

- Constitutional Law & Civil Liberties
  - NOTE: purpose of Constitution = frame of gov't
  - Civil Liberties ≠ Civil Rights
    - Civil liberties
    - Civil Rights
    - Liberties based on John Locke's *Second Treatise of Gov't*
      - Locke's "social contract"
      - Jefferson describe as = "unalienable"
    - Liberties guaranteed by Bills of Rights
      - NOTE: Originally – no BoR
      - Specific clauses protect civil liberties
        - » Art I, § 9, Cl 2 - Writ of Habeas Corpus shall not be suspended
        - » Art I, § 9, Cl 3 – No Bill of Attainder; No Ex Post Facto
        - » Art IV, § 2, Cl 1 – Privileges & Immunities Clause
    - Anti-Federalists - absence = fundamental defect
  - Ratification completed by conventions within states
    - 1<sup>st</sup> State = DE
    - MA =6th
      - Majority = Anti-federalists
      - Massachusetts Compromise

- Federalists realize Constitution may fail
- Result = Federalist promise BoR in 1<sup>st</sup> Congress

— Bill of Rights - Design

- Framed in broad, general terms
- Outlines fundamental rights
- Madison submits proposals
- Originally 12 amendments
- Original #3-12 = today = #1-10
- Clearly reflects Founders general distrust of gov't
  - 1<sup>st</sup> = “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.”
  - 2<sup>nd</sup> = “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”
  - 3<sup>rd</sup> = “No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.”
  - 4<sup>th</sup> = “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”
  - 5<sup>th</sup> = “No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”
  - 6<sup>th</sup> = “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to

be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.”

- 7<sup>th</sup> = “In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.”
- 8<sup>th</sup> = “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”
- 9<sup>th</sup> = “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”
- 10<sup>th</sup> = “Each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated to the United States, in Congress assembled.”

- NOTE: toady Words of BoR provide general guidance to Courts
- Ratified by 3/4s of states on Dec 15, 1791

- Judicial Powers

- Art III creates SCOTUS; Creation of lower courts to Congress

- NOTE: state constitutions similar

- Two key functions of judiciary

- 1) Adjudication – hears civil & criminal
      - 2) Judicial Review

- NOTE: NOT in Const

- Judicial system =adversarial

- It = contest
    - Party bring action=plaintiff/prosecution
    - Party against whom brought is defendant

- If = appeal, Appellant files vs. Appellee opposes
- Judge = trier of law
- Jury = trier of fact
  - Judge determines sentence based on jury's verdict
  - NOTE: Bench trials = judge = both trier of law & fact
- Who can sue or be sued?
- Criteria to sue:
  - Must have Standing
  - Issue must be justiciable
  - Issue must be Ripe
  - Issue must not be Moot
  - Proper Venue
- Venue tied to our Two-Tiered System
  - Judicial system in US = unique
    - Federal AND State
  - Why 2?
- Federal Jurisdiction
  - From Art III, Sec 2
    - 1) Federal Question
    - 2) Diversity of Citizenship

» Ex. Erie RR vs. Tompkins (1937)

— Fed Courts subdivided in 3-tiers

- US District Court & Specialized courts
- US Courts of Appeals
- SCOTUS = highest court in US
  - Only court established - Art III, Sec 1
  - 1) Appellate jurisdiction
  - 2) SCOTUS “Original jurisdiction” - Art III, Sec 1 Cl 2 establishes

» Ex. Rhode Island v. Massachusetts (1838)

— State Court Systems

- No two state court systems identical
- Most states = two sets of trial courts:
- MA = ONE trial court system with 3 departments
  - Superior Court
  - District Courts
  - Specialty Courts
- Most states have Intermediate appellate courts - but not all
  - In MA = Massachusetts Court of Appeals
- Highest state courts - called by various names
  - In MA = Supreme Judicial Court (SJC)

