

taking *reservations*, which is a legal means for making a provision enforceable than it might otherwise be. The government gives a number of reasons for these reservations, including that under our system of federalism, the treaty would be taking away power of individual states to make law and that other countries should not be imposing their views on the states. For example, the United States has taken a reservation to treaties that prohibit the death penalty against juveniles. The basis for this idea is that such a decision should be made by individual states.

Problem 1.4

You have been selected to join a group of space pioneers who will establish a colony on a distant planet. In order to create the best possible society, you and your group decide to make a list of the human rights that all space colonists should have.

- a. List the three most important human rights that you believe should be guaranteed.
 - b. Compare your list with those of others. Explain reasons for your selections.
 - c. Why do you think some of the rights you listed are more important than others?
 - d. Do any of the rights you listed conflict with one another? If so, which ones? Why?
 - e. Compare your list of rights with the rights listed on pages 600–607, the Universal Declaration of Human Rights. Which ones did you include? Which ones did you not include?
 - f. Are all the human rights you listed also legal rights? When does a human right become a legal right?
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Human rights are standards countries can use when writing laws. Sometimes human rights become law in a country when the government signs an international treaty guaranteeing such rights. Human rights also can become law if they are included in a constitution or if the legislature of a country passes laws protecting or guaranteeing these rights. Even though they may not refer to them as human rights, there are many provisions that protect human rights in our Constitution and Bill of Rights and in federal, state, and local laws.

Many of the human rights documents—including the Universal Declaration of Human Rights—mention cultural rights, and it is universally accepted that all people have a right to their own culture. But what does this mean when culture comes into conflict with universally accepted human rights? The practice of female infanticide, or killing female babies, might be accepted in one culture, but the world community condemns it as a violation of human rights, the right to life. So cultural rights, like many other rights, are not absolute.

Human Rights USA

Many countries have more serious human rights violations than the United States. This may be one reason why some people in the United States tend to use the term *human rights* only when referring to violations happening in other countries. However, human rights do apply to all people in all countries, including the United States.

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Problem 1.5

- a. Assume the following take place in the United States. Decide if each is a human rights violation. If it is, identify the article of the UDHR that is at issue.
1. Before class starts, the teacher says, "You can't pray in school."
 2. A child goes to sleep hungry because the parents have no money for food.
 3. A student receives a poor education in her high school and is rejected for every job for which she applies.
 4. A man is stopped before boarding an airplane and strip-searched because he has an Arab-sounding name and a stamp on his passport indicating that he has been to Iraq in the past year.
 5. A Spanish-speaking student speaks Spanish to another student. The principal tells the students that only English may be spoken in the school.
- b.
6. A woman is ill and is turned away from a hospital because she does not have health insurance or the money to pay her medical bill.
 7. A homeless man asks for money from people passing by, but people do not give him any money.
 8. A Muslim high school girl wears a hijab (head scarf) to school. The teacher tells her to remove it during class, as there is a rule against hats or other head coverings in the building.
 9. A family moves to the United States from an African country where it is part of their culture for the wife to stay at home and take care of the household. The husband comes home from work and finds that his wife has not done the laundry or cooked dinner. He disciplines her by striking her three times, the usual method of discipline in their culture.
- b. Did you find any human rights in conflict within any of the above examples? What should be done when this occurs?



Muslim girls in hijabs

UNIT

1

Introduction to Law and the Legal System



Street Law
online

Visit the *Street Law* Web
site at streetlaw.glencoe.com for
unit-based activities.

Unit 1, Introduction to Law and the Legal System, sets the stage for your study of Street Law. Chapters in this unit will help you learn important basic information including:

- What is law?
- How are laws made in the various branches of government?
- What roles can you play in influencing lawmakers?
- How is our legal system organized, including the difference between trials and appeals and between the state and federal court systems?
- How do you find and get help from a lawyer?

