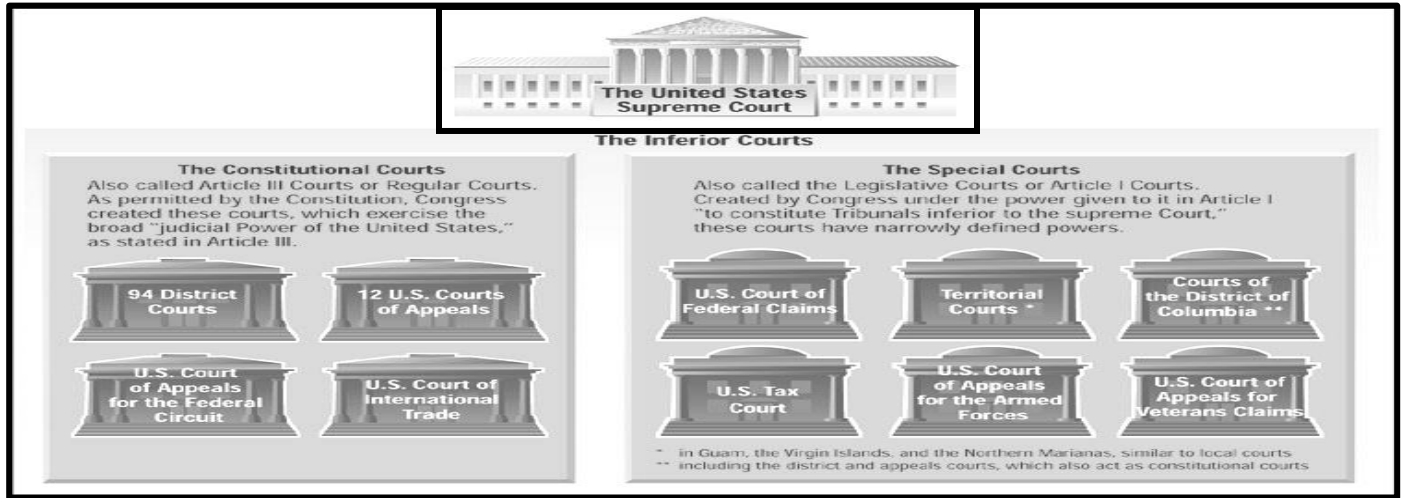


Unit 6 – The Judicial Branch Study Guide

The National Judiciary

- The Constitution - Article III created a Judicial branch that Interprets laws.
- The Framers created a national judiciary or National court system.
- There are two court systems in the United States: the national judiciary that spans the country with 120 federal courts, and the State courts that are run by each of the 50 States.
- The Constitution created the Supreme Court and left Congress to establish the **inferior courts**—the lower federal courts. There are two types of federal courts: (1) Constitutional courts and (2) Special courts (Legislative courts).
- The Constitution created only the Supreme Court, giving Congress the power to create any lower, or “inferior,” courts as needed.



-Court Jurisdiction-

- **Jurisdiction** is the authority of a court to hear and decide a case.
- Federal courts may hear a case because either:
 - A) Interpretation of Constitution
 - B) Federal laws
 - C) Citizens have a Dispute with Federal, State or Foreign Government
 - D) Treaties
 - E) Disputed on the high seas
- A court in which a case is first heard is said to have **original jurisdiction** over that case.
- A court that hears a case on appeal from a lower court has **appellate jurisdiction** over that case.
- ❖ The Supreme Court exercises both original and appellate jurisdiction.

-Federal Judges/Justices-

- The President nominates Supreme Court justices, as well as federal court judges, who are then subject to the approval of the Senate.
- Most federal judges are leading attorneys, legal scholars and law school professors, former members of Congress, and State courts, but their political views are key factors.
- Constitutional Judges, including the Supreme Court, are appointed for life.
- Judges of constitutional courts may only be removed by their own will or through impeachment.
- Special courts Judges are appointed for terms varying from 4 to 15 years.
- Congress determines salaries for federal judges.

