

# THAT'S THE LAW

(First steps into the American Law)

Imagine that you are shopping in a grocery store in Virginia when a little old woman in line at the checkout starts screaming that she's been pick-pocketed. The police arrive on the scene and the woman identifies you as someone who suspiciously brushed against her. The police arrest you and throw you in jail. Later, they seek to interrogate you without informing you of your right to have a lawyer present.

## **Legal Issues:**

Some possible legal issues raised by these facts include:

- Is pick pocketing a crime in Virginia? If so, under what law?
- Did the police have probable cause to arrest you based on the identification of the old woman?
- How reliable was the old lady's identification?
- How long can the police hold you?
- Were any of your Constitutional rights violated during the police's arrest and interrogation of you?
- If you are found guilty, can the little old lady also sue you in civil court for infliction of emotional distress or another tort?

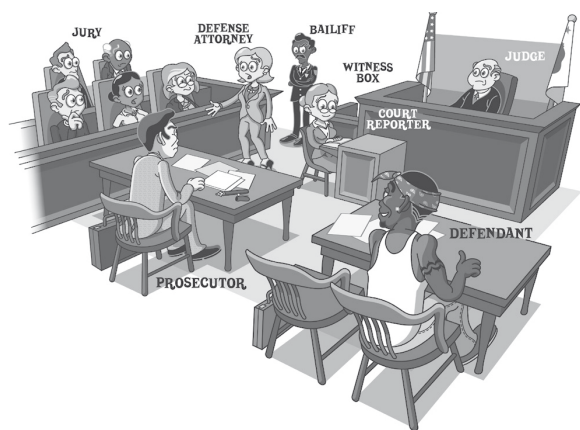
**Step 1: After you have brainstormed all the possible legal issues the facts raise, determine whether the legal issues are governed by Federal or State law.**

## **Step 2: Which Court Are You In?**

Determining which court you are in is a two-part inquiry. First, ask yourself whether you are in Federal or State Court. Dual sovereignty means that each sovereign has its own

court system: the States each have courts and the United States has courts, which are called Federal courts. Federal Courts are located throughout the United States – not just in Washington, D.C.

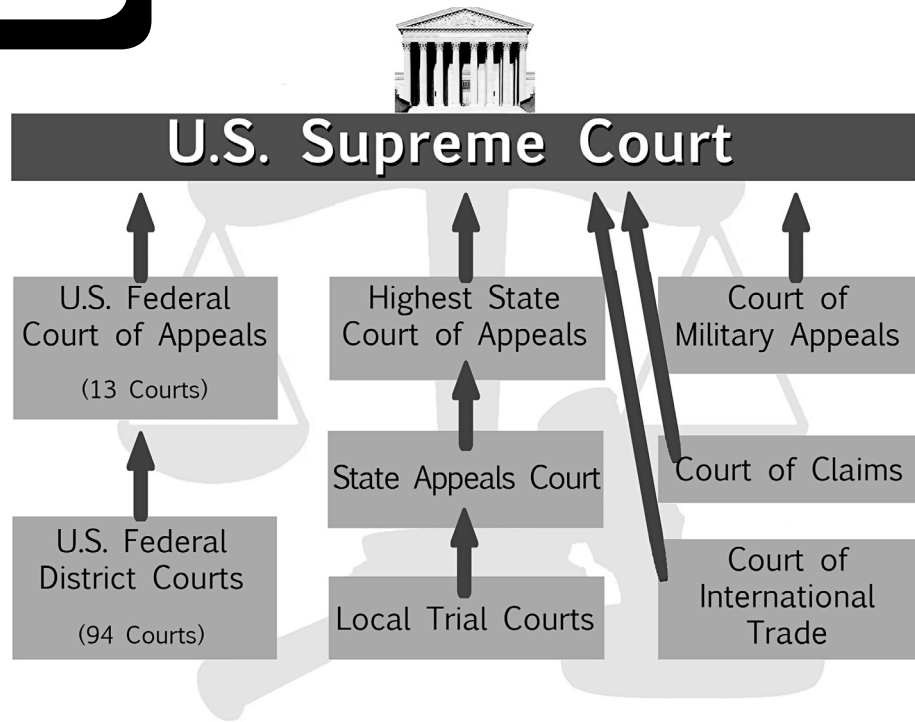
Second, ask yourself whether you are in a Trial Court, a mid-level appeals court, or a supreme court. Most American court systems – whether they are Federal or State – have a similar structure, consisting of Trial Courts, mid-level appeals courts, and supreme courts. In the Federal court system, the Trial Courts are called United States District Courts. The Federal Courts of appeals each cover a geographical area called a circuit and are, accordingly, called Circuit Courts. States vary in the names they give to their courts, but regardless of the nomenclature, the structure is the same.