This unit also contains two chapters that help you develop skills you will need for the rest of your life. Chapter 3 discusses advocacy and will help you identify problems in your community, state, and country. As an effective advocate, you will be able to develop and implement plans (including voting and lobbying) for



The phrase “equal justice under law” refers to the goal of the U.S. court system to treat all persons fairly.

solving these problems. Your energy and insight can—and should—make you a part of the solutions to the most pressing problems we face.

Chapter 4 focuses on settling disputes outside of court, and will help you make smart decisions when you encounter conflict. While the law establishes who is right and who is wrong in many (but certainly not all) situations involving conflict, most conflicts are resolved without lawyers and without the court system.

If you are confronting a serious conflict, there are powerful steps you can take before considering a lawsuit—steps that are more helpful and more satisfying than fighting or running away.

Equipped with advocacy and conflict resolution skills from *Street Law*—along with all the practical legal information and other problem-solving skills you will get from this book—you will be able to improve your life and the life of your community.

CHAPTER

1

What Is Law?

*"The law
must be stable,
but it must not
stand still."*

— Roscoe Pound



Street Law
online

Visit the *Street Law* Web site at streetlaw.glencoe.com for chapter-based information and resources.

The question "What is law?" has troubled people for many years. An entire field of study known as **jurisprudence**, or the study of law and legal philosophy, is devoted to answering this question. Many definitions of law exist. For our purposes, however, law can be defined as the rules and regulations made and enforced by government that regulate the conduct of people within a society.

As a child, you learned about rules first at home and later at school. At home, your parents or guardians made and enforced rules concerning issues like chores and bedtimes. Teachers and principals established rules about classroom behavior. Rules made and enforced by the government are called laws. The government makes laws that affect almost every aspect of daily life.

One thing is certain: Every society that has ever existed has recognized the need for laws. These laws may have been unwritten, but even preindustrial societies had rules to regulate people's conduct. Without laws, there would be confusion and disorder. This does not mean that all laws are fair or even good, but imagine how people might take advantage of one another without a set of rules.

Congress passes laws
for everyone in the
United States to live by.

We the People
insure domestic Tranquility, provide for the common
and our Prosperity, We ordain and establish this Constitution

A democratic system of government cannot function effectively unless its laws are respected by the people the laws are intended to govern. In other words, society must be based on the "rule of law." The rule of law requires that the rules by which we are governed be known in advance and created through democratic processes. Rules should not be made up after the fact by arbitrary actions or decrees. All members of society—average citizens and government officials such as senators, judges, and even the president—are required to support the legal system and obey its laws. No one is above the law.

Problem 1.1

List 10 of your daily activities (for example, waking up, eating, and going to school). Next to each item, list any laws that affect that activity. What is the purpose of each law that you identified? Would you change any of these laws? Why or why not?

Law and Values

Laws generally reflect and promote a society's values. Our legal system is influenced by our society's traditional ideas of right and wrong. For example, laws against murder reflect the moral belief that killing another person is wrong. Most people would condemn murder regardless of what the law said. However, not everything that is immoral is also illegal. For example, lying to a friend may be immoral but is usually not illegal.

We expect our legal system to achieve many goals. These include (1) protecting basic human rights, (2) promoting fairness, (3) helping resolve conflicts, (4) promoting order and stability, (5) promoting desirable social and economic behavior, (6) representing the will of the majority, and (7) protecting the rights of minorities.

Many of society's most difficult problems involve conflicts among these goals. For example, some laws give preference to minorities over whites. Critics of these laws argue that they discriminate against whites and create racial conflict. Proponents of such laws, however, argue that they protect the rights of minorities, promote fairness by leveling an uneven playing field, and help reduce racial tension.



This sign reflects society's values about right and wrong. *What values are placed in conflict by laws protecting the environment?*

Achieving the goals just listed while trying to avoid conflict is a difficult task for the U.S. legal system. Laws must balance rights with responsibilities, the will of the majority with the rights of the minority, and the need for order with the need for basic human rights. Reasonable people sometimes disagree over how the law can protect the rights of some without violating the rights of others. However, everyone must remember that laws are intended to protect people and resolve conflicts in everyday life.

The Case of . . .

