

INTRODUCTION TO LAW

5TH
EDITION



JOANNE BANKER HAMES | YVONNE EKERN

Introduction to Law

Fifth Edition

Joanne Banker Hames
DeAnza Community College

Yvonne Ekern
Santa Clara University, School of Law

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Preface

The study of law attracts students for a variety of reasons. Many see the study of law as a career choice—as the opportunity to become a lawyer, a paralegal, or some other related professional. Some are interested because of personal dealings with the legal system, while others are interested simply because it is a fascinating subject. Whatever reasons motivate the student, an introductory class in law must accomplish certain basic objectives. Students must develop an understanding of the organization of the legal system. They must comprehend basic legal concepts related to procedural and substantive law. Students should also be introduced to cases, statutes, and the Constitution, the sources of all of our laws. While students in an introductory law class should not be forced to learn about the law entirely through reading cases, some experience in reading cases is essential to learning about the law.

Our years of teaching convince us that any introductory law course must begin with and emphasize the development of a strong legal vocabulary. Also important is the opportunity to use and develop the critical thinking skills so important to any law-related career. Our goal, therefore, in writing this text is to help instructors by providing beginning students with a book that keeps their interest while providing an overview of the organization and operation of the legal system, as well as an introduction to some of the basic concepts of substantive and procedural law. More importantly, however, we have included several features that give students the opportunity to develop a strong legal vocabulary and to build their critical thinking skills.

NEW IN THE FIFTH EDITION OF *INTRODUCTION TO LAW*

Feedback from instructors and students who use this text confirmed that the basic organization and features of this textbook are successful. Students especially appreciate the extensive key term definitions in the margin, the interesting cases, and the wide use of common hypothetical cases to explain the application of legal principles. These features remain in the text. However, the law is not, nor will it ever be, a static entity. Any useful textbook dealing with the law must reflect these changes. As a result, our goal in this edition is to also provide students with the following.

- Updates to the law and new exhibits containing current legal forms and court documents
- A broader view of some of the substantive and procedural areas of law
- Updated information on the current impact of technology in law practice
- Relevant hypothetical situations encouraging classroom discussion of ethical conduct for all participants in the legal profession
- Discussion of new court cases illustrating current trends in the development of our laws
- More practice in building critical thinking skills with additional case questions and end-of-chapter exercises.

To accomplish these goals, the fifth edition of *Introduction to Law* contains the following new features:

- Additional end-of-chapter exercises were added to many chapters
- A new feature, Ethical Concerns: What Should the Lawyer Do? was added to each chapter

- All legal forms were updated to current versions
- Several recent cases, mostly from the U.S. Supreme Court, are presented in most chapters
- A Table of Cases follows the Table of Contents
- Appendix IV contains a new case and more current case, *Association for Molecular Pathology v. Myriad Genetics, Inc.*
- All chapters have been edited and updated as follows:
 - Chapter 3 was expanded to include updated information about the use of technology in the courts, the role of the National Center for State Courts, and the role of law office administrators. The sections on attorney and paralegal ethics have been reorganized for a better understanding of the differences in these professions.
 - Chapter 4 was expanded to include a section on the current practice of conducting legal research through the use of computers. This section includes a discussion of Westlaw, Lexis and Bloomberg Law. Several screen shots are added for illustration.
 - Chapter 5 was updated and expanded to address the importance of developing basic legal writing skills. Included in the additional material is a section on outlining and additional examples of legal writing, including an excerpt from a Supreme Court brief (*Illinois v. Caballes*, 543 U.S. 405 (2005)) with margin notes explaining how the author of the brief utilizes basic legal writing techniques.
 - Chapter 6 includes several new Supreme Court cases and updates to various areas of constitutional law. New cases relate to freedom of religion and employment discrimination (*Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*), freedom of speech dealing with pickets at military funeral of a gay soldier (*Snyder v. Phelps*), falsely claiming possession of military medal (*United States v. Alvarez*) and campaign finance (*Citizens United v. FEC*); the Voting Rights Act (*Shelby County v. Holder*).
 - New sections also discuss the taxing power and universal health coverage or “Obamacare” (*National Federation of Independent Businesses v. Sebelius*) and the standing issue (case in controversy) as illustrated in California same-sex marriage case (*Hollingsworth v. Perry*).
 - Chapter 7, Torts, is completely revised to emphasize the basic elements and defenses of traditional torts. The chapter also includes a new section on the relationship of tort law to civil rights violations and continues to include a discussion of workers compensation and toxic torts.
 - Chapter 8 contains a new section, Changing Face of Family Law, including discussions of *United States v. Windsor* (unconstitutionality of the Defense of Marriage Act) and state reaction to adoptions by same-sex couples.
 - Chapter 9 provides new and more current court documents to illustrate concepts.
 - Chapters 10 and 11 were reorganized and new content added to each chapter. Chapter 10 now deals only with the law of contracts and property. The discussion of contract law provides more detail on the elements of contract formation and consideration. The section on performance of contracts now includes a discussion of conditions. The section on property law now includes a discussion of adverse possession, land use, and government takings. New U.S. Supreme Court developments

