



Communication Law & Ethics

RU COMS 400 UNIT 1 Introduction

Class web site: <https://revolutionsincommunication.com/law>

Follow along with Section 1

<https://revolutionsincommunication.com/law/intro/>



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Introductions

1. Introduce a class member to us.
2. Take five minutes to talk with one or two others sitting near you. Write down name, hometown, major & concentration, career goal.
3. What issues in media law you're aware of or want to know more about. (For ex: ethics, censorship, copyright, libel, hate speech, etc.)



On track: overall

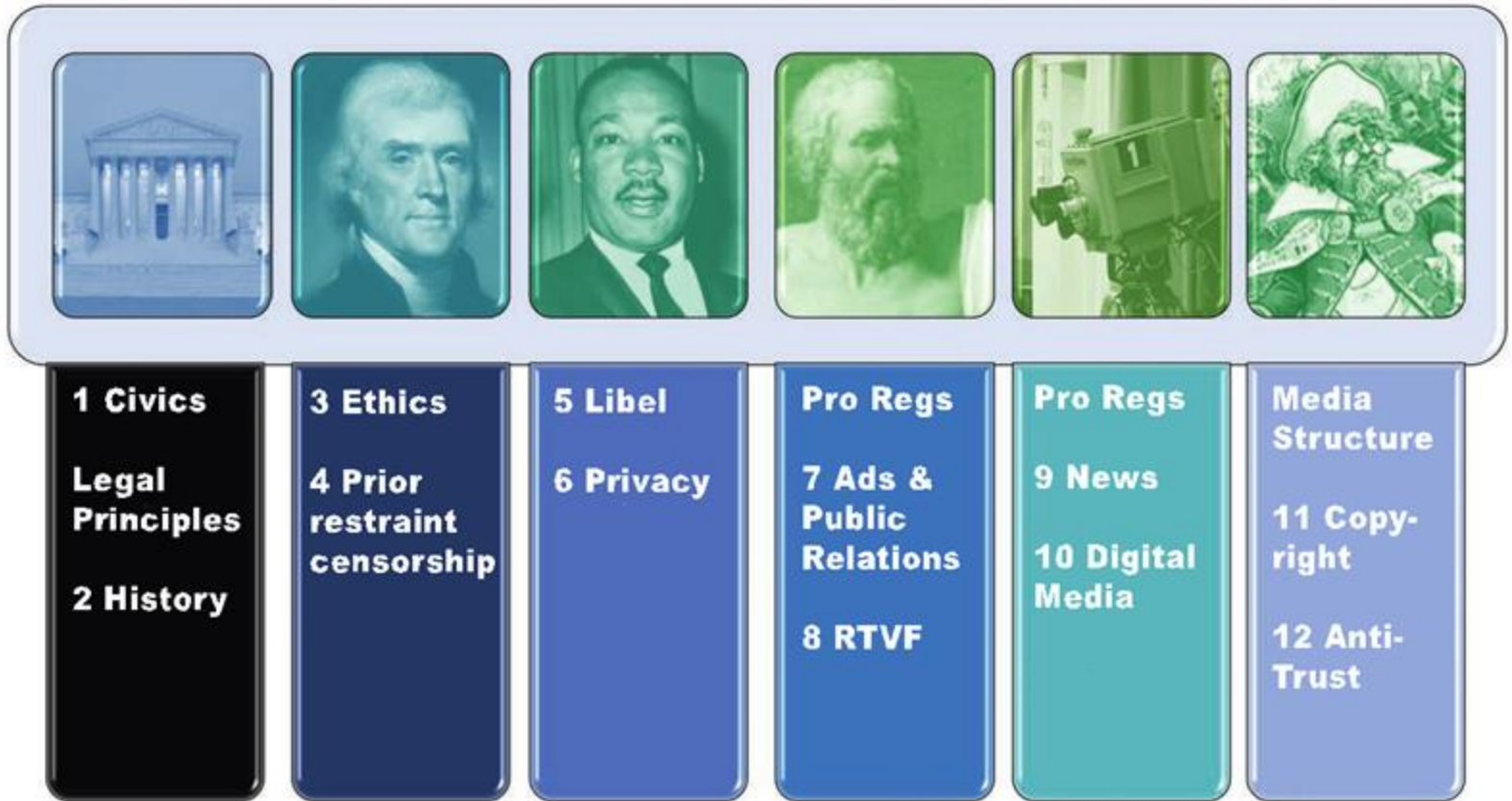
- Read the textbook revolutionsincommunication.com/law
 - 12 sections / one per week
 - Practice quiz at the end of each section
- Take the section quiz on D2L
 - 12 quizzes / one per week
- Extra reading and video responses
 - Usually 2x / month first half of semester
- Turn in Intros today, A1 by next week
 - Put your last name on the file and in the text when you turn it in on D2L
 - Ex: *Yourname.Assn1.docx*



Today:

1. Structure of the course, syllabus, readings, quizzes, process, groups
2. Introductions
3. Intro to comm law
4. Structure of the law
5. Legal terms & concepts
6. Jurisprudence in comm law
7. Distinguishing comm law from other types of law

Six main content areas



Recent issues



The spectrum of rights



Copyright

All Rights Reserved
Re-use requires the permission from the copyright owner.

Creative Commons

Some Rights Reserved
Re-use is permitted without permission under the specifications shared in the license.

Public Domain

No Rights Reserved
May be used without permission.



PHOTOGRAPHY IS NOT A CRIME



Censorship, libel, privacy laws



Can Radford University censor student media? Why or why not?

If a reporter makes a mistake, how easy should it be for a public official to sue for libel?



