTS**

	CONSTITUTIONAL COURTS	SPECIAL LEGISLATIVE COURTS
<b>Justification</b>	Directly or indirectly mentioned in Constitution	Needed for specific purpose
<b>Obtain Judgeship</b>	Appointed by President confirmed by the Senate	Appointed by President confirmed by the Senate
<b>Term</b>	For life (good behavior)	Typically a 15 year fixed term (Some courts need such a qualified expert they have no term)

--Congress creates inferior courts (constitutional ) and special legislative courts. When in doubt on test just pick Congress :)  
 --Sovereign Immunity: The United States has to grant you permission to sue them. Oddly enough, they allow it often. It goes through the U.S. Court of Claims.

**JUDICIARY**

**JUDICIAL REVIEW**

CASE	SPECIFICS	IMPACT
<i>Marbury v. Madison</i> (1803)	Jefferson became president but did not deliver the official John Adam's appointments papers for judges. Marbury sued and wanted a congressional law interpreted to give him his appointment. The Supreme Court said that Congressional law was unconstitutional.	The Supreme Court established it had the power to: <ul style="list-style-type: none"> <li>• interpret the words of the Constitution</li> <li>• to decide if government actions are constitutional (<b>Judicial Review</b>)</li> </ul>
This case established Judicial Review. Even though the Constitution does not actually say that the Supreme Court has this power.		

**PROCESS OF INCORPORATION (SELECTIVE INCORPORATION)**

DEFINITION OF SELECTIVE INCORPORATION	CONSTITUTIONAL JUSTIFICATION	PORTIONS OF BILL OF RIGHTS INCORPORATED	
The process through which the Supreme Court applies portions of the bill of rights to protect individuals from the State government.	The 14th Amendment requires all states to provide all citizens with <b>due process</b> and <b>equal protection</b> .	-Free speech -Free press -Freedom of religion --Assembly & petition rights -Association	1st Amendment
		-Search & seizure --Exclusion of evidence	4th Amendment
		-Self incrimination --Double jeopardy	5th Amendment
		-Confront witness -Impartial jury -Speedy trial -Right to counsel -public trial	6th Amendment
		--prohibition of cruel and unusual punishment	8th Amendment
--Prior to the 14th Amendment (1868), dual federalism dominated views where State laws were for States and national law was for the nation. Under this, the Bill of Rights only protected citizens from the National Government. The 14th Amendment changed all this. Now individual liberties can be protected from State governments too. --Also privacy has been incorporated even though it is not listed in Bill of Rights (it is implied and interpreted from several amendment cases)			

**JUDICIARY**

**HEARING AND DECIDING SUPREME COURT CASES**

STEPS IN THE PROCESS	DESCRIPTION
<b>DECIDING TO TAKE THE CASE</b>	The petitioner files a <b>petition for certiorari</b> : a brief arguing why the lower court erred. The <b>Rule of Four</b> : 4 justices (out of 9) must agree to listen a case. The court then issues a <b>writ of certiorari</b> to the lower court informing it of the Court’s decision and to request the full trial transcript.
<b>ORAL ARGUMENTS</b>	Each side gets 30 minutes to make their case and this included the time they get to answer questions from the Justices.
<b>THE CONFERENCE AND VOTE</b>	The justices meet once a week (during argument scheduled weeks) to discuss the case and attempt to influence each other. The decision is made on the case by a simple majority vote (usually 5 out of 9).
<b>WRITING OPINIONS</b>	Justices write the reasoning for their opinions. This is important because of <i>stare decisis</i> meaning let the decision stand. Future court decisions are based on precedent set on this decision.
<p>-In one year the Supreme Court has to decide how many out of the 9,600 cases were filed. About 75 were heard. It helps if: the federal government is the party asking for review, the case involves conflict among the courts of appeals, the case presents a civil rights or civil liberties question, the case involves the ideological or policy preferences of the justices, or the case has a significant social or political interest, as evidence by the present interest group amicus curiae briefs.</p> <p>-<i>In forma pauperis</i>: Filings by prisoners for a new trial (In the form of a pauper)</p>	

**OUTSIDE INFLUENCE**

INFLUENCE	DESCRIPTION
<b>AMICUS CURIAE BRIEFS</b>	Interest groups and concerned individual are allowed to send in briefs explaining their viewpoints and reasoning for a case they are interested in.
<b>HARVARD LAW AND YALE LAW REVIEWS</b>	Most justices went ivy--league law schools. They read items published from their alma -mater.
<b>LIVING IN SOCIETY</b>	They are people. They have opinionated family and friends. They read and watch the news. They are aware of public opinion.
<b>CLERKS</b>	Assist justices by handling briefs and analyzing important reports. They work closely with and influence the justices.

**JUDICIARY**

**THE GOVERNMENT’S INFLUENCE ON THE JUDICIARY**

BRANCH	PART OF BRANCH	DESCRIPTION
<b>LEGISLATIVE</b>	Senate	The Senate Confirms the presidential appointments for the judiciary. <b>Senatorial Courtesy:</b> is when the Senate from the State with the federal judge opening recommends judges to the White House.
	House of Representatives & the Senate	House impeaches judge (charged with crime) and Senate Convicts (decides if they guilty)
	House of Representatives & the Senate	Pay judges salaries
	House of Representatives & the Senate	Sets jurisdiction of legislative courts
	House of Representatives & the Senate	Creates new seats as needed. (Double # of seats in last 50 years)
<b>EXECUTIVE</b>	President	The President appoints judges (with Senate approval)
	Department of Justice	Attorney General (and people in office) prosecute federal criminals and defends the United States in court.
	Department of Justice	<b>Solicitor general</b> (appointed by President, confirmed by Senate) determines which cases to appeal the U.S. Supreme Court and represents the United States in the Supreme Court room. They also file <b>amicus curiae briefs</b> (friend of court brief) for cases not involving the United States.