in patent law and DNA are also discussed. Chapter 11 deals with the law of agency, business organization and bankruptcy. Employment law issues are discussed in conjunction with agency law. All official forms are updated.

- Chapter 12 contains an expanded discussion of diversity of citizenship involving corporations under *Hertz v. Friend*, a discussion of e-filing, and a discussion of class actions.
- Chapter 13 now contains a discussion of Federal Arbitration Act.
- Chapter 14 contains new law showing development in the area of criminal law related to double jeopardy (*Evans v. Michigan*) and life sentences without possibility of parole for juveniles (*Miller v. Alabama*).
- Chapter 15 contains new case law dealing with the right of police to swab arrested individuals for DNA (*Maryland v. King*); several older court documents were removed and replaced with the criminal complaint against the Boston Marathon bombing suspect.
- In Chapter 16 all Federal Rules of Evidence were updated and the discussion of expert witness testimony was expanded with inclusion of *Williams v. Illinois*.
- Chapter 17 contains new and more current forms including an excerpt from a jury selection questionnaire from a U.S. district court, opening statements in case of Zacarias Moussaoui, and selected jury instructions from the trial of *Apple v. Samsung* (2012).

INSTRUCTIONAL AND LEARNING FEATURES OF *INTRODUCTION TO LAW*

The many features of *Introduction to Law* make it an excellent choice for both the student and the instructor. Students will find an easy-to-read text with a built-in dictionary, realistic factual situations, and high-interest cases. Instructors will find an organized text containing questions to help students review text material, hypothetical situations for class analysis and discussion, and assignments in each chapter. *Introduction to Law* contains the following features:

- **Numerous charts and tables** illustrate and clarify legal concepts.
- **Legal vocabulary** is identified in boldface type. The key terms are defined in the margins of the text where the terms appear, and are also listed at the end of each chapter for review.
- **A chapter-opening case file** contains a hypothetical factual situation that introduces the subject matter, encouraging students to think about the subject matter in a law office or everyday setting, rather than simply as more textual reading.
- **Carefully selected and edited case law** appears in each chapter. The case law introduces students to reading the law and assists with the development of critical thinking skills. The cases are interesting and even familiar. Most cases have been edited in an effort to shorten them and to give beginning students the opportunity to ascertain the important concepts of the case without being confused. (In editing the cases, we have taken some liberties with normal rules of editing.) To assist the student, we have also provided a brief introduction to most cases, as well as questions for case analysis following the case.
- Most chapters provide the names of Internet sites that are relevant to the material in the chapter. A **Featured Web Site** in each chapter provides an

overview of one important Web site, along with student assignments using the site.

- Internet references to international organizations, laws, and legal resources appear in each chapter in a feature titled **Around the World**. This feature allows students to explore global influences on the legal system as well as to compare the U.S. legal system with that of other nations.
- Many chapters include a feature called **A Point to Remember**. This practical information helps students focus on the skills and concepts that will help them in their legal studies.
- Each chapter includes a feature called **Ethical Concerns: What Should the Lawyer Do?** This feature encourages students to consider ethical ramifications of daily experiences of legal professionals.
- A complete **Glossary** at the end of the text contains definitions for all highlighted key terms used in the text.
- A **mock trial** is presented in Appendix II, and a Basic Citation Reference Guide is included as Appendix III. The mock trial could be used at the end of Chapter 17 (“The Trial”). We have found that a mock trial is fun and memorable for students. We have provided the basic fact pattern and the legal issues. The trial is a good opportunity for students to apply the materials presented in the preceding chapters.
- Appendix VI, “Supplemental Court Decisions,” contains summaries of important recent and landmark cases. In the various chapters, students are asked to do factual analysis based on these cases.