The Shipwrecked Sailors

Three sailors on an ocean going freighter were cast adrift in a life raft after their ship sank during a storm in the Atlantic Ocean. The ship went down so suddenly that there was no time to send out an SOS. As far as the three sailors knew, they were the only survivors. They had no food or water in the raft. And they had no fishing gear or other equipment that might be used to get food from the ocean.

After recovering from the shock of the shipwreck, the three sailors began to discuss their situation. Dudley, the ship's navigator, figured that they were at least one thousand miles from land and that the storm had blown them far from where any ships would normally pass. Stephens, the ship's doctor, indicated that without food they could not live longer than 30 days. The only nourishment they could expect was from any rain that might fall from time to time. He noted, however, that if one of the three died before the others, the other two could live a while longer by eating the body of the third.

On the twenty-fifth day, the third sailor, Brooks, who by this time was extremely weak, suggested that they all draw lots and that the loser be killed and eaten by the other two. Both Dudley and Stephens agreed. The next day, lots were drawn and Brooks lost. At this point, Brooks objected and refused to consent.

However, Dudley and Stephens decided that Brooks would die soon anyway, so they might as well get it over with. After thus agreeing, they killed and ate Brooks.

Five days later, Dudley and Stephens were rescued by a passing ship and brought to port. They explained to authorities what had happened to Brooks. After recovering from their ordeal, they were placed on trial for murder.

The country in which they were tried had the following law: Any person who deliberately takes the life of another is guilty of murder.

Problem 1.2

- a. Should Dudley and Stephens be tried for murder?
- b. As an attorney for Dudley and Stephens, what arguments would you make on their behalf? As an attorney for the government, what arguments would you make on the government's behalf?
- c. If they are convicted, what should their punishment be?
- d. What purpose would be served by convicting Dudley and Stephens?
- e. What is the relationship between law and morality in this case? Was it morally wrong for Dudley and Stephens to kill Brooks? Explain your answer.
- f. Can an act be legal but immoral? Can an act be morally right but unlawful? Explain.

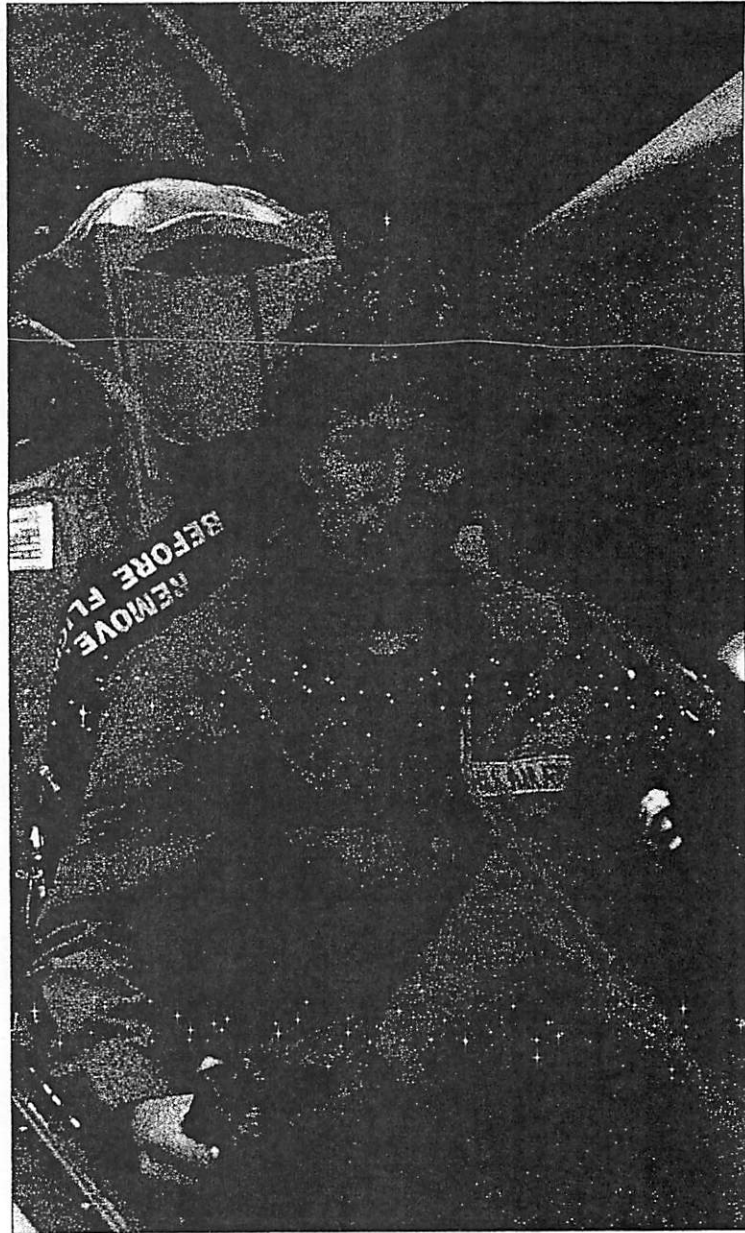
Laws can be based on moral, economic, political, or social values. As values change, so can laws. Moral values deal with fundamental questions of right and wrong. For example, laws against killing promote society's primary moral value—the protection of life. However, even this shared moral value—protection of life—is not absolute or universal because in limited circumstances such as self-defense or war, the law allows intentional killing.