-Other Court Officers-

- **Court Clerks** – keeps a record of court proceedings, assisted by court stenographer and bailiff.
- **U.S. Magistrate** – do the legal work like Issuing warrants and setting bail.
- **Bankruptcy** – deals with bankruptcy cases.
- **U.S Attorney** – responsible for trying all people with federal crimes.
- **U.S marshal** – an officer who makes arrests and keeps order in courtrooms

Order in the Courts

-Inferior Federal Courts-

- Constitution allows Congress to set up all courts outside of the Supreme Court. These courts are known as the Inferior courts.
- These federal district courts were created with the Judiciary Act of 1789
 - a) 11 circuits divided into 94 districts (Including D.C. and Puerto Rico).
- 1. **District Courts** have original jurisdiction over most cases that are heard in federal courts.
 - a) The district courts hear a wide range of **criminal cases** and **civil cases**.
 - b) A criminal case, is one in which a defendant is tried for committing some action that Congress declared by law to be a federal crime. A federal civil case is one which involves noncriminal matters.
- 2. **Courts of Appeals** were created in 1891 to handle much of the burden that the Supreme Court faced in ruling on appealed cases.
 - a) The courts of appeals only have appellate jurisdiction, hearing cases on appeal from lower federal courts
 - b) Altogether, 179 circuit judges sit in the 12 appeals courts.
 - c) A Supreme Court justice is also assigned to each of the circuits.
- 3. **Court of International Trade** hears civil cases arising out of tariff and other trade-related laws.
- 4. **Court of Appeals for the Federal Circuit** has nationwide jurisdiction and hears cases from several different courts
 - a) Most cases heard arise from the U.S. Court of International Trade, the U.S. Court of Federal Claims, and the U.S. Court of Appeals for Veterans Claims.

-Special Courts-

- These courts deal with narrow jurisdictions generally an expressed power of Congress.
- 1. **Claims Court** – 16 judges...Those who have claims of damages against the United States can possibly secure **redress**—satisfaction of a claim, usually through payment through this court.
- 2. **Territorial Courts** – courts in Virgin Islands, Guam and American Samoa...
- 3. **Military Appeals Courts** – This court is a **civilian tribunal**, a court operating as part of the judicial branch, entirely separate from the military establishment.
 - a) The court reviews the more serious convictions of members of the armed forces at a **court-martial**, or trial involving military law.
- 4. **Court of Appeals for Veterans** - hears cases in which individuals claim that the Department of Veterans Affairs has denied or otherwise mishandled valid claims for veterans' benefits.
- 5. **U.S. Tax Court** - was created by Congress in 1969 to hear civil but not criminal cases involving disputes over the application of the tax laws.
- 6. **District of Columbia Court** - handles all local judicial matters for the district, including trials and appeals since it isn't a state.

The National Judiciary				
Court	Created	Number of Courts	Number of Judges	Term of Judges
Supreme Court	1789	1	9	Life
District Court	1789	94	642	Life
Court of Appeals	1891	12	179	Life
Trade Court	1926	1	9	Life
Court of Appeals for the Armed Forces	1950	1	5	15 years
Tax Court	1969	1	19	15 years
Court of Appeals for the Federal Circuit	1982	1	12	Life
Court of Federal Claims	1982	1	16	15 years
Court of Appeals for Veterans Claims	1988	1	7	15 years

Supreme Court

-I got the Power-

- Judicial review refers to the power of a court to determine the constitutionality of a government action. Both State and Federal courts have this power.
- Judicial review is not expressed in the constitution. It was the case of *Marbury v. Madison* (1803), That asserted the Supreme Court's power of judicial review.
- The Chief Justice John Marshall and the Court's decision laid the foundation for its involvement in the development of the American system of government.
- All laws and Gov't actions are secondary to the Constitution and judges may refuse any law that goes against the Supreme Law of the Land.