End-of-Chapter Concept Review, Critical Thinking, and Skill-Building Exercises

- A **Chapter Summary** is included in every chapter. The summaries are short overviews of the major concepts covered in the chapter.
- **Questions for Review** follow each chapter summary. These questions help the student focus on the most important concepts in the chapter.
- **Application and Analysis Problems** at the end of each chapter require the student to apply the concepts covered in the chapter.
- The **Assignments and Projects** section contains hands-on activities to help the student build necessary skills.
- **Skills Assessment** provides students with an opportunity to test a variety of skills needed to survive in a law office.

Instructor Supplements

Instructor’s Manual with Test Bank Includes content outlines for classroom discussion, teaching suggestions, and answers to selected end-of-chapter questions from the text. This also contains a Word document version of the test bank.

MyTest This computerized test generation system gives you maximum flexibility in preparing tests. It can create custom tests and print scrambled versions of a test at one time, as well as build tests randomly by chapter, level of difficulty, or question type. The software also allows online testing and record-keeping and the ability to add problems to the database. This test bank can also be delivered formatted for use in popular learning management platforms, such as BlackBoard, WebCT, Moodle, Angel, D2L, and Sakai. Visit www.PearsonMyTest.com to begin building your tests.

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Acknowledgments

No textbook can be produced through the sole effort of its authors. The fifth edition of *Introduction to Law* is no exception.

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About the Authors

Yvonne Ekern is an Associate Clinical Professor of Law at Santa Clara University's School of Law and a full-time member of the Legal Analysis, Research, and Writing faculty. For seven years she was the chairperson of the West Valley College Paralegal Program (ABA approved). Prior to attending law school, she taught high school English and math in California and Missouri. She graduated from the University of Idaho School of Law in 1985. While working in criminal and family law offices, she taught part-time in several Silicon Valley paralegal programs. Among the classes she teaches are Legal Research and Writing, Advanced Legal Research and Writing, Appellate Advocacy, Advanced Legal Research and Writing Using LEXIS, and Legal Analysis. She has over twenty-five years teaching experience. She is the co-author of *Legal Research, Analysis and Writing* and *Constitutional Law: Principles and Practice*.

Joanne Banker Hames is an attorney and paralegal educator who has been actively involved in paralegal education since 1977. She is an instructor in and the former coordinator for the ABA-approved paralegal program at De Anza Community College in Cupertino, California, as well as an adjunct instructor at Santa Clara University's School of Law. She earned her J. D. degree from Santa Clara University Law School and has been an active member of the California Bar since 1972. As an attorney, she has been involved in research and writing for legal memoranda and appellate briefs. Among the classes she teaches are Legal Research and Writing, Advanced Legal Research and Writing, Computer Assisted Legal Research, Civil Litigation, and Introduction to California Law. She is the co-author of *Civil Litigation*, *Legal Research, Analysis and Writing* and *Constitutional Law: Principles and Practice*.

chapter **one**

Introduction to Law



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CASE FILE

CENTERVILLE NEWS: MARCH 10

The following news stories recently appeared in the Centerville Newspaper:

Emily Ross was seriously injured in an automobile accident when she was hit by an uninsured drunk driver who ran a stop sign. Emily's attorney sued Bar None, a restaurant and bar, claiming that the business served the driver an excessive amount of alcohol, knowing he would be driving home. Bar None denies all liability.

Brandon Delgado recently applied for a job with the town of Centerville. As part of the application process the town requires him to provide the password for his Facebook page. He thinks this is a violation of his privacy.

The Centerville city council received numerous complaints from parents about their children purchasing and drinking high "energy" drinks. Parents believe that these drinks cause extreme behavior in their children and they have petitioned the council to ban the sale of these drinks to minors. The city council is deciding whether to do this.

CHAPTER OBJECTIVES

When you complete this chapter you should be able to

- Define the term *law*.
- List some of the historical origins of law.
- Explain the basic concepts of a civil law legal system.
- Explain the basic concepts of a common law legal system.
- List and describe three major philosophical theories of law.
- List three important categories of law.
- Explain the purpose of substantive laws.
- Explain the purpose of procedural laws.
- Provide examples of substantive criminal laws and substantive civil laws.
- Compare and contrast procedures in a criminal case with procedures in a civil case.