If Radford police wrongly publish a name in connection with a major crime, can the media be sued for republishing that charge?

Media Ethics ...



Guess which is “**looting**” and which is “**collecting**” emergency food...



These two photos are from the Katrina disaster of 2005, and they were labeled differently by the news agencies.

How do we approach issues of balance and fairness to all?
What are the rules?



Intro / Civics

1. Introduction to media law

US First Amendment

International standards for
freedom of speech



Virginia Constitution, 1776

That all men are **by nature** equally free and independent and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety ... **That all power is vested in, and consequently derived from, the people**, that magistrates are their trustees and servants, and at all times amenable to them...



US Constitution, First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.



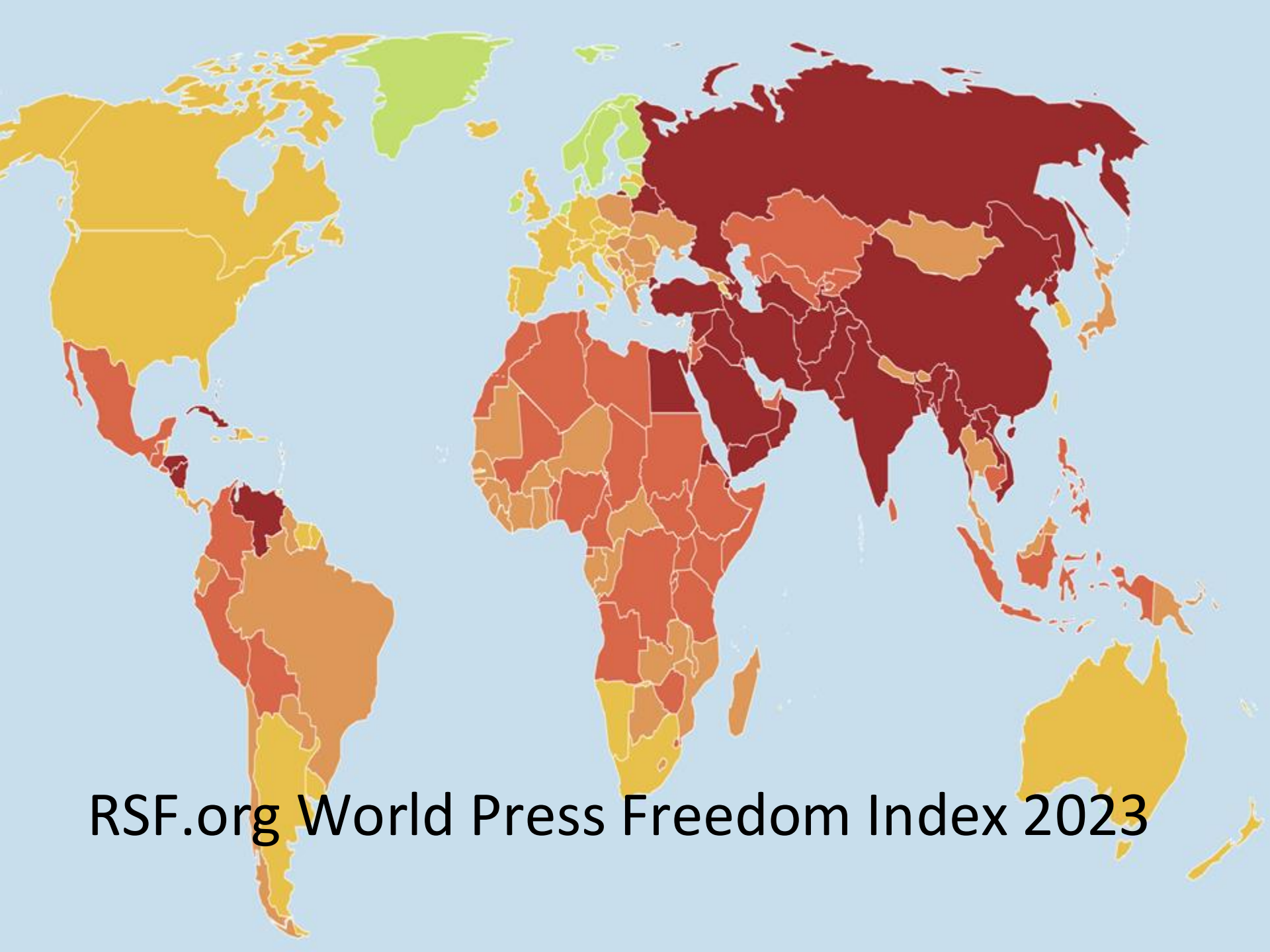
*The European Convention for the Protection
of Human Rights and Fundamental
Freedoms, Article 10*

*Everyone has the right to freedom of
expression. This right shall include
freedom to hold opinions and to receive
and impart information and ideas
without interference by public authority
and regardless of frontiers...*



United Nations Declaration of Human Rights, Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.



RSF.org World Press Freedom Index 2023

US is # 45

- President Biden -- healthy improvements to government accountability and transparency.
- Trumps attacks on press as “enemies of the people” pushed US rating down
- Also arrests of journalists covering demonstrations
- Still there is a lack of shield laws to protect confidentiality of sources, and searches and confiscations of journalists equipment
- Structural barriers to press freedom persist

Saudi Arabia is # 170

- No free media, political parties, unions, etc
- Journalists and citizens routinely jailed, sometimes executed, for any criticism
- Jamal Khashoggi assassination one of many
- Blasphemy, insulting religion, "inciting chaos", "jeopardizing national unity" and "undermining the image and reputation of the king and the state" are typical charges in secret courts.
- Hundreds of people are executed every year for crimes ranging from murder to attending pro-democracy protests. Trials and executions are kept secret, even from relatives.