- Court of Last Resort -

- There are nine Supreme Court justices and there are no constitutional requirements for the job.
- It's a job for life and associate justices are paid \$213,900 and the chief justice \$223,500 a year.
- They are nominated by the President and approved by the Senate.
- The Senate has explicitly rejected twelve Supreme Court nominees, most recently Robert Bork in 1987.
- The Nine Justices: **Chief Justice:** John G. Roberts, ... **Jr Associate Justices:** Antonin Scalia, Anthony M. Kennedy, Clarence Thomas, Ruth Bader Ginsburg, Stephen G. Breyer, Samuel Anthony Alito, Jr., Sonia Sotomayor, Elena Kagan.
- The First Chief Justice was John Jay.

-Supreme Court Jurisdiction-

- The Supreme Court has both original and appellate jurisdiction.
- The Court has original jurisdiction over cases involving two or more States and all cases brought against ambassadors or other public ministers.
- Most cases heard by the Court are appeals cases. The Court hears only one to two cases in which it has original jurisdiction per year.

-How Cases Reach the Supreme Court-

- Most cases reach the Court via **writ of certiorari**, an order to a lower court to send a record in a given case for its review.
- Cases can also reach the Court by **certificate** when a lower court asks for the Court to certify the answer to a specific question in the matter.
- For a case to be heard by the Court, four of nine judges must agree that it should be placed on the Court's docket. They usually hear around 80 cases a year - more than 7,000-8,000 petitions filed with the Court each Term.

-How the Supreme Court Operates-

- **Prosecutor** - lawyer for the government.
- **Defendants** - Those accused of a crime.
- **Briefs** - are written documents filed with the Court before oral arguments begin.
- **Oral Arguments** - Once the Supreme Court accepts a case, it sets a date on which lawyers on both sides will present oral argument – you get thirty minutes to present out loud.
- **Verdict** – is the decision of the case.
- **The Court in Conference** - The Chief Justice presides over a closed-door conference in which justices present their views on the case at hand.
- The court explains its decisions in a written **majority opinion**, but the **Dissenting** (opinion) group writes an opinion too.
- **Concurring opinion** - are thoughts/points added to the majority opinion by other justices.

-Types of laws-

- ❖ **Common Law** - is law developed by judges through decisions of courts and similar tribunals rather than through legislative statutes or executive branch action
- **Civil law** – Disputes between 2 or more Individuals or and a gov't.
 - a) Types: Contracts, Property, Family relations and Injured parties
 - b) Court order is need to enforce payments if defendant refuses to pay
- **Criminal law**- Offenses against the public order
 - a) Petty crimes – are minor.... Example: parking, littering
 - b) Misdemeanors – are more seriousExample: Vandalism, prostitution
 - c) Felonies – Serious crimes.....Example: Robbery, Murder, Kidnapping

-Due Process-

- **Due process** - government must act fairly and follow established procedures of law at all times.
- There are two amendments that deal with due process of law (David vs. New Orleans -1878)
 - 1) **The 5th Amendment** provides that “no person ... shall be deprived of life, liberty, or property without due process of law...”
 - 2) **The 14th Amendment** extends that restriction to State and local governments.
- Due process is broken down into two branches:
 - 1) **Substantive due process**—the fairness of the laws themselves
 - ❖ **Pierce vs. Society of Sisters** – 1925, Oregon passed a law that all children must attend Public schools. A group of Roman Catholics sue to send their children to private schools. The Supreme Court Said the law was Unfair and violated the 14th Amen because religious freedom is greatened.
 - 2) **Procedural due process**—the fairness of the procedures used to enforce the laws
 - ❖ **Rochin vs. California** – 1952, Rochin a drug dealer tried to swallow pills as cops were trying to arrest him. They had Rochin's stomach pumped and found the drugs. The Supreme Court ruled this violated the 14th amen, getting evidence like that is torture and the officers broke the rules of due process.