1-1 Introduction**1-2 What Law Is**

Historical Origins
Philosophical Theories

1-3 Categories of Law

Source of Law
Substantive and Procedural Laws
Criminal and Civil Laws
 *Substantive Criminal and Civil
 Laws*
 Criminal and Civil Procedures
 Court Procedures

Chapter Case

Roper v. Simmons, 543 U.S. 551
(2005)

Case Summaries

Exxon Shipping Co. v. Baker,
554 U.S. 471 (2008)

Maples v. Thomas,
565 U.S. ___, 132 S. Ct. 912
(2012)

Marshall v. Marshall,
547 U.S. 293 (2006)

law

A set of rules and procedures usually intended to regulate some aspect of society.

SEC. 1-1 INTRODUCTION

Whether based on fact or fiction, legal stories capture the interest of the American public. Daily news reports in all media generally include some stories involving our legal system. Sometimes the events involve serious issues such as the rights of those who suffer serious injuries due to the actions of other parties. Sometimes the stories involve societal concerns raised by changes in lifestyles. Often, the stories involve legal difficulties of celebrities who get involved in everything from murder to substance abuse. The entertainment media also focus heavily on legal stories. Popular fiction, television series, and movies are often based on law-related events.

Clearly, the law is a fascinating topic. More than that, however, the law affects all aspects of our lives, from the selection of our president to the way we drive our automobiles. At times the law is simple and straightforward. At other times it can be complex and involved, requiring experts to explain and interpret it.

Whether your goal is to work in the law or whether you are just interested in law, you should know certain basic concepts about the U.S. legal system. This text introduces you to some of the basics of the U.S. legal system. You will not learn everything there is to learn about the law from this text; that is an impossible task. However, as you go through the various chapters, you will see how the legal system is organized and how it functions. You will read about some important areas of law and see how civil and criminal legal disputes are handled both in and out of court.

SEC. 1-2 WHAT LAW IS

Imagine what your community would be like without traffic laws. People could drive on either side of the road, signs could be ignored, and speed would never be an issue. The result, of course, would be chaos and harm. Laws, such as traffic laws, are created to assure harmony and avoid chaos among people who live together. In a general sense, **law** consists of a set of rules and procedures usually intended to regulate some aspect of society. Today, we have laws that regulate many aspects of our lives. The examples in the Case File at the beginning of this chapter provide three examples of situations controlled by laws, but there are many others.

Most often, we use the term *law* to refer to rules created and enforced by federal, state, and local governments. However, other societal organizations and institutions also create rules and regulations and use the term *law* to refer to them. For example, laws, sometimes called canon law, regulate many religious organizations. Corporations and many business, social, and charitable organizations often operate in accordance with rules or regulations, sometimes known as bylaws.

Although all societies need laws, the types of laws adopted by any society are often different. Because values, customs, and even religious beliefs influence laws and legal systems, differences exist from country to country. Even within the United States, different laws are found in different states. From the earliest of times, all civilizations had laws. Also from the earliest of times law was a topic widely explored by historians, philosophers, sociologists, and legal scholars.

Historical Origins

The origins and development of laws and legal systems are for the most part based on the actions of government and religion. In many societies government and religion are largely intertwined and their laws reflect this. Because of differences in beliefs and values, laws vary widely from one society to another. However, historically, only two major types of legal systems developed, **civil law** systems and **common law** systems. The term *civil law* as used to describe a legal system refers to a system based primarily on written **constitutions** and written laws or **codes**. In such legal systems, a ruler or legislative body creates an extensive set of rules or regulations to govern. The role of courts in such systems is limited. Common law systems, on the other hand, are based on **precedent** or case law.

Civil law jurisdictions, the more common in the world today, date back thousands of years. One of the most famous examples was the Babylonian Empire, a society ruled by a law known as the Code of Hammurabi. The Code was named after the ruler of the time and dates back to approximately 1760 B.C. Like our current laws, this Code contained rules that governed different aspects of society, including criminal laws, domestic relations, and contract laws. For example, if a man stole goods or received stolen goods he was put to death. If a man and woman married, and lived together, they became jointly responsible for debts. And if a builder built a house for another person, that person was obligated to pay. Punishments, damage, and the substance of the laws reflect the society of the times, but the similarities to many of our laws can still be seen in this ancient Code.

Other examples of civil law legal systems include ancient systems in China, India, and the Roman Empire. More recently, in the nineteenth century, the Napoleonic Code became the basis of a civil law legal system in France. The civil law legal system continues today in many parts of the world.