Look at the documents on the next page: a table of the organization of the courts, the State court system the sequence of event in the criminal justice system - Answers are to be found on page 304.

**DOCUMENT 1**

**Federal and State Courts**



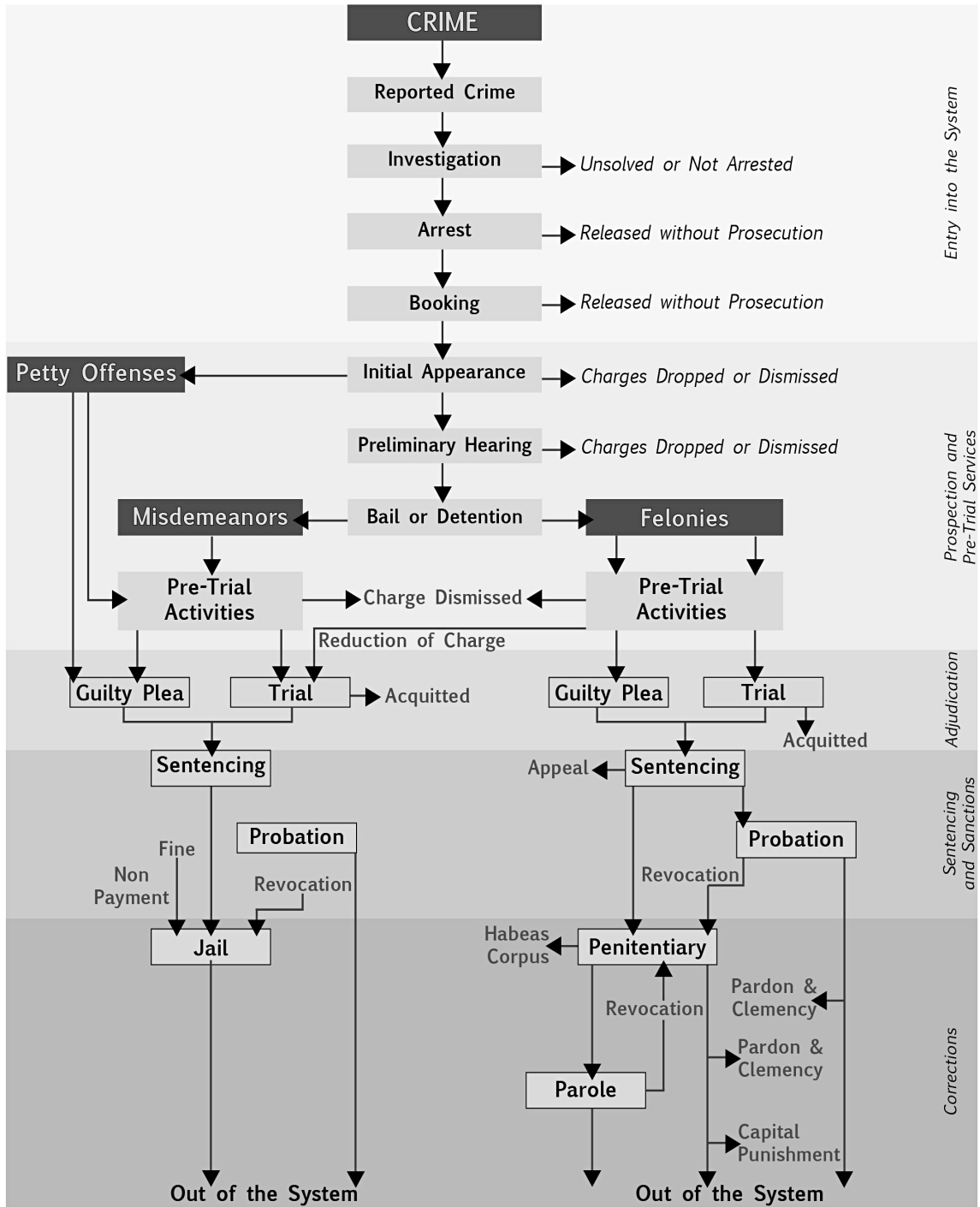
**DOCUMENT 2**

**The State Court system**

<b>State Supreme Court</b>	→	hears appeals from lower courts
<b>Superior Court</b>	→	hears serious cases most trials held here
<b>Special Courts:</b> Juvenile, Divorce, Family, Housing	→	specific cases heard
<b>County, Municipal, Traffic, Magistrate, etc.</b>	→	minor cases, arraignments