-The Police Power-

- The police power is the authority of each State to act to safeguard the well-being of its people.
- a) **To promote health:** States can limit the sale of alcohol and tobacco, make laws to combat pollution, and require vaccination of school children.
- b) **To promote safety:** States can forbid concealed weapons, require the use of seat belts, and punish drunk drivers.
- c) **To promote morals:** States can outlaw gambling, the sale of obscene materials, and prostitution.
- d) **To promote the general welfare:** States can enact compulsory education laws, provide help to the needy, and limit profits of public utilities.

-Security of Home and Person-

- The 3rd and 4th Amendments protect the security of home and person.
- The 4th Amendment protects against **writs of assistance** (blanket search warrants) and “unreasonable searches and seizures.” It is extended to the States through the 14th Amendment
 - 1) **Probable Cause**—to search a premise, in most cases, a warrant must be obtained based on a reasonable suspicion of crime
 - 2) **Arrests**—to arrest a person, a police officer needs only probable cause
 - 3) **Automobiles**—police officers do not always need search warrants to search an automobile
 - 4) **Wiretapping**—unless police officers have a warrant, tapping phone calls is not legal
 - 5) **Drug Testing**—drug testing can be conducted without a warrant or probable cause
 - 6) **The Exclusionary Rule**—Evidence gained as a result of an illegal search cannot be used in court

-Rights of the Accused-

- **Due Process** – gov't must act fairly and follow established procedures of law at all times.
- "It is better that ten guilty persons go free, then that one innocent person be punished".
- You are innocent until proven guilty. It is the gov'ts job to prove in fair manner guilt.
 - 10,000 INNOCENT PEOPLE CONVICTED EACH YEAR, STUDY ESTIMATES
 - Florida is the nationwide leader in wrongful convictions, with 23 death row inmates exonerated since 1973

Protections offered below:

- 1) **Writ of Habeas Corpus**—A court order which prevents unjust arrests and imprisonment.
 - a) Can be suspended in the time of rebellion or invasion.
 - b) Civil War 1861 Abe Lincoln suspended it.
- 2) **No Bills of Attainder**—laws passed by Congress that inflict punishment without a court trial.
Example – Landrum-Griffin Act 1959 made it illegal as a communist to serve as labor leaders, the Supreme Court overturned this law.
- 3) **Ex Post Facto Laws**—new laws cannot apply to things that happened in the past.
- 4) **Grand Jury** - is the formal device by which a person can be accused of a serious crime.
 - a) The grand jury deliberates on whether the prosecution's **indictment**, a formal complaint, presents enough evidence against the accused to justify a trial.
 - b) Most States have legislated to skip the grand jury stage.
- 5) **Speedy and Public Trial** - The Speedy Trial Act of 1974 requires that the time between an arrest and beginning of a person's criminal trial must take place no more than 100 days after the arrest.
- 6) **Trial by Jury** - guaranteed an impartial jury chosen from the district where the crime was committed.
 - a) Most 12 person juries have to be unanimous to convict.
 - b) If a defendant waives the right to a jury trial, a bench trial is held where the judge alone hears the case.
- 7) **Adequate Defense** – Everyone has the right to the best defense
 - a) to be informed of the content and form of the accusation
 - b) to be confronted with the witnesses against them
 - c) to be able to subpoena witnesses to testify on their behalf
 - d) to have a lawyer speak in their defense (Gideon vs Wainwright -1963)
- 8) **Self-Incrimination** – Accused is innocent until proven guilty, so they don't have to prove the charges against them. The Fifth Amendment protects this right (Taking the Fifth).
 - a) A person cannot be forced to confess to a crime under extreme circumstances.
 - b) A husband or wife cannot be forced to testify against their spouse. Unless they want to.
 - c) Miranda Rights, suspects must be told and understand their Constitutional rights when being arrested(Miranda vs. Arizona -1966).
- 9) **Double Jeopardy** – You can't be tried for the same crime twice. They can be tried for a crime in a state court then in a federal court for the same crime, like drugs.