China is 179 / 180

- “The world’s largest prison for journalists”
- Kunchok Jinpa, a leading media source of information about Tibet, died in February 2021 as a result of mistreatment in prison
- Liu Xiaobo, a Nobel peace laureate, and Yang Tongyan, dissident blogger, died in prison 2017
- Secret trials and forced confessions
- Arrests of editors and journalists in Hong Kong 2022 – 23
- Forces trading partners like Google, Apple, & satellite companies, to submit to state censorship
- RSF calls China a “predator of press freedom.”

China celebrates May 35th



Tienanmen Square June 4, 1989



草泥馬之歌

Song of the "Grass Mud Horse" (AlpaCa)

This song is reflecting a protest of Chinese government's censorship of free speech and profanity on the internet.

The major characters in the song have names of the animal "Cao Ni Ma", which sound similar to Chinese curse words.



I am a Grass Mud Horse.
Please listen to this song.

我是一隻草泥馬，
請聽『草泥馬』之歌



So: Why study media law ?

- Understand how free countries balance rights
- Professionals need to know how to avoid doing harm and ...
- To know that the legal system protects ethical public communication, free press and free markets
- That freedom of speech protects unpopular points of view as well as popular ones
- That free speech issues can be far away, but they can also be close to home

Deductive reasoning

Sherlock Holmes uses deductions to solve his cases. Take the case of Silver Blaze, in which a dog did not bark when a crime took place.

Holmes deduced that the dog probably knew the person who was committing the crime.





Ben Franklin

Endorsing the
Constitutional
convention in
1787



*I wish ... every Member of the Convention,
who may still have Objections to it, would
with me on this Occasion doubt a little of
his own Infallibility ...*



How to study media law

- Student involvement
- Critical thinking
- Deductive reasoning / by analogy
 - from a general rule (court decision) to a specific conclusion (how the rule should be applied in a particular case).
- Inductive reasoning / from specific cases to general rules (jurisprudence)
- Epistemology / use authoritative & expert sources



1a. Distinguishing Media law

What distinguishes media law?

- Civil law cases
- Content issues – Constitutional law, some statutory law
- Structural issues – Regulatory law through FCC regulations, anti-trust

What distinguishes media law?

- Media law emerges from a large and complex historical tradition of the struggle first for religious and next for political freedoms.
- Tests applied in media law content cases give a strong "preferred position" to individual liberty of speech as protected by the First Amendment to the US Constitution. However, tests applied in structure cases use a standard "preponderance of evidence" test. "Guilt beyond a reasonable doubt" is only used in criminal cases as part of the Sixth Amendment guarantee of a fair trial.



What distinguishes media law?

Content issues

are usually between a plaintiff and a respondent.

-- In the US, content issues usually involve Constitutional law and common law.

Prior restraint, libel, invasion of privacy, and obscenity are content issues tried in civil courts

Structural issues - Copyright and some broadcasting content issues are governed by statutory and regulatory law.

1st Amendment
Constitutional law,
Censorship, libel, privacy,
commercial speech,
social media

(content issues)

Media regulation

Advertising
content,
anti-trust &
broadcasting
structure

**Entertainment
law,** copyright,
contracts etc.
(structural issues)

US media content regulation

Type	Content	Resolved by ...
All media	Sedition, criticism govt, leaking documents	Mostly legal - High burden of proof
All media but broadcasting	Obscenity	No longer illegal (but not protected by 1 st Amendment)
All media	Libel, slander	Private civil lawsuits
All media	Privacy, intrusion,	Private civil lawsuits
All media	Copyright	Private lawsuits, Bern Convention, US LofC
Advertising	Products & services	FTC, FDA, FCC
Broadcasting	Obscenity, indecency	FCC
Broadcasting	Ads aimed at children	FCC

US media structural regulation

Type	Structure	Resolved by ...
Print ownership	Antitrust laws	Legislation (Congress)
Radio, TV ownership	Bcast ownership rules, Antitrust laws	FCC, Legislation (Congress)
Broadcast cable satellite TV	Technical standards	FCC, ITU (international)
Satellites	Technical standards	ITU (MPEG, JPEG, others)
Internet and web	Domain names, technical issues	ICANN, ITU



2. What is law?

What are the types and sources of law, in both the US and the world?



What is law? (formal definitions)

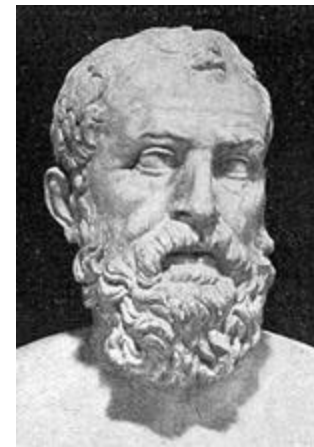
"A body of rules of action or conduct prescribed by a controlling authority." -- Black's law dictionary

Constitutional law defines the role, powers, and structure of the executive, the legislature (or parliament), and the judiciary; as well as the basic rights of citizens

Law balances individual rights against other priorities such as public safety

What is law?

Anacharsis ... laughed at Solon for imagining that the dishonesty and covetousness of his countrymen could be restrained by written laws, which were like spiders' webs, and would catch, it is true, the weak and poor, but easily be broken by the mighty and rich.



To this Solon rejoined that men keep their promises when neither side can get anything by the breaking of them; and he would so **fit his laws to the citizens**, that all should understand it was [better] to be just than to break the laws.