Economic values deal with the accumulation, preservation, use, and distribution of wealth. Many laws promote economic values by encouraging certain economic decisions and discouraging others. For example, the law encourages home ownership by giving tax benefits to people who borrow money to pay for a home. Laws against shoplifting protect property and discourage stealing by providing a criminal penalty.

Political values reflect the relationship between government and individuals. Laws making it easier to vote promote citizen participation in the political process, a basic American political value.

Social values concern issues that are important to society. For example, it is an American social value that all students are provided with free public education at least through high school. Consequently, all states have laws providing for such education. Like other values, social values can change. In the past, for example, society believed that school sports were not as important for girls as for boys. This value has changed. Today, laws require schools to provide females with sports opportunities similar to those offered to males.

Many laws combine moral, economic, political, and social values. For example, laws against theft deal with the moral issue of stealing, the economic issue of protection of property, the political issue of how government punishes those who violate criminal statutes, and the social issue of respecting the property of others.



Female participation in traditionally male activities is on the rise. How does this photo reflect society's changing laws and values?

"Liberty means responsibility. That is why most men dread it."

— George
Bernard Shaw

Americans tend to think that laws can be passed to solve all of their problems. In 1919, the U.S. Constitution was amended to prohibit the manufacture and sale of alcoholic beverages in this country. The Eighteenth Amendment was passed in response to a significant national problem. However, prohibition of alcohol was extremely difficult to enforce, and 14 years later it was repealed by another constitutional amendment. (The text of the entire Constitution is provided on pages 570–599.) Today, legislators try to deal with the nation's devastating drug problem by passing a wide variety of laws. People disagree on what role the law can play in solving this problem. We know from experience, however, that there is a limit to what laws can reasonably be expected to do.

Problem 1.3

For each of the following laws, indicate whether moral, economic, political, or social values are involved. Explain your responses.

- a. All drivers must stop at stop signs.
- b. It is a crime to cheat on your tax return.
- c. All citizens may vote at age 18.
- d. Special government programs lend money to minority-owned businesses at low interest rates.
- e. Government officials may not accept gifts from people who want them to pass certain laws.
- f. Possession of marijuana is a crime.

Human Rights

Human rights are the rights all people have just because they are human beings. To advocate human rights is to demand that the dignity of all people be respected. Both government and private individuals can violate human rights. Human rights apply in people's homes, schools, and workplaces. In fact they apply everywhere. We have our human rights from the moment we are born until the moment we die.