Common law systems are those based on the concept of precedent or ***stare decisis***. In this type of system, laws originate from decisions of courts rather than legislative bodies. Originally decisions were based on tradition and custom, but eventually decisions were based on precedent. Precedent requires courts to follow decisions of earlier courts. Common law originated with medieval England and is found in many countries once occupied by Great Britain. Since the United States was originally an English colony, it is not surprising that in many ways the legal system in the United States follows common-law principles. The United States has a written Constitution and written codes; however, these are subject to interpretation by the courts and these decisions often become precedent.

Philosophical Theories

When the president nominates an individual to a high court position, Congress always inquires into the nominee's "judicial philosophy." In part, the question relates to how the prospective justice will decide and apply the law, in particular the Constitution. In today's political context, the question also focuses on an individual's beliefs about the role of the courts in deciding legal questions. In the broader sense, however, the philosophy of law, also known as **jurisprudence**, deals with a multitude of questions related to the origins of law, the meaning of law, and the relationship of law and morality.

civil law

1. A legal system based on written laws or codes. 2. A type of law that controls private disputes between parties.

common law

A body of law developed through the courts.

constitution

A document whose primary purpose is to establish a government and define its powers.

code

A topical organization of statutes.

precedent

The example set by the decision of an earlier court for similar cases or similar legal questions that arise in later cases.

stare decisis

"It stands decided"; another term for *precedent*.

jurisprudence

Study of philosophy of law.

APPLICATION 1.1

COURT DECISION

EXXON SHIPPING CO. v. BAKER,
554 U.S. 471 (2008)

On March 24, 1989, the supertanker *Exxon Valdez* grounded off the Alaskan coast, fracturing its hull and spilling millions of gallons of crude oil into Prince William Sound. A civil lawsuit resulted and a \$2.5 billion punitive damage judgment was eventually assessed against Exxon. In 2008 the U.S. Supreme Court reduced this amount to \$500 million. The Court based its decision on maritime common law and discussed the development of punitive damages, stating it had its roots in 18th-century English law. Before deciding the case, the Court also reviewed the different laws of the states and other nations regarding punitive damages. The following language from the opinion shows the Court's reliance on common law:

“Our review of punitive damages today, then, considers not their intersection with the Constitution, but the desirability of regulating them as a common law remedy for which responsibility lies with this Court as a source of judge-made law in the absence of statute.”

natural theory of law

A philosophical theory holding that law reflects the moral and unchangeable laws of nature.

legal positivism

A philosophical theory holding that the validity of law is not related to morality.

legal realism

A philosophical theory that laws are created by judges and therefore subject to individual beliefs and prejudices.

Numerous philosophers and legal scholars including Aristotle, Socrates, Thomas Aquinas, David Hume, and Oliver Wendell Holmes, Jr. sought to find answers to these questions. Not surprisingly, many different theories related to the nature of law exist. Many of the theories seek to explain the relationship of law and morality. One school of thought, the **natural theory of law**, is that law reflects moral and unchangeable laws of nature. When a law fails to do this it is unjust and need not be obeyed. Philosophers such as Aristotle, Socrates, and Thomas Aquinas held this theory. Another popular philosophic theory is that of **legal positivism**. Under this theory, the validity of a law is not related to morality. If a law is properly created or enacted then it is valid. However, many philosophers who follow this school of thought believe that whether a person must obey a law does not necessarily follow from the fact that the law is valid. Whether one must obey a law is a moral question. A third philosophical theory is that of **legal realism**. This theory is based on the belief that men create laws and therefore laws are subject to pitfalls created by men. In particular, these philosophers believe that judges applying their personal beliefs and biases often mold laws. The philosophy of law is a complicated study, seeking answers to questions for which there may be no absolute answers.

SEC. 1-3 CATEGORIES OF LAW

Laws are categorized or classified in several ways. Three important ways are

1. whether the law is constitutional law, statutory law, or case law
2. whether the law is substantive or procedural and
3. whether the law is criminal or civil.

Source of Law

A major way of classifying laws is by the source of the law. Laws generally stem from one of three sources: a constitution, a statute, or a case decision; they are

APPLICATION 1.2

STATUTE OF LIMITATIONS

Suppose Peters, driving inattentively, runs a red light and collides with a truck driven by McDonald. Peters is injured but McDonald is not. If Peters sues for his damages, he would not prevail because the substantive law does not support his claim. This kind of action is governed by **tort** law, in particular the law of negligence, which requires that one pay for damages that he or she negligently causes. In this case, because it is Peters and not McDonald who was negligent, the court cannot make McDonald pay for Peters's injuries. On the other hand, if McDonald were injured, he could sue and probably win.