- -- Plutarch, Parallel Lives, c. 100 A.D.

What is law?

Judge: "You are the more guilty of the two, in the eye of the law; for the law supposes that your wife acts under your direction."

Mr. Bumble: "If the law supposes that ... **the law is an ass** — an idiot. If that's the law, the law is a bachelor; and the worst I wish the law is that his eye may be opened by experience."

-- Charles Dickens, Oliver Twist





3. Legal systems

Common Law vs Civil Law

Why “case law” or Common Law
is important in the US

Sources of law



World legal systems

Common law: United States, UK, Ireland, Canada, Australia

Civil: France, Germany, most European and Latin American nations

Traditional: India

Religious: Arab nations, Israel



Common vs Civil Law

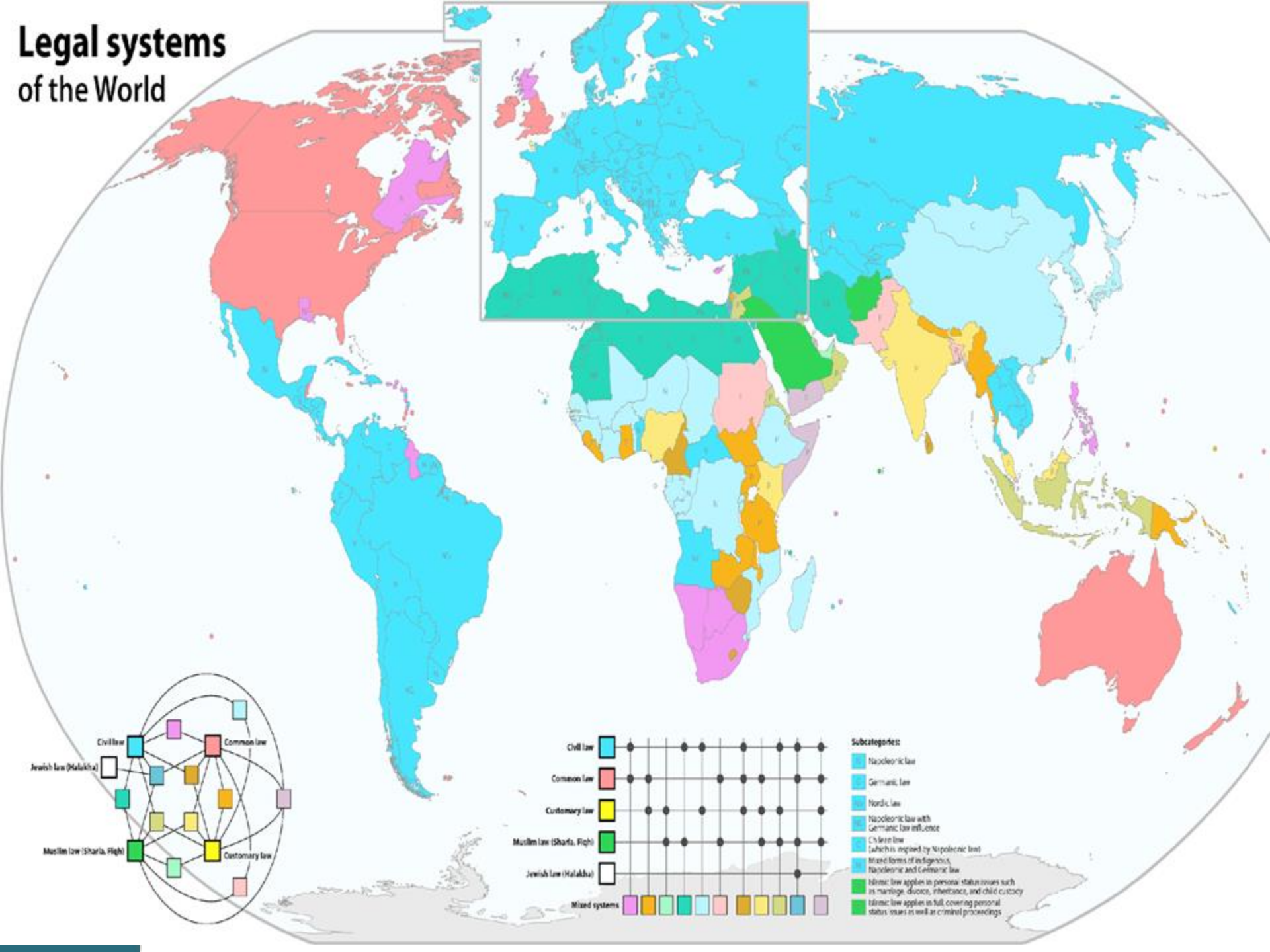
Common: Judge is umpire in a plaintiff vs defendant courtroom system

Civil: Judge(s) lead court inquiry like prosecutors

Common: Judges review laws based on Constitution or legal precedent

Civil: Judges apply laws directly

Legal systems of the World



- Civil law
- Common law
- Customary law
- Muslim law (Sharia, Fiqh)
- Jewish law (Halakha)
- Mixed systems

- Subcategories**
- Napoleonic law
 - Germanic law
 - Nordic law
 - Napoleonic law with Germanic law influence
 - Chinese law (which is inspired by Napoleonic law)
 - Mixed forms of indigenous, Napoleonic and Germanic law
 - Islamic law applies in personal status issues such as marriage, divorce, inheritance, and child custody
 - Islamic law applies in full, covering personal status issues as well as criminal proceedings



Five types (sources) of law

Statutory (Congress, state legislatures)

Regulatory (Executive agencies)

Common (Judiciary)

