"A jury consists of twelve persons chosen to decide who has the better lawyer." — Robert Frost

I. Trial Courts

A. Basics

1. Parties
   - There are always two sides in a trial.

2. Plaintiff/Prosecutor
   - Criminal trial the state or federal initiates the case and is known as the Prosecutor
   - In a civil trial the party that brings the legal action is called the plaintiff

3. Defendant
   - The person who responds in a trial.

4. Adversarial System
   - It is a contest between opposing sides. The theory is that the trier of fact (judge/jury) will be able to determine the truth if opposing parties present their best arguments.

5. Inquisitional System
   - The judges is active in questioning witnesses and controlling the court process, including the gathering and presenting of evidence...used in many European countries.

Problem 5.1:  With a partner (write his/her name down) answer the following questions and be ready to give your answers in class.

a. Do you think the adversarial system is the best method for solving disputes? Why or why not?

b. Indicate whether you agree or disagree with the following statement “It is better than ten guilty persons go free than one innocent percent suffer conviction. Explain your answer.

c. In a criminal case, should a lawyer defend a client he or she knows is guilty? Would you defend someone you know was guilty? Explain.
6. Judges
   a. presides over the trial.
   b. protects the rights of those involved.
   c. assures that the lawyers follow the rules of evidence and trial procedure.
   d. non-jury trials decides guilt or penalty.

7. Juries
   a. requirements: Must be at least 18, able to speak and understand English, a resident of the state.
   b. important civic duty
   c. voir dire -screening process where opposing lawyers ask questions to each prospective juror to discover any prejudices or preconceived opinions.
   d. removal for cause
      Removal of a potential juror who appears incapable of rendering a fair and impartial verdict.
   e. peremptory challenges
      This means the attorneys can have prospective jurors removed without starting a cause.
Problem 2: On your own answer the following questions.

a. Has anyone in your family ever served on a jury? What type of case was involved?

b. Why would someone choose not to have a jury trial in a civil case? In a criminal case?

c. What reasons can you give for excluding from jury service members of the clergy, attorneys, physicians, police officers, and convicted felons? Should everyone be required to service on juries? Give your reasons?

d. If you were a defense attorney questioning jurors at the voir dire in a murder trial, what questions would you ask potential jurors to determine whether they could render a fair and impartial verdict?

e. For what reasons might an attorney use a peremptory challenge?

II. Appeals Courts

A. Appeals Court – one party presents arguments asking the court to review the decisions of the trial court. The other party presents arguments supporting the decisions of the trial court.

1. There are no juries or witnesses, and no new evidence is presented.

2. Only the lawyers appear before the judges to make legal arguments.
B. Grounds for Appeal

1. Error of law  Occurs when the judge makes a mistake as to the law applicable in the case.

2. Small errors  That do not affect the outcome of the trial will not be reversed.

C. Precedent

1. When an appeals court decides a case, it issues a written opinion or ruling.

2. Typically decided by a panel of Judges (justices) decide the cases. Generally a minimum of three judges.

3. Opinion- The written opinion of the court.

4. Dissenting opinion- Those judges who disagree with the majority opinion may issue a separate document which states the reasons for disagreement.

4. Concurring opinion- Judges who agree with the majority opinion, but for reasons different from those used to support the majority.
III. State and Federal Court Systems
   A. State Courts

   1. Jurisdiction – general jurisdiction
      They can hear cases that deal with state law as well as many areas of federal law.

   2. Resemble federal courts in structure and in procedure

   3. All states have trial courts.

   4. Types of trial courts:
      a. Superior:
      b. County:
      c. District:
      d. Municipal Courts:
5. Often specialized to deal with specific legal areas.

a. family - domestic relations courts hear actions involving divorce, separation, and child custody, sometimes juveniles and intra-family offenses
b. traffic - actions involving violations committed by persons driving motor vehicles.
c. Criminal - hear cases involving violations of laws for which the violators could go to jail, usually divided between felony and misdemeanor cases.
d. probate - cases involving wills and claims against the estates of persons who die with or without a will.
e. small claims - hear cases involving small amounts of money maximums of $500, $750, $1,000 or more

6. Appeal to an intermediate court or sometimes to state supreme court

Problem 3: As a table consider the following cases. For each, decide whether the case will be tried in a federal or state court. To what court could each case be appealed? Explain your answer. Then give an example, different from those listed, of a case that could be heard in a state court and a case that could be heard in a federal court.

a. A state sues a neighboring state for dumping waste in a river that borders both states.
b. A wife sues her husband for divorce.
c. A person is prosecuted for assaulting a neighbor.
d. Two cars collide. One driver sues the other for hospital bills and auto repairs.
e. A group of parents sues the local school board, asking that their children’s school be desegregated.
B. Federal Courts

1. Constitution created a Supreme Court and gives Congress the power to create lower courts.

2. There are 94 Federal judicial districts
   a. Each district court is known as a federal trial court.
   b. within each is a U.S. bankruptcy court that administrates the federal bankruptcy law.
   c. There 12 regional circuits each of which as a court of appeals

3. Overall federal courts handle about 1,000,000 cases a year.

4. State court systems handle about 30,000,000/year.

5. There are 1,700 federal judges.

6. There are 30,000 stated court judges.
IV. Tribal Courts
V. The Supreme Court
A. Background
   1. Nine justices
   2. All courts in the U.S. must follow Supreme Court decisions.
   3. Does not accept all appeals brought to it.
   4. About 8,000 appealed a year, only 80 cases/year are heard.
   5. More than half are from Inmates in prison.
   6. petitions for certiorari – a request of a lower court to send up its records.
B. How to get a case heard:

1. **Legal briefs** - legal arguments, initially submitted to the Court emphasize why the case should be heard rather than how it should be decided.
2. **4 out of nine** justices must agree to hear the case.
3. **Legal briefs** If accepted, more documents are submitted arguing to the Court how the case should be decided.
4. **Hour long** – each side as 30 minutes

C. Term

1. Begins in **October** ends around June.
2. **75%** of cases come from the federal courts.
3. **In more than half** the lower court opinion is reversed.

D. Job

1. **Nominated** by the President.
2. **Authority** To interpret the meaning of the Constitution and federal laws.
Problem 4: Who should be on the Supreme Court?
The president of the U.S. selects nominees for all federal judgeships including the U.S. Supreme Court justices- “with the advice and consent of the Senate.” The Senate must approve all nominees before they are appointed. Once appointed, justices serve for life unless they resign or are impeached. When the Senate receives a nominee from the president, it sends the nominee to the Senate Judiciary Committee for consideration. The committee schedules a hearing on the nomination. After the hearing the committee votes. If a majority votes in favor of the nominee, the nomination is sent to the full Senate for consideration. If the majority of the Senate also votes for the nominee, the nominee is confirmed.

a. You are legal counsel to the president. One of the justices has just announced his resignation. Many groups and individuals are suggesting names of people they think should be nominated by the president. Write a memo to the president describing the type of person who should be nominated to the Supreme Court.

b. As legal counsel to the president, look at the following characteristic of potential Supreme Court nominees. Rank them from most important to least important. Be prepared to give your reasons.

- 45 years old
- Hispanic American
- Female
- Graduated first in class from top law school
- Respected trial court judge
- Smoked marijuana while a law professor 20 years ago
- Believes that affirmative action is unconstitutional
- Believes in a woman’s right to abortion
- Lives in California (assume there are no current justices from the West Coast)
- Practicing Catholic (assume there are now Catholics at present on the Court)