- It = top appellate authority
- Also, power to give Judicial Opinions
- State Jurisdiction – state courts have authority over
  - 1) state questions
  - 2) Concurrent jurisdiction
    - a) Federal questions
    - b) Diversity of Citizenship
    - If concurrent jurisdiction, which venue?
- How to get to SCOTUS?
  - It's a marathon!!! PLUS, many hurdles
  - NOTE: process NOT in Constitution
  - All constitutional cases begin with simple argument:
    - Gov't action violates US Constitution
  - Ex. Poll Taxes
    - It= fixed sum to gain access to vote
    - Deemed Constitutional by unanimous SCOTUS
      - » *Breedlove v. Suttles* (1937)
    - BUT, attitudes shift
      - » 24<sup>th</sup> Amendment ratified 1964
      - » Only five states retain

» *Ex. Harper v. Virginia Bd. of Elections (1966)*

» Result: local matter = constitutional right

- Legal process

- Begins when party files with court

- In civil cases,

- Plaintiff vs. defendant

- In Criminal cases

- State vs. defendant

- 1<sup>st</sup> stage = pleadings.

- Civil starts with filing "Complaint"

- Complaint "served" w/ summons

- D must then file "Answer"

- » Claims denied = dispute

- » Claims admitted = resolved

- » If D fails to answer, PL wins = Default Judgment

- Other pleadings/parties may be added

- » Counterclaim

- » 3<sup>rd</sup> Party complaint

- » Cross-claim

- Criminal case begins with arrest

- Court may grant bail
- D's 1st appearance = arraignment
- Second stage = Parties then conduct discovery
  - Various discovery devices
    - Interrogatories
    - Depositions
    - Requests for Production of Documents or Things
    - Requests for Medical
    - Regular witness
    - NOTE: Hearsay
    - Expert witnesses
  - In Criminal trial
    - Police & DA gathers evidence
    - NOTE: DA's office MUST provide access to all evidence to D
    - Some evidence "excluded" from trial
      - » Exclusionary Rule – Fruit of the Poisonous Tree
    - Fifth Amendment Right to Silence
  - Motion to Dismiss
- Jury trials
  - Judge



- Jury
- Opening statements
- Evidence
- Two types:
  - Direct
  - Circumstantial
- Burden of proof
  - *Semper necessitas probandi incumbit ei qui agit*
  - In Civil = preponderance of the evidence
  - In Criminal = beyond a reasonable doubt
  - Burden shifts from PL to D
- Questioning of Witnesses
  - Direct examination
  - Cross examination
  - Re-direct examination
- Common in-trial motions
  - Summary judgment
  - Directed Verdict
  - JNOV = Judgment Not Withstanding the Verdict
- Closing arguments

- Jury Instructions
- Verdict
  - NOTE: Settlement
- What next? Appeals Court?
  - Appeal NOT new trial
  - NOTE: NO ABSOLUTE RIGHT OF APPEAL
  - To obtain, appellant must show “error”
    - Error by judge or jury
    - Error with procedural or substantive law
  - If granted:
    - Lawyers prepare briefs & present oral arguments.
    - Judges (3) hear arguments & ask questionings
    - Decision made during private conference
  - Deliver *Opinion per curiam* =
    - Opinion contains:
      - » a) Ruling on the issue(s) presented,
      - » b) Reasons for its decision,
      - » c) Rules of law that apply, &
      - » d) Any other info deemed relevant
- Appeals outcome:

- Affirm
- Modify
- Reverse
- Remand
  
- How to get to SCOTUS
  - 1) Appellate jurisdiction
    - NOTE: it = discretionary
    - Appellant must petition for *writ of certiorari*
    - Rule of Four
    - If grants, *writ of certiorari* issued
    - Most dramatic stage = oral arguments
    - Justices discuss case at conference
    - *Opinion per curiam* issued
  
    - » Opinion contains:
      - a) Ruling on the issue(s) presented,
      - b) Reasons for its decision,
      - c) Rules of law that apply, &
      - d) Any other info deemed relevant

» SCOTUS outcome:

- Affirm
  - Modify
  - Reverse
  - Remand
- 2) Original Jurisdiction
    - It also discretionary
    - Appellate must petition court for an extraordinary writ
    - Process THEN same as appeal