The Universal Declaration of Human Rights (UDHR) is a statement of basic human rights and standards for government that has been agreed to by almost every country in the world. (The text of the entire UDHR is provided on pages 600–607.) First written and adopted by the United Nations (UN) in 1948 under the leadership of Eleanor Roosevelt, it proclaims that all people have the right to liberty, education, political and religious freedom, and economic well-being. The Declaration also bans torture and says that all people have the right to participate in their government process. Today these rights are promoted, recognized, and observed by every country that belongs to the UN.



Eleanor Roosevelt believed that her work on the Universal Declaration of Human Rights was her greatest accomplishment. How can human rights affect the writing of laws?

The Universal Declaration of Human Rights is not a binding treaty, but the United Nations has established a system of international treaties and other legal mechanisms to enforce human rights. These include two major treaties:

- The International Covenant on Civil and Political Rights protects rights such as freedoms of speech, religion, and press and the right to participate in government.
- The International Covenant on Economic, Social and Cultural Rights provides for rights such as the right to adequate education, food, housing, and health care.

The Covenant on Economic, Social and Cultural Rights also provides for the right to a job, safe working conditions, an adequate salary, and the right to own property. Some believe the right to a clean environment should be added to the Covenants, while others are calling for a right to economic development for poor countries. The United States has signed and ratified the Covenant on Civil and Political Rights, and has signed but not ratified the Covenant on Economic, Social and Cultural Rights.

There are other important human rights treaties covering specific areas of human rights, including genocide, discrimination against women, and the rights of children. Even when the United States signs these human rights treaties, it often restricts their enforcement within the country. This is done by announcing that the United States is

"The people's good is the highest law."

— Cicero

taking *reservations*, which is a legal means for making a provision enforceable than it might otherwise be. The government gives a number of reasons for these reservations, including that under our system of federalism, the treaty would be taking away power of individual states to make law and that other countries should not be imposing their views on the states. For example, the United States has taken a reservation to treaties that prohibit the death penalty against juveniles. The basis for this idea is that such a decision should be made by individual states.

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- b. Did you find any human rights in conflict within any of the above examples? What should be done when this occurs?



Muslim girls in hijabs

Balancing Rights with Responsibilities

The emphasis on rights in the United States has led some people to criticize the country for being too concerned with rights, while neglecting responsibilities. Some say that "with every right there comes a responsibility" and urge people to act more responsibly toward one another, their families, and their communities.

Critics cite the United States's emphasis on individual rights as evidence of "radical individualism," which has resulted in a self-centered focus and the loss of a sense of community. Americans justifiably have great respect for laws extending rights to women, minorities, and persons with disabilities—all of whom were previously excluded from full participation in society.

While individual rights are important, they must be matched by social responsibilities, these critics say. For example, if people wish to be tried by juries of their peers, they must be willing to serve on such juries. If they want to be governed by elected officials who respond to their values and needs, they must not only vote but also get involved in other ways: attend election forums, work for candidates, and run for positions on school boards, city councils, and community associations. Many laws also require people to act responsibly. For example, parents must provide their children with adequate food, shelter, and clothing; drivers must obey traffic laws; and all workers must pay taxes.

Other critics of the emphasis on rights in the United States point out that just "because you have a legal right to do (or not to do) something does not mean it is the right thing to do." For example, the First Amendment sometimes gives people the right to say hateful and abusive things to others, as its function is to protect freedom of speech. However, it does not make such speech right.

Leaders such as César Chávez helped minority groups fight for civil rights. How have laws changed to include women, minorities, and persons with disabilities?



The Apathetic Bystanders

Catherine “Kitty” Genovese was attacked and stabbed to death in 1964 in a highly populated area of Queens, New York. During the half-hour ordeal, 38 people heard Kitty’s screams for help and watched from their windows. Twice the killer was scared off by the sound of voices and the realization that he was being watched. However, both times, when it became obvious that nobody was going to call the police, the killer returned to finish off his victim. Rather than give any aid

to Kitty, such as calling the police or an ambulance, all 38 bystanders chose to pull their shades, draw their blinds, and ignore Kitty’s urgent pleas for help as her life was taken by the deranged attacker.

Problem 1.6