Assume, however, that the accident happens in a state that has a two-year **statute of limitations**. A statute of limitations is a time limit for filing a lawsuit in court. Even though the substantive law supports a claim by McDonald, if he waits three years after the accident to sue, the court will probably dismiss the action because McDonald did not follow the procedural rules of the state.

tort

A noncontractual civil wrong.

statute of limitations

A law that places a time limit on when a lawsuit can be filed.

known accordingly as constitutional law, statutory law, or case law. The sources of U.S. law are discussed in detail in Chapter 2.

Substantive and Procedural Laws

Another important way laws are classified is by asking whether a law is substantive or procedural. **Substantive laws** define the rights and duties of parties and establish the legal basis for any lawsuit. **Procedural laws** relate to the enforcement of the substantive rights and duties. They dictate how a case should be handled once a dispute arises under the substantive law. For example, a law that makes burglary a crime is a substantive law. A law that gives anyone accused of burglary the right to a jury trial is a procedural law. Both substantive principles and procedural rules are important in our legal system. If the substantive law does not support a party's position, then the court has no basis for granting that party any legal remedy. Likewise, if the party does not follow the procedural rules, the court might not afford legal remedies even if they are allowed under substantive legal principles.

In addition to categorizing laws by their source, or by whether the laws are substantive or procedural, U.S. law is sometimes categorized by whether the law is criminal or civil. The distinction is important because the ways these laws originate and the court procedures used to enforce the laws often differ. Most people have some notion of the general difference between a criminal case and a civil case. A criminal case is often described as an offense against the state or society as a whole, whereas a civil case is normally described as a private dispute between parties.

Criminal and Civil Laws

Substantive criminal and civil laws. Substantive laws exist for both criminal and civil actions, as do procedural rules. Substantive criminal laws deal with crimes. **Crimes** define behavior that society has declared illegal and has decided to punish. Standard punishments include jail or fines. A person accused of a criminal offense is entitled to *due process of law* under the U.S. Constitution. The concept of due process requires

substantive laws

Laws that define our rights and obligations.

procedural laws

Laws that dictate how we enforce our rights and obligations.

crime

An act in violation of a criminal statute.

1. the existence of a law that prohibits the conduct in question before the violation occurs;
2. a law that is sufficiently certain and clear so that an individual is capable of knowing what is permissible and what is illegal;
3. a specifically described penalty that is to be imposed in the event a person is found guilty.

Examples of substantive criminal laws include crimes such as murder, assault, theft, and drunk driving.

Substantive civil laws cover a variety of different topics. Laws regulating contracts, torts, corporations, and family law are examples of some of these topics. Some areas of civil law, like areas of criminal law, are controlled primarily by statutory laws and are as detailed and specific as criminal law. On the other hand, some substantive civil laws are much less specific in the type of conduct they regulate.

Some situations result in both criminal and civil cases. Consider the following situation: Rory Eberhardt had a promising career as a software engineer in Silicon Valley. Recently, however, his life fell apart. Eberhardt had a substantial portion of his assets in technology stocks. Unfortunately, the market took a downturn and Eberhardt found himself in financial troubles. Creditors were hounding him and his home was near foreclosure. During this time, an individual who wanted Eberhardt to sell him certain “trade secret” information belonging to Eberhardt’s employers approached Eberhardt. Because of his financial difficulties, Eberhardt succumbed to temptation and sold information. Eberhardt’s employers discovered what he did. As a result, they sued him for damages. They also reported him to the local police department, which is recommending that theft charges be filed against him. Eberhardt contacted a law firm to represent him, and was told the firm could represent him in the civil lawsuit filed by his employer, but that the firm did not handle criminal cases. He was advised to hire a lawyer who specializes in criminal cases for that matter.

This situation presents several examples of civil cases including potential actions against Eberhardt for collection of debts, foreclosure of his home, and the lawsuit by his employer for misappropriating a trade secret. Any action for theft would be a criminal case.

rules of court

Procedural rules adopted by all courts regulating practice in the court.

due process of law

The existence of a law that prohibits the conduct in question before the violation occurs; a law that is sufficiently certain and clear so that an individual is capable of knowing what is permissible and what is illegal; a specifically described penalty that is to be imposed in the event a person is found guilty.

jurisdiction

The power or authority to act in a certain situation; the power of a court to hear cases and render judgments.

