

Chapter 3 The Judicial System and Litigation

Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Why Businesspeople Need to Understand the Judicial System

- To gain familiarity with the system's procedures and flaws
- To learn to gauge the financial and other risks associated with litigation
- To exercise their interest, as taxpayers, in an efficient judicial system
- To prepare for the types of legal issues they are likely to confront

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What Is Jurisdiction?

- Jurisdiction refers to a court's power to decide a case, and is divided into the following four categories:
 - Subject matter—jurisdiction based on the type of case and amount in dispute
 - *In rem*—jurisdiction over properties located within its bounds
 - *Quasi in rem*—jurisdiction over property within the court's boundaries, which is not itself in dispute
 - *In personam*—jurisdiction over the parties to a lawsuit, not their property

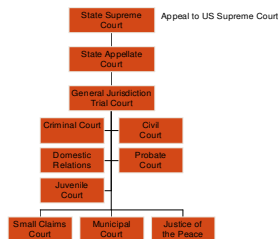
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Venue

- The particular geographic area where a lawsuit should be filed
- *Res judicata*—once a case has been fully litigated, neither party may institute another action based on the same facts or circumstances

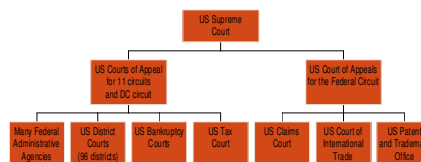
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Sample State Court System



Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Federal Court System



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US Supreme Court

- Created by Article III of the US Constitution
- Highest court in the US
- Located in Washington DC
- Composed of nine justices who are nominated by the President and confirmed by the Senate
- Types of decisions:
 - Unanimous
 - Majority
 - Plurality
 - Tie

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Erie R. Co. v. Tompkins

Landmark Case

- There is no federal common law
- Whether the law of the state shall be declared by its legislature in a statute or by its highest court in a decision is not a matter of federal concern

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Judicial Procedures – An Adversarial System

- Complaint
 - Filed by plaintiff
- Answer
 - Sets defendant's position
 - Counterclaim
 - Plaintiff files reply
- Incidental demands
- Process
 - Subpoena
- Default judgment

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Judicial Procedures Cont'd

- Discovery
 - Interrogatories
 - Depositions
 - Request for documents
 - Exams
 - Inspect records, property, etc.
- Pretrial Motions
- Pretrial Conference
- Trial

Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

The Trial

- Jury selection (Voiur dire)
 - Challenge for cause
 - Preemptory challenge
- Opening statement
- Evidence
 - Court determines what is admissible
 - Material, relevant, & reliable

Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Trial Continued

- Plaintiff
 - Burden of proof
 - Direct examination
 - Redirect
- Defendant
 - Cross-examination

Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Trial Continued

- Closing arguments
 - Plaintiff first
 - Defendant
 - Rebuttal & Rejoinder
- Jury Instructions
 - Charges
- Verdict

Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Trial Continued

- Burden of proof
 - Civil case
 - Preponderance of evidence
 - Clear and convincing evidence
 - Criminal case
 - Beyond a reasonable doubt

Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Trial Continued

- Entry of judgment
 - Judge converts verdict into judgment

Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

The Appeal

- In a civil case, either party can appeal the trial court's decision once a final judgment is entered
- In a criminal case, only the defendant can appeal
- An appellate court will reverse a lower court decision if it finds an error of law in the record
 - It will generally not reverse a finding of fact

Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Attorney's Fees and Other Costs

- Attorneys can charge on the following bases:
 - Hourly
 - Type of work performed
 - Contingency fee
- Other costs may include depositions, expert witness fees, copies, travel, etc.

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International Considerations

- Differences in judicial systems
 - Common v. civil law
 - Cultural and religious differences
- International courts
 - International Court of Justice (also known as the "World Court")

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Legally Speaking

- How to find an attorney
 - Personal reference from someone you trust
 - Bar Association referral service
 - Martindale-Hubbell (available on-line and in hard copy)
 - Yellow pages (probably the worst source)

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& International Environment of Business

Summary

- Introduction
- What is Jurisdiction?
- Venue
- Sample State Court System
- Federal Court System
- US Supreme Court
- Erie R. Co. v. Tompkins
- The Trial
- The Appeal
- Attorney's Fees and Other Costs
- International Considerations
- Legally Speaking

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