**DOCUMENT 3**

*The sequence of events in the criminal justice system*



# UNIT 1 Err... Law?

part 1

## THE FUNCTION OF LAW

Documents - Frontier Justice

part 2

## WHAT ARE LAWS?

Documents - Being Legal

part 3

## WHO MAKES THE LAWS?

Documents - Power of State Courts

part 4

## LITIGANTS AND INTEREST GROUPS

Documents - Going to Court

### Introduction

*The discovery of America took a long time. The people who explored, and then settled this land, brought with them their knowledge and ideas of what Law was. Nevertheless, when living far from the large cities, they sometimes took some "concessions" with what would be acceptable as Law... especially in the Wild West. We may see in this an important debate that arises: should Law be created from top to bottom?*

# 1



## PART 1 – THE FUNCTION OF LAW

### **DID YOU KNOW?**

*Jesse James (1847–82), U.S. outlaw. A member of William Quantrill's raiders during the Civil War, he and his brother Frank led the James Gang, robbing banks and trains from Arkansas to Colorado and Texas, beginning in 1866. Living as an ordinary citizen in St. Joseph, MO., he was murdered for a \$5,000 reward by gang member Robert Ford.*

We know that Law occupies an important place in our society. We cannot avoid it if we want to live in a peaceful world without problems. However, it is not so obvious when we think about the early days of the United States. Thinking about the “outlaws” of the Wild West like Jesse James, we may wonder if laws were part of the daily lives of the pioneers. Could these people live a peaceful life and live together in harmony? Of course, everybody knows that there were sheriffs to enforce the laws in the new territories, but were they really powerful? And did they obey the same exact system of laws? In other words, was there a clear and shared definition of the idea of Law at that time? And what kind of organization was established to make sure everybody would obey the laws?

Law is a human creation. It is up to each person to decide if he or she will respect the laws created by the majority, or not. Those who decide not to respect the laws do not place them-

**What are laws?**

*Laws are rules that are typically used within the context of institutions. Many types of laws exist, such as Labor Law, Family Law, Contract Law, etc. Some of these laws deal with the private sphere, while others fall under Public Law: Administrative Law, Constitutional Law, or Criminal Law.*

selves in mortal danger; so there is no correlation between the laws of Nature and those of Man. Laws were simply created to bring a bit of justice and equality to our society. The Courts and the governments are responsible for enforcing them and making sure that everyone is answerable to these laws on equal terms within their sphere of influence.

Law provides protection for victims and defines punishment of those who break the law. Law does not only consist of options among which one may just pick and choose the best solution:

**When a society has no legal system that allows each person to live in harmony with others, living well together is not possible.**



those who don't obey it should be aware that they will have to face the consequences. When a society has no legal system that allows each person to live in harmony with others, living well together is not possible. In such a society, one might imagine that people would decide everything based only on their own desires, and that they might also commit any and all crimes freely if such was their wish: to steal, kill, injure, destroy, pollute, rape, assault, or terrorize would thus be possible, and no one would be able to stop it.

So, one might say that it would be a disaster if each of us could act upon his or her own desires without any limits. If laws did not exist, nothing would stop people who would be free to take revenge or behave badly, knowing that there would be no consequences, whether we do good or bad. Society is actually brimming with crime, murder and unlawful actions.

Each country needs a legal system to allow people to live freely and in peace. A judicial system is a set of rules for a group of people, which thus corresponds to a specific culture or society. The goals and objectives of laws and rules is to protect the rights of each one.