Criminal and civil procedures. Procedural laws or rules tell us how we enforce substantive rights. Often, these rules deal with the court process. Where a lawsuit should be filed, what the time limit is for filing the action, and what type of papers must be filed in court are all questions of procedural law. The answers to these types of procedural questions are generally found in statutory law or rules of court.

Rules of court are laws that are adopted by various courts with power given to the courts by the legislature. However, in both criminal and civil cases both constitutional and case law are sometimes important in determining the procedures that must be followed. In the area of criminal law, the U.S. Constitution specifies several procedures that must be followed by police, by prosecutors, and by the court. For example, in criminal cases, a defendant has the right to have an attorney. The defendant also has a right to **due process of law**. In the area of civil law, the selection of the proper court in which to initiate the lawsuit is sometimes a problem. Civil lawsuits must be filed in a court that has **jurisdiction**. Jurisdiction is a complicated legal subject, but refers to the fact that the court must have the power or authority to hear a case. The U.S. Constitution limits the types of cases that can be brought in federal courts. The concept of due process of law also applies to jurisdiction and

APPLICATION 1.3

COURT DECISION

MAPLES v. THOMAS,

565 U.S. ____, 132 S. Ct. 912 (2012)

Procedural issues often form the basis of an appeal and can result in a court's refusal to consider an appeal even in a death penalty case. Consider the case of *Maples v. Thomas*. Petitioner, Maples, was convicted of murder in an Alabama state court and sentenced to death. The state appellate courts refused to hear any claims on appeal because neither he nor his attorneys filed a notice of appeal within a 42-day time period as required by state law. Maples then sought appellate relief in the federal courts, but the lower courts (the U.S. District Court and the Circuit Court of Appeals) refused to hear the case relying on a federal rule that prohibits a federal court from granting a hearing where claims were not raised in a state court because of a "procedural error," unless the error was caused by something external to the petitioner. Prior case law held that the negligence of a person's attorney was not "external" because the attorney acts as the agent of his client.

The relevant facts are as follows. Maples was represented by two pro bono attorneys, employed by a New York firm. To handle this case, they associated with a local Alabama law firm. One attorney with that local firm was listed as an attorney of record, but did not work on the case. After trial, Maples' two pro bono attorneys filed a petition in the trial court seeking postconviction relief. This petition was denied, and notice of the denial of the petition was mailed to the local law firm and addressed to the two pro bono lawyers. This started the 42-day time limit. However, prior to the court denying the petition, the two pro bono attorneys accepted other employment that prevented them from representing Maples. They did not notify Maples or the court of this new employment. A mailroom employee returned the notice of denial to the court without opening the communication. As a result, Maples did not file any further appeal in a timely manner and the state courts refused to hear claims that he had inadequate counsel at trial. Because of this procedural error, a federal district court also refused to hear petitioner's claims. The federal trial court relied on a rule that prohibits a federal court from granting a hearing where claims were not raised in a state court because of a "procedural error."

The U.S. Supreme Court reversed the appellate court ruling and held that when attorneys abandon their clients, this severs the attorney-client relationship and the attorneys no longer act as the agent of the client. Two Supreme Court justices dissented.

APPLICATION 1.4

COURT DECISION

MARSHALL v. MARSHALL,

547 U.S. 293 (2006)

An initial procedural question in all civil cases is which court has authority to hear a case. The case of *Marshall v. Marshall* deals with this question. This case involved the inheritance rights of Anna Nicole Smith from her husband J. Howard Marshall.

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APPLICATION 1.4 (continued)

It was an important case because a California federal court had awarded Ms. Smith substantial money and the Texas state court found against her. The case eventually reached the U.S. Supreme Court.

The background of the case is as follows. Ms. Smith's husband, J. Howard Marshall, did not include anything for her in his will. The will was submitted to the probate court in Texas and Ms. Smith filed an action contesting it. While his estate was pending in state probate court, Ms. Smith filed for bankruptcy in federal court in California. Several matters arose in the bankruptcy case and eventually, the court was called upon to decide if J. Howard's son did in fact interfere with Ms. Smith's inheritance rights. The federal court decided it had the right to hear the case and awarded Ms. Smith substantial money damages. The son maintained that the federal court did not have authority or jurisdiction to hear this case. He claimed that the Texas probate court was the only one having jurisdiction. The U.S. Supreme Court sided with Ms. Smith and found the federal court did have jurisdiction to hear this case.