Reviews statutory and regulatory law

Equity (injunctions, divorce, probate)

Chancery Court, redress of Common Law complaints

Constitutional

- General term for legal questions about balancing individual rights and the structure of the government



Criminal vs civil procedure

Criminal charges or indictment brought by police or prosecutor

Penalties in criminal law range from small fines to jail terms /execution

Almost all media law is civil (not criminal)

Exception: public relations misrepresentations of medical or securities information

Civil law (note different meaning here) involves lawsuits between individuals

Penalties include fines and sometimes remedial action, but never jail



Federal vs state

Upper and lower division courts

(in Va, circuit vs district court)

Circuit courts handle large criminal and civil cases

District courts handle traffic, misdemeanors, small claims,

State verdicts may be appealed through state appeals courts and then to a state supreme court

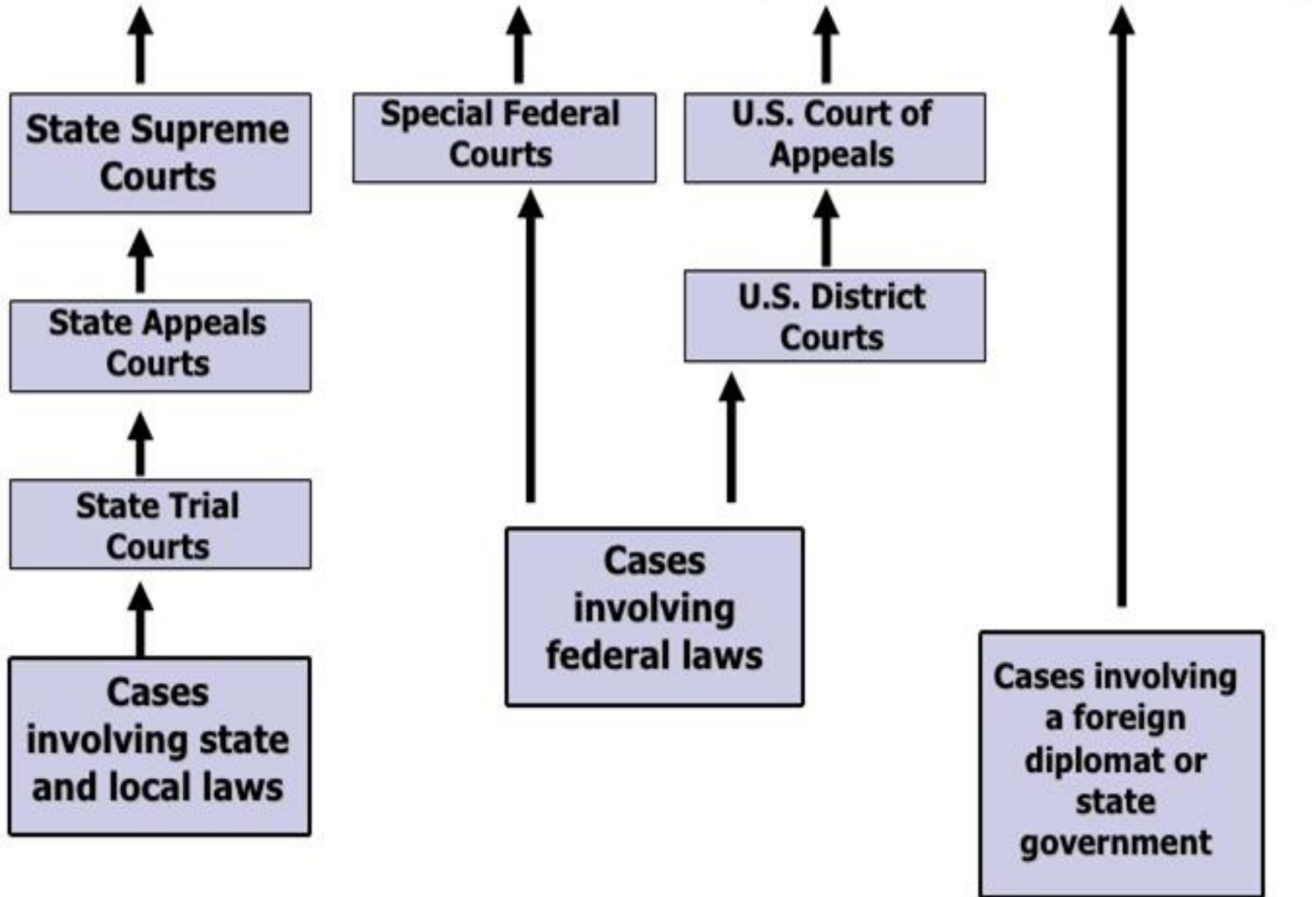
Federal courts have trial and appeals courts and usually involve charges concerning federal laws

Federal courts may also try cases with participants from different states (diversity jurisdiction)

Federal verdicts may be appealed through federal appeals courts and then to the US Supreme Court

The US Supreme Court also hears cases appeals from state supreme courts

The United States Supreme Court



**United States
Supreme Court**

Guam

Puerto Rico

Virgin Islands

Federal Circuit

D.C.