In the United States, the legal system is a bit complicated, because many legal systems are actually super-imposed: at the Federal, State and local levels. Each level creates its own laws, which citizens must obey. Each also has its own judicial organization. Far removed from what their ancestors were doing in the time of the Wild West,

**Who creates the laws?**

*In the United States, the Law is drawn from four sources: Constitutional Law, the laws voted by Congress, the administrative rules, and Common Law, including Case Law. It must be noted that there are three levels of Law, which are Federal, State and local.*

American people now easily use, and sometimes overuse, the potential of their legal system to settle their disputes. They have certainly become the world champions for this very particular sport: going to court.

**How are laws made?**

As concerns the laws passed by Congress, everything begins with a Bill, introduced into Congress by one of the two houses (the House of Representatives or the Senate); neither takes precedence over the other. Then, each law is debated in committee before being discussed by members in the respective houses. When adopted by one house, it is then sent to the other house where the process is repeated. Finally, after being passed by both houses, the Bill is then sent to the President, who must either sign it into Law with his signature, or veto it.



**A. What do you imagine life was like in the Old West?**

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**B. Is it possible to live in a world without laws?**

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**C. Why does the American legal system seem to be so complicated today?**

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## FRONTIER JUSTICE

## DOCUMENT 1

## Enforcing the law

The three great threats to the lives of the settlers on the frontier were nature and the elements, Native Americans, and lawbreakers. Men like Bat Masterson and Wyatt Earp became famous for enforcing the law. But it was not easy because everyone was armed and a single lawman was often the only law for 200 or 300 miles around. Judges, like the famous Roy Bean, administered law on a circuit and conducted hearings in local saloons with a law book in one hand and a pistol in the other. Desperados were not always the colorful or spectacular kind. Most crime shad to do with swindlings and thefts, the work of claim



jumpers, confidence men, card sharks, and rustlers. If caught, these men often faced rough justice, if not at the hands of an individual, then at the hands of vigilantes or a lynch mob. But the Old West had a deep ambivalence about the Law. It admired tough and independent characters, gamblers who took chances and won, people who knew how to fight for, and keep, what was theirs. It admired a tough lawman but was suspicious of government. That ambivalence is apparent in the reputations enjoyed by men like the Dalton boys, Billy the Kid, Sam Bass, and Frank and Jesse James: notorious outlaws who were feared but, in a sense, also admired.

## DOCUMENT 2

## The O.K. Corral case

In 1876, Wyatt Earp moved to Wichita, Kansas, where his brother Virgil had opened a new saloon. There, he also began working with a part-time police officer on rounding up criminals. The adventure and the little bit of press Earp received from the job appealed to him, and eventually he was made City Marshal in Dodge City, Kansas. He then reinvented himself as a lawman. In December 1879, Earp joined his brothers Virgil and Morgan in Tombstone, Arizona, a booming frontier town that had only recently been erected when a speculator discovered the land there contained vast amounts of silver. His good friend Doc Holliday, whom he had met in Kansas, joined him

But the silver riches the Earp brothers hoped to find never came, forcing Earp to return to law work. In a town and a region desperate to tame the lawlessness of the cowboy culture that pervaded the frontier, Earp was a welcome sight.

In March 1881, Earp set out to find cowboys that had robbed a Tombstone stagecoach and its driver. In an effort to close in on the outlaws, he struck a deal with a rancher named Ike Clanton, who regularly dealt with the cowboys working around Tombstone. In return for his help, Earp promised Clanton he could collect a \$6,000 reward.

But the partnership quickly dissolved. Clanton, paranoid that Earp would leak the details of their bargain, turned against Earp. By October, Clanton was out of his mind, drunk and parading around Tombstone's saloons, bragging that he was going to kill one of the Earp men. Everything came to a head on October 26, 1881, when the Earps, along with Doc Holliday, met Clanton, his brother Billy, and two others, Frank McLaury and his brother, Tom, on a small lot on the edge of town near an enclosure called the O.K. Corral. There, the greatest gunfight in the West's history took place. Over the course of just 30 seconds, a barrage of shots was fired, ultimately killing Billy Clanton and both of the McLaury brothers. Virgil and Morgan Earp, as well as Holliday, were all injured. The only one remaining unharmed was Wyatt. The battle drove tensions between the cowboy community and those who were looking for a more settled West to emerge. Ike Clanton planned the shooting of Virgil Earp and the assassination of Morgan Earp. As a result of Morgan's death, Wyatt Earp set off in search of vengeance. With Holliday and a group of men, he killed so many people that they made headlines around the nation, earning the group both praise and condemnation for taking on the West's wild cowboy culture.