preponderance of the evidence

The amount of proof necessary for most civil cases; more likely than not.

liable

A finding of responsibility in a civil case.

indigent

Without funds or assets and therefore unable to afford an attorney.

burden of proof

The necessity of establishing a particular fact or the necessity of going forward with the evidence.

beyond a reasonable doubt

The amount of proof necessary for a conviction in a criminal case.

acquittal

A finding of not guilty in a criminal case.

hung jury

A jury that cannot attain the necessary consensus or majority to reach a verdict.

limits the rights of courts to hear cases against defendants who do not reside within the state in which the court is located. This is an increasingly important issue with the amount of business done over the Internet. When constitutional procedural issues arise, courts are often required to determine how the Constitution applies to the specific facts of the case.

Court procedures. A major difference between civil and criminal laws relates to court procedures for each type of case. A civil case is brought to court by the injured party (called the plaintiff in a lawsuit). The plaintiff must hire his or her own attorney and the defendant (the person sued) must do the same. When a plaintiff requests money damages as opposed to a court order such as an injunction, jury trials are usually allowed in civil cases. However, the parties must pay for the jury. It is not provided at state expense. At trial, the plaintiff must prove his or her case by a standard known as a **preponderance of the evidence**. If the court finds against the defendant, the defendant is said to be **liable**. If a defendant is liable, a judgment is rendered against the defendant. This can be money damages and some specific court order, such as an injunction. The defendant cannot be put in jail. After the trial, either side has the right to appeal.

In a criminal action, the case is brought to trial by a prosecutor employed by the state or the federal government. The injured party becomes a witness in the case but is not a party (a plaintiff or defendant). If the defendant is **indigent** and cannot afford a lawyer, one will be provided without cost to the defendant. Jury trials are allowed for most criminal cases at state expense. At trial, the prosecutor must prove the case against the defendant meets a **burden of proof** known as **beyond a reasonable doubt**. If the jury finds against the defendant, he or she is said to be guilty. If the defendant is found guilty, he or she can be sentenced to jail, put on probation, and/or pay a fine. If the jury finds no guilt, then the defendant is **acquitted**. Jurors in both civil and criminal cases must reach an agreement for the trial to end successfully. The number of jurors that must agree varies according to state law. In federal courts, jurors must always be unanimous in their decision. If the requisite number of jurors do not agree, then a **hung jury** results and the case can be retried. In a criminal case, only the defendant can appeal after trial. See Figure 1–1 for a comparison of criminal and civil cases.

Figure 1–1 Criminal v. civil court procedures.

A Drunk Driver	A Criminal Case	A Civil Case
The Case	A government prosecutor files criminal charges against the drunk driver. An injured victim is a witness in the case.	A party injured in the crash files a lawsuit against the drunk driver asking for money damages.
The Court	Often depends on whether the case is a misdemeanor or a felony.	Often depends on how much money is sought.
A Jury	Under the Constitution, the defendant has a right to a jury in criminal cases where the punishment exceeds 6 months.	Where a party seeks money damages, both sides are often entitled to a jury.
Attorneys	An indigent defendant is entitled to court-appointed counsel.	Each party must bear his or her own attorney costs.
Burden of Proof	The prosecutor must prove the defendant guilty beyond a reasonable doubt.	The plaintiff must prove his or her case by a preponderance of the evidence.
Verdict	The defendant is found guilty or is acquitted.	The defendant is found liable or not liable.
Punishment	A guilty defendant can be fined or jailed.	Damages are assessed against a liable defendant.
Appeal	Only the defendant can appeal.	Either side can usually appeal.

A Point to Remember

Most cases, civil and criminal, have a plaintiff, the one who sues, and the defendant, the one who is sued. In a criminal case, the plaintiff is always the representative of the government. When legal professionals refer to plaintiffs and defendants in written documents, they often abbreviate using the Greek letters π (*pi*) and Δ (*delta*).

APPLICATION 1.5**SILVERS V. STEIN AND PEOPLE V. STEIN***Same Facts—Two Cases*

Consider the following example. Stein, who is under the influence of alcohol, drives a car and rear-ends a vehicle driven by Silvers. As a result Silvers is injured. This factual situation could give rise to both a criminal and a civil action. The state could prosecute Stein for the crime of drunk driving and Silvers could sue Stein for money damages for his injuries. The civil case would be entitled *Silvers v. Stein*. Each party would provide his own attorney. In this type of case the parties would probably be

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