Armed Forces

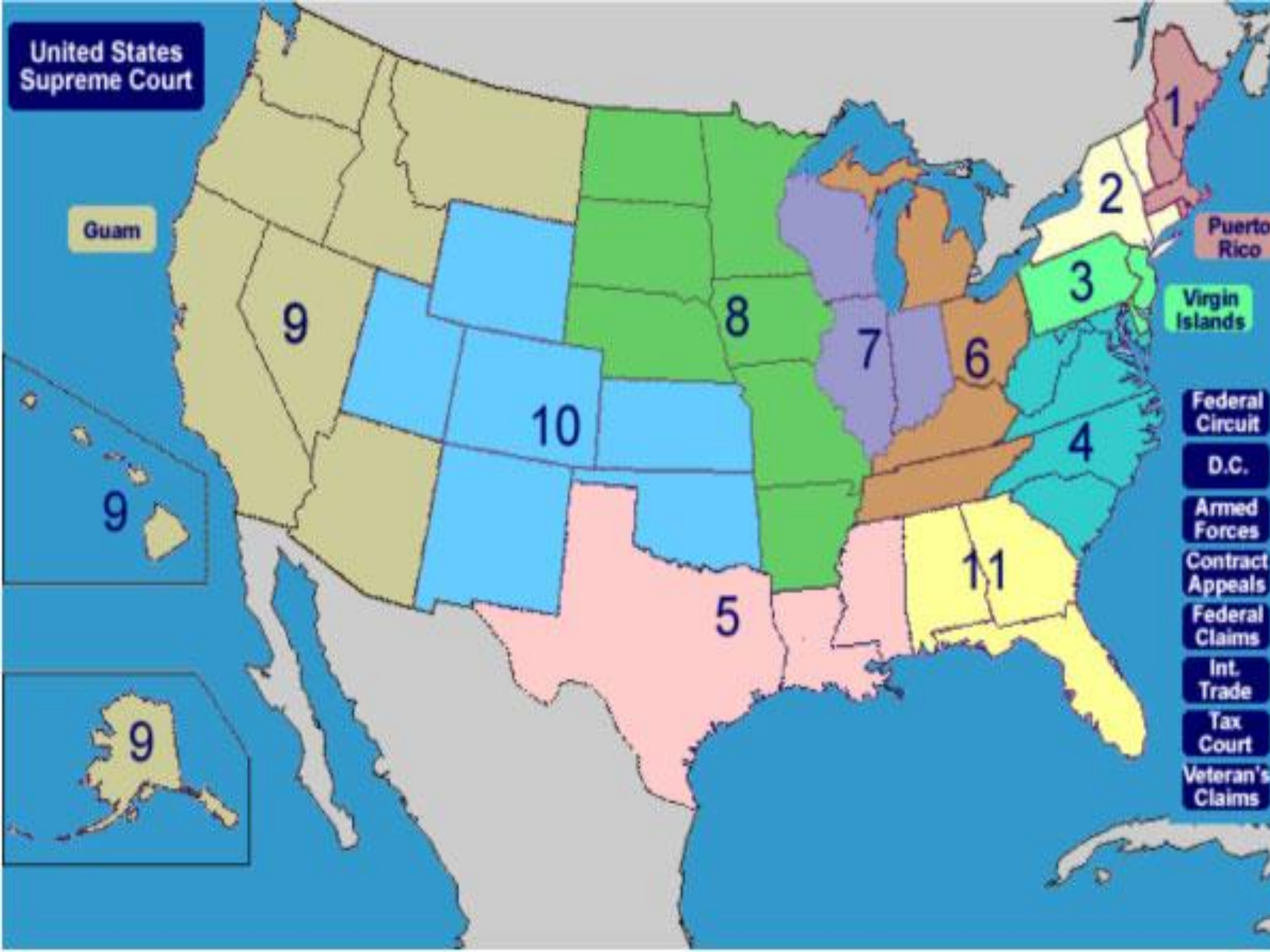
Contract Appeals

Federal Claims

Int. Trade

Tax Court

Veteran's Claims





4-5. Legal principles

This is a very general introduction to some legal terms and important concepts.

You're probably familiar with many of them, such as the standard (or burden) of proof test in a criminal case ...

Legal terms & concepts

Internal principles of the law and legal systems, especially equal justice under law, stare decisis, and due process.

External issues involving the interaction between the law and social institutions within a larger context. We may be concerned, for example, with questions such as the “original intent” of the framers of the Constitution, as opposed to the idea of a “living constitution” in which definitions of human rights may expand to meet new social conditions.

We may also be concerned with the reservoir of trust that people place in the courts, and the way that socially challenging decisions like same-sex marriage, flag burning, school prayer and abortion can draw down that reservoir of trust.

Legal terms & concepts

Equal Justice and the Rule of Law -- This is an ancient concept and one of the most important and hard-fought ideas in human history. The principle is that no one — not even a king — is above the law.

Due Process of law -- Respect for individual rights through legal procedures originated in the Magna Carta of 1215. Due process for all American citizens is the main point of the 14th Amendment.

Constitutionality – The requirement that a law is in harmony with the Constitution.

Stare decisis -- Let the precedent stand. (Respect prior court decisions)

Legal concepts – Supremacy

Federal supremacy — Federal law is superior to state law: The Supremacy clause in U.S. Constitution (Article 6) means that states are bound by the U.S. Constitution, federal law and federal agency regulations.

Fourteenth Amendment (passed in 1868) makes the US Bill of Rights applicable to the states. However, this did not happen all at once. Instead, a gradual process called Constitutional Incorporation took place.



Burden of Proof

In a criminal case, innocence is assumed until guilt **beyond a reasonable doubt** is proven.

In a civil case, the standard is the **preponderance of evidence**, (51% vs 49%)

However, in Constitutional cases, we apply **strict or intermediate scrutiny** tests to be applied.