**JUDICIARY**

**SUPREME COURT OPINIONS**

OPINION	DESCRIPTION
<b>Per Curiam Opinion</b>	Brief, unsigned court opinion.
<b>Opinion of the Court</b>	Majority opinion belief (this is the law of the land).
<b>Concurring Opinion</b>	Justices write this if they agree with the Opinion of the Court but for different reasons.
<b>Dissenting Opinion</b>	A justice writes this to explain why they disagree with the Opinion of the Court. (These are used as justifications when people try to make the Supreme Court change its mind in the future)

**FIVE SUPREME COURT CASES LIKELY TO BE ON THE AP TEST**

CASE	SIGNIFICANCE
<i>Marbury v. Madison</i> , 1803	Court establishes <b>Judicial Review</b> : The Court can now determine if government action violates the constitution or not. (case was about presidential appointments)
<i>McCulloch v. Maryland</i> , 1819	Court decides that Congress has the right to <b>implied powers</b> (not written in Constitution) due to the necessary and proper clause, in order to carry out their expressed powers. (case was about Maryland taxing the national bank)
<i>Gibbons v. Ogden</i> , 1824	Court says that only the National Government (Congress) has the power to regulate interstate commerce. (case was about issuing licenses for ports between New York and New Jersey)
<i>Gitlow v. New York</i> , 1925	The court uses <b>Selective Incorporation</b> for the 1st time in order to protect individuals freedom of speech from State governments. ( case was about New York charged Gitlow for printing a communist manifesto)
<i>Brown v. Board of Education</i> , 1954	Court declared segregated schools were unconstitutional (case was about Brown had to walk past white school to attend color school that was inferior)

**JUDICIARY**

**CHIEF JUSTICE ERAS**

CHIEF JUSTICE	PERIOD OF TIME	YEARS	GENERAL DESCRIPTION
<b>John Marshall</b>	1801--1835	34 years	Helped establish many court powers
<b>Roger Taney</b>	1836--1864	28 years	Favored state power
<b>Earl Warren</b>	1953--1969	16 years	Major civil right changes and cases
<b>William Rehnquist</b>	1986--2005	19 years	Major conservative influence

Chief Justices have no extra powers. The chief justice organizes hearings and guides discussion but all justices have equal power. Any 5 justices in agreement (or more) determine the majority decision. The chief justice writes the majority opinion if they are in the majority.

**THE JUDICIARY AND THE POLITICAL SPECTRUM**

POLITICAL SPECTRUM POSITION	THEY TEND TO SUPPORT
<b>JUDICIAL LIBERALS</b>	<ul style="list-style-type: none"> <li>● Broad interpretation of the Elastic Clause (Necessary and Proper Clause)</li> <li>● Broad interpretation of civil rights acts and laws</li> <li>● Pro-choice decisions</li> <li>● Strict limits on the separation of church and state</li> <li>● Affirmative action programs to end discrimination</li> </ul>
<b>JUDICIAL CONSERVATIVES</b>	<ul style="list-style-type: none"> <li>● Stricter limits on the use of the Commerce Clause</li> <li>● Limited uses of “necessary and proper”</li> <li>● More local and state control of civil rights questions</li> <li>● Pro-life decisions</li> <li>● Community standards for free speech and obscenity</li> <li>● Affirmative action as a form of reverse discrimination</li> <li>● Community limits to lifestyle choices</li> </ul>

--Justices and judges are people. They have political interests and agendas. Presidents nominate judges and justices with political beliefs similar to their own. They tend to reflect the biases of the two major parties.  
 --Judges are insulated from the public in that many serve for life and they are not elected.  
 --Judges answer to the public in that they could be impeached and removed by Congress, their records of opinions and actions are used to determine if they should be appointed in the first place, and Congress can react to unpopular decision by leading the charge to amend the Constitution.  
 --Generally **judicial liberals** favor a more open interpretation of the powers of the Constitution. Those who oppose that view are **judicial conservatives**.



AP AMERICAN GOVERNMENT STUDY GUIDE  
**JUDICIARY**

**APPROACH OF COURTS AS A POLICY MAKER**

<b>JUDICIAL APPROACH</b>	<b>DESCRIPTION</b>
<b>JUDICIAL ACTIVISM</b>	When judges or courts make rulings that support a particular political agenda or have a direct effect on policy.  Example: <i>Brown v Topeka Board of Education</i> , 1954 evidence of an instance in which judicial action can be needed.
<b>JUDICIAL RESTRAINT</b>	The belief that policy decisions should be left to the legislative and executive branches because the judicial branch's role is to interpret and apply the law, not to create it.

--The Court exerts policy--making influence through **Judicial Review**, setting legal precedents, and overturning the decisions of lower courts.  
--**Stare decisis**: Latin for "let the decision stand" is based on the custom of making judicial rulings based on decisions made by earlier, similar cases. However the Supreme Court has overruled its own precedent on many occasions.