

For many people, the U.S. court system is what they see on *Law and Order* or in old *Perry Mason* episodes. It usually relates to the criminal law system and often at the state – not federal - level. Although there are exceptions, the basic structures of the federal and state court systems are pretty much the same, although technically different.

All Americans, except those in the District of Columbia, and in US territories such as Guam, have two sovereigns, one federal and one state. County and local governments are not sovereign but only subdivisions of state government.

The federal courts generally deal with violation of federal law, cases between citizens of different states subject to a certain minimum dollar level, and cases raising federal or federal constitutional issues such as Second Amendment rights.

Some topics are covered exclusively under federal law such as radio stations. Others such as gun regulation are shared by federal and state governments. Some, such as traffic laws, are by and large left to the states. Where state and federal laws overlap, there can be problems. For example, while some states have legalized marijuana under state law, people in those states can still be prosecuted for violation of federal drug law, as marijuana use remains illegal under federal law.

As for the court system, both federal and state systems usually feature three levels of courts of general jurisdiction (excluding traffic courts, small claims courts, and municipal and county courts).

The first (lower) level of courts tries cases directly and decides both issues of fact and law.

In New York State, for historical reasons, this lower level is called the Supreme Court. Decisions made at this level in New York State are only binding in that specific case.

At the federal level, these are called U.S. District Courts. At the Federal level, these courts would, historically, not issue nationwide constitutional decisions but this has been lost since Donald Trump became President and the most left leaning U.S. district judges now issue nationwide injunctions.

Then, there are intermediate level appeals courts. People (and the government) generally have a right to use them if they wish to challenge a lower court decision. These appellate courts mostly decide only issues of law and do not hold new trials.

In New York State it is known as the Appellate Division of the State Supreme Court. There are four regional Appellate Division Courts. Decisions of these state appellate courts are only binding precedents for that district.

In the federal system the appellate court is called the Court of Appeals. There are four regional U.S. district courts for the Eastern, Southern, Northern and Western Districts of New York. Decisions of the Courts of Appeals are only binding within their jurisdictional area though they do carry weight in the other U.S. Circuit courts.

At the top of the pyramids are the U.S. Supreme Court and the highest courts of the states (In New York State the highest court is the Court of Appeals). Both the top level federal and state courts usually have discretion over which cases they will take, so not all appeals to them will be heard.

In New York State, the Court of Appeals sets statewide precedents but these decisions do not bind courts in other states. The Court of Appeals has the last word on state law issues but it is possible to cross from the state system's top court to the U.S. Supreme Court if there are federal issues or constitutional issues at stake. You may remember *Bush v. Gore*, where the U.S. Supreme Court considered Florida election law in light of the federal constitution.

The U.S. Supreme Court sets national precedents. The U.S. Supreme Court can overrule decisions of the highest state court. It has the power of judicial review, that is it can interpret and declare whether a law or government act is constitutional or not. However, it sometimes strays into making policy decisions or issuing decisions grounded more in social and political factors than strictly in law. The Court may not always be right but what it declares to be the law is the law. It is difficult, but not impossible, to get the U.S. Supreme court to reverse a decision.

It is important to know how judges are appointed to our courts. Some state judges are elected and others are appointed, but federal judges are appointed for life on good behavior. These methods of appointment show how important it is who we elect Governor or President, as they are the gatekeepers. A long-term Governor or President has the opportunity to pack these courts with judges who share their philosophies and may serve for decades after the appointing Governor or President has left office

In New York State, the lowest level judges (Supreme Court) are directly elected by the voters for terms of 14 years and may be reelected. New York State Court of Appeals judges are nominated by the Governor subject to confirmation by the State Senate for terms of fourteen years.

At the federal level, all judges are nominated by the President and must be confirmed by the U.S. Senate. They are appointed for life on good behavior and may only be removed by impeachment and conviction but may resign voluntarily at any time. Judges often time their resignations so they can be replaced by a President who is likely to nominate someone who shares their judicial views.

The major difference between criminal and civil law is that in criminal courts proof beyond a reasonable doubt is required to convict while in civil courts only proof by the weight of the evidence (more likely than not) is required. Juries may be smaller than twelve in civil cases and a jury may not have to be unanimous.

Court cases on Constitutional issues are usually lengthy and very expensive with no “slam dunks”. (An Alaskan Moose hunter recently won a U S Supreme Court case that cost him \$1.5 million). Hopefully, the above information will help you to understand the differences in the various courts, how they operate, how judges are chosen, how a case might end up before the U S Supreme Court and the importance of governors and presidents in the makeup of courts.

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