Rights of the People

-Civil Liberties and Civil Rights-

- The founding Fathers wanted protection from National gov't, so the Bill of rights was added.
- The listing of the general rights of the people can be found in the first ten amendments in the Constitution, also known as the **Bill of Rights** and 13th and 14th amendments.
- In general, **Civil liberties** are protections against government.
 - a) Speech, trial and religion
 - b) Most rights are found in the constitution
- The term **Civil rights** actions that guarantee our liberties for all people.
 - a) Civil rights act of 1964 against discrimination based on sex or color
 - b) Laws passed by Congress
- The difference between civil rights, which means the basic right to be free from unequal treatment, based on certain characteristics which we deem important, like race, gender, and disability, and civil liberties, which are basic freedoms guaranteed by the Bill of Rights or interpreted through the years by courts and lawmakers.
- In America people don't have total freedom. They can do as they please as long as they don't keep others from their rights. **Example** trying to start a riot with a speech.
- Most of these rights are offered to all people living in America, not just citizens, but restrictions do occur. **Example** For instance, their right to travel is often restricted.

Equal Protection Clause-

- The 14th Amendment's Equal Protection Clause declares that citizens are protected equally under the law.
- It requires that states guarantee the same rights, privileges, and protections to all citizens. This doctrine reinforces that of due process of law and prevents states from passing or enforcing laws that arbitrarily discriminate against anyone.

-Federalism and Individual Rights-

- The 9th Amendment states that the American people possess rights that are not set out explicitly in the Constitution.
- It has been used to protect rights as various as the rights of the accused to a woman's right to abortion without undue interference by government
The Bill of Rights guarantee's of individual freedoms only protects against National gov't and not State gov'ts
- The Supreme Court held that the Bill of Rights only restricts the National Government - The *Barron v. Baltimore*, in 1833.
- So the 14th Amendment's was added and the **Due Process Clause** provides that no State can "deprive any person of life, liberty or property, without due process of law..."
- Supreme Court has to define the rights on a case by case basis, called **the process of incorporation**
- Now the states guarantee the same liberties as the federal gov't does.
- ❖ The chart shows the rights "Nationalized" by the Supreme Court using the Due Process Clause of the 14th Amendment.

-Punishment-

- The 8th Amendment offers protection in jail or prison.
- The Constitution does not guarantee that all accused persons are entitled to bail, just that the amount of the bail cannot be excessive.
- **Preventive detention** - a law that allows federal judges to order that accused felons be held Without bail if there is a danger that the person will commit another crime if released (United States vs. Salerno, 1987).
- The 8th Amendment is intended to prevent, in the Court's opinion, barbaric tortures such as drawing and quartering and other excessively cruel punishments.
- In Estelle v. Gamble, 1976, it ruled that a prison inmate could not be denied medical care.
- **Capital punishment**, or the death penalty:
 - a) Early 1970s the supreme Court voided Capital punishment because it felt that the punishment was applied "capriciously" to only a few convicts, often African American or poor or both.
 - b) In 1976, the Court held for the first time that a new law which instituted the death penalty was NOT unconstitutional. The new law provided for a two-stage trial process.

-Right to Bear Arms-

- The 2nd Amendment protects the right of each State to form and keep a militia and permits Individuals to own weapons for that purpose.
- So there can be restrictions on individuals owning weapons and it's up to the states to make that decision.

-The Right to Privacy-

- The constitutional guarantees of due process create a right of privacy.
- Established in Griswold v. Connecticut, 1965, which held that a law outlawing birth-control was unconstitutional.
- In Stanley v. Georgia, 1969, the right of privacy was defined as "the right to be free, except in very limited circumstances, from unwanted governmental intrusion into one's privacy."
- Roe vs. Wade – 1973, In the first trimester a women has a private right to her body/abortion.

-Freedom of Religion-

- The 1st Amendment guarantees religious freedom
- There are two guarantees of religious freedoms:
 - a) **Establishment Clause** - Guards against establishing a mandated religion- in effect, freedom from religion. Thomas Jefferson said it put up "A Wall of Separation between Church and State.
 - b) **Free Exercise Clause** - Guards against the government interfering in the exercise of any religion - In effect, freedom for religion.
- Church and government are constitutionally separated from one another.

- Limits on Free Exercise-

- Actions that violate social duties or disrupt social order are not covered under the Free Exercise Clause and child labor laws.
 - **Examples**: Bigamy is illegal, (**Reynolds vs. USA**). Schoolchildren who have not been vaccinated.

- Free Exercise Upheld-

- The Court has found many government actions to be counter to the Free Exercise Clause.

Examples:

- Amish children cannot be forced to go to school after grade 8
- Ministers are allowed to hold elective office
- Unemployment benefits cannot be denied to someone who quit their job because of religious beliefs

- Freedom of Speech and Freedom of Press-

- The 1st and 14th amendments protect:
 - a) The freedom of expression, whether spoken, written, or communicated in any way.
 - b) Protect all persons' right to a complete discussion of public affairs.

-Freedom of Speech and Press do not protect:

- **Libel**, the false and malicious use of written words
- **Slander**, saying something false and hateful: Obscenity and Words that incite others to commit crimes.
 - a) Obscenity: would average person in community find it offensive or does it have serious literary, artistic and political value (**Miller v. California, 1973**).
 - b) Gov't can censor materials that are obscene.

-The Media-

- **Both Radio and Television Media** are subject to more government regulation than other forms of expression because they are transmitted by "public airwaves."
- The FCC regulates radio and TV, but not the film industry it has its own regulatory system.
- Gov't can't curb ideas in the press - **New York Times v. United States**, 1971, the government sought a court order to keep newspapers from printing "the Pentagon Papers" which had been stolen and leaked to the press. The Supreme Court found that the government couldn't show that the papers endangered national security enough to justify prior restraint of publication.
- Reporters keeping secret their sources do not have a constitutional right and can go to jail. So 30 states have passed **shield laws** to give reporters some protection against having to reveal their sources.

-Sedition-

- **Sedition** is the crime of attempting to overthrow the government by force, or to disrupt its lawful activities by violent acts. Seditious speech is speech that urges such conduct.
- Congress has enacted three major laws to prevent sedition and seditious speech:
 - 1) **The Alien and Sedition Acts**—made scandalous or false criticism of the government illegal. Expired before Thomas Jefferson took office in 1801.
 - 2) **The Sedition Act of 1917**—made it a crime to encourage disloyalty or spread anti-government ideas during a time of crisis. Upheld by the Supreme Court in instances of "clear and present danger."
Examples: Yelling Fire in a theater or bomb on a plane and there isn't any
 - 3) **The Smith Act of 1940**—forbade advocating violent overthrow of the government, and belonging knowingly to any group that does. The Supreme Court still upholds the constitutionality of the law, but over time has modified it so that it is difficult to enforce.

-Symbolic Speech-

- **Symbolic speech** is expression by conduct.
- Physical Gesturing or wearing of certain clothing and Picketing (the patrolling of a business site by workers on strike).
- Supreme Court rulings show that the blanket of symbolic speech covers only so much. It does not cover destroying draft cards (*United States v. O'Brien*, 1968) but it does encompass flag burning (*Texas v. Johnson*, 1989, and *United States v. Eichman*, 1990).

- Commercial Speech -

- Commercial Speech is speech for business purposes, usually advertising.
- Exceptions include: barring false and misleading advertisement, advertising illegal goods or services, and the promotion of tobacco products on the radio or television.

-Assembly

- People can gather to share views peacefully. The government can make and enforce reasonable rules regarding the time, place, and manner of assemblies.
- An example of such a rule is that public areas near schools and courthouses are restricted.