Scrutiny: 3 tests for constitutionality

When courts review laws that curtail constitutionally protected rights, they first determine the level of scrutiny to be applied

Rational basis review – routine non-Constitutional regulation

Intermediate scrutiny - content neutral regulation

Strict scrutiny - specific content regulated

Rational basis review

- Most lenient test for a law
- Government only has to show that a law has a legitimate interest that is rational and non-arbitrary
- Generally used when fundamental rights or suspect classifications are not at issue
 - = groups of people who have been historically discriminated against.

Intermediate Scrutiny

Any law affecting freedom of speech must

- 1) be within power of government;
- 2) advance an important gov't interest;
- 3) be narrowly tailored, not overly broad
- 4) leave open alternative options for communication

eg: Time, place & manner restrictions

Intermediate Scrutiny

Ex: Central Hudson v NY PUC 1980

- 1) Legal? (Yes, advertising)
- 2) Important government interest? (Yes, save energy)
- 3) Further the interest? (No, advertising doesn't necessarily mean energy waste)
- 4) Narrowly tailored? (No, its overly broad; it affects all company speech in one narrow interest)

Strict Scrutiny

When a law infringes on a fundamental constitutional right, and regulates the content or subject of a message, it is subject to strict scrutiny review. So, is the law ...

- 1) Justified by a compelling government interest?
- 2) Does it further the interest?
- 3) Narrowly tailored?
- 4) Least restrictive

Strict Scrutiny

Ex: Reed v Town of Gilbert (2015)

Clyde Reed, pastor of a church, placed temporary signs in Gilbert, Az advertising services. This violated a town ordinance that placed more restrictions on temporary directional & religious signs than political signs. So, was there a *compelling government interest* regulating temporary signs in Gilbert?

Strict Scrutiny

Ex: Reed v Town of Gilbert (2015)

Justice Clarence Thomas (writing the opinion for the majority) held that the content-based restrictions that did not survive strict scrutiny because the ordinance was not narrowly tailored to further a compelling government interest.

Legal terms – Overbreadth

If a law is vague, or can be selectively administered, it may violate Constitutional rights.

A good law is not **overly broad**, but rather, is **narrowly tailored** to meet compelling interests.

Ex: In US v Stevens, 2010, the Supreme Court said that a law banning videos depicting cruelty to animals was overly broad and should have been more narrowly tailored. Although the intent of the law was good, the way the law was written could have led to problems.

Legal terms – Forum

Public forum –

Parks, streets, traditional areas for free speech

No content restrictions

Limited **time place manner** restrictions

Limited purpose public forum

City council, university lecture halls

Time, place, manner restrictions allowed

Need not be least restrictive

Non- public forum.

- *Military bases, airports, private property*
- Content based restrictions OK

Legal terms & concepts

Certiorari (cert.), — A writ granted by the US Supreme Court agreeing that they will hear a case.

Diversity jurisdiction — Case where petitioners and respondents are in different states, and the case should be heard in federal court not state court

Demurrer— The legal equivalent of “so what?” Even if the facts are as stated, the the legal context is not so serious that the case should proceed.

En banc — More than one judge in an appeals court

Motion for summary judgement, or motion to dismiss — A pre-trial motion stating that there is so little evidence that there is no point in going on with a trial.

Petitioner and respondent, or plaintiff and defendant — Parties to the case.

Opinion — A judge’s findings in a case, as opposed to a verdict. An opinion may uphold or reverse a lower court.

Venue — Location where case is heard

Verdict — A jury’s findings in a civil or criminal trial.

Voir dire— Jury selection



Legal terms - civil law

Brief, certiorari, concur, demurrer, discovery, dissent, distinguish, ex parte, injunction, interrogatories, motion, opinion, petitioner (plaintiff), quash, remand, reverse, respondent (defendant), subpoena duces tecum, summary judgment, stare decisis, tort, uphold, venue, voir dire



6. Course of a lawsuit

We'll follow a hypothetical case to get an idea of procedure and terminology

The course of a lawsuit



Smith sues [?] Jones

The initial complaint is called Smith v Jones. It is filed in the office of the clerk of the circuit court and papers are served on the respondent.

Preliminary motions are filed (motion to dismiss, demurrer, change of venue)

Trial date is set, attorneys start discovery process; jury is empaneled (voir dire) and judge instructs jury on law

The course of a lawsuit 2



Appeal: Jones sues Smith

Now the suit is called Jones v Smith

Appeals court reads briefs, hears oral arguments, Jones wins,
appeals court decides to remand to lower court

But Smith appeals to the Supreme Court

The course of a lawsuit 3



Appeal: Smith sues Jones

Now the suit is called Smith v Jones again

The Supreme Court grants certiorari, reads the briefs, hears oral arguments, and later issues an opinion in the case.

Jones wins again. Smith has nowhere else to go.

There are several dissenting opinions issued by judges who think Smith should have won. But Smith v Jones is now an established precedent.



7. Jurisprudence

What do we think that the law should do?

Normative, rather than descriptive, approach to law

Jurisprudence is the broad term for the history, theory and philosophy of law. It is where questions about the purpose of law are addressed.

Used in a sentence, you might say that the a certain decision was important in First Amendment jurisprudence, or that a lawyer's grasp of jurisprudence was legendary.



Examples of issues in Jurisprudence

- Should the government regulate political speech (and money) in elections, or should anyone be allowed to participate in any way they like? Is spending money in itself a form of free speech?
- Should the law protect national symbols (eg, the American flag), or should the law protect a deeper principle in protecting the right to burn a flag?
- Should the law protect the reputations of public people, or should the law protect the ability to criticize public people? And who is public?
- Should the law boost civic virtue (and how can we be sure what that is), or should the law facilitate individualism (and what limits, if any, should there be)?
- Should the law enhance copyright protections or should it enlarge the public domain?
- How do we measure the equity and effectiveness of the law?

1st Amendment Jurisprudence

- Debate about freedom of religion, press, speech, assembly and petition is constant constant in most civilizations. We'll look at this in [Section 2](#) (history.
- In the US, the underlying theory of a federal First Amendment law doesn't start to take shape until the 1920s, as part of the Constitutional incorporation process of the US Bill of Rights (the first ten amendments to the US Constitution).
 - Incorporation was the process under which state law was subordinated to federal law after the US Civil War.
- First Amendment jurisprudence (religion, press, free speech, etc.) involved state laws until the World War I era.
- Remember, "Congress shall make no law..." didn't mean that state legislatures could not make law, at least, before the incorporation process.

1st Amendment Theories

Balancing — Zechariah Chafee wrote his foundational book Freedom of Speech (1920) in the context of the WWI Seditious Act, the anti-Red “Palmer Raids” by the attorney general and especially the Schenck v US ‘clear and present danger’ decision of 1919, which he found ill-advised.

1st Amendment Theories

Absolute protection for free speech —
Alexander Meiklejohn argued
that nothing is more important to a
democracy than freedom of speech. For
example, see **Free Speech and its Relation
to Self-Government, 1948.**

1st Amendment Theories

Libertarianism — Action vs Expression —

Thomas I. Emerson The underlying theory of the First Amendment should distinguish between action and expression. Also, freedom of expression includes the right to form and hold beliefs on any subject and to communicate those beliefs to others by whatever medium, along with the right to hear the opinions of others, and the right to inquire, to have reasonable freedom of access to information

1st Amendment Theories

Context — Franklyn S. Haiman – Trying to distinguish between expression and action causes more harm than good, Haiman argues. All expression and action is in effect communication. It's the context, the potential for harm, that the law has to consider.

1st Amendment Theories

Social Justice — Robert W. McChesney — The New Theology of the First Amendment, *Monthly Review*, March 1, 1998. — McChesney discusses freedom of speech in the context of corporate and commercial intrusion on political speech issues.

If the rights to be protected by the First Amendment can only be effectively employed by a fraction of the citizenry, and their exercise of these rights gives them undue political power and undermines the ability of the balance of the citizenry to exercise the same rights and/or other constitutional rights, then it is not necessarily legitimately protected by the First Amendment.”

1st Amendment Theories

“Code” versus law — Lawrence

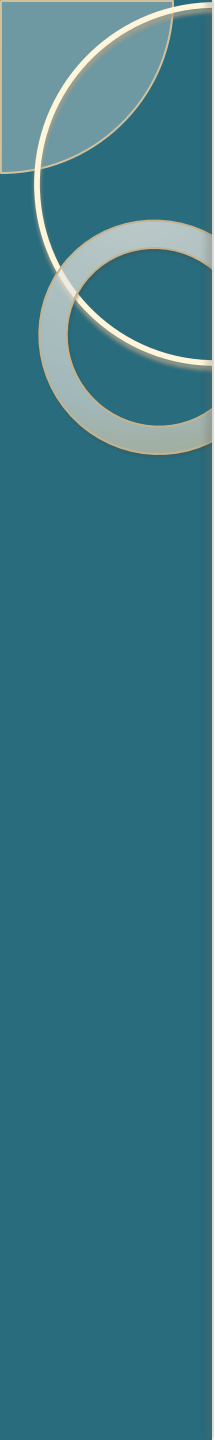
Lessig Digital media is already balanced between the a) code of laws written by elected officials and, b) the computer code written by digital media companies who structure the media experience.

Individuals are regulated by four forces: the law, social norms, the market, and architecture (technical infrastructure).

1st Amendment Theories

Human Dignity law

- The marketplace of ideas is broken. It cannot correct false, harmful and hateful speech due, in part, to the complexities of new media.
- Karl Popper's Paradox of Tolerance – A society can be too tolerant. It can open the door to its own destruction by being overly tolerant to destructive ideas.



Jurisprudence and Constitutional interpretation

1. Originalist (very conservative)
2. Literalist (conservative)
3. Modernist (liberal)
4. Instrumentalist (very liberal)



Jurisprudence and Constitutional interpretation 1

Originalist / Original Intent

Interpret the Constitution to mean what the framers intended it to mean at the time. The Constitution is a legal document, they argue. It's a contract. Originalists often refer to the Federalist Papers and other contemporary writings to understand the original meaning of the Constitution. (Antonin Scalia and Clarence Thomas)



Jurisprudence and Constitutional interpretation 2

Literalist / Strict Constructionist

Strict constructionists read the law according to the literal definitions of the words involved. They do not try to infer the Framers' intent behind the words, but stick to the meanings of the actual words used.

(John Roberts, William Rehnquist)



Jurisprudence and Constitutional interpretation 3

Modernist / Living Constitution

The Constitution is a "living" document. As civilization changes, the Constitution may also need to change with times. The Framers had no ability to foresee the needs of the future. Judges have the responsibility to "fill in the gaps." Courts may strike down laws that restrict fundamental human rights.



Jurisprudence and Constitutional interpretation 4

Instrumentalist / Living Constitution

Apply the Constitution in the way that is most practical for contemporary society, regardless of the original intent of the document or strict definitions of its words.

(John Paul Stevens, David Hackett Souter, Ruth Bader Ginsburg and Stephen Breyer)



Review:

- Six components of 1st Amendment
- Five sources of law
- Federal / state court system
- Standards of evidence
 - Criminal – guilt beyond _____ ?
 - Civil – preponderance of _____ ? Constitutional – strict _____ ?
- Legal terms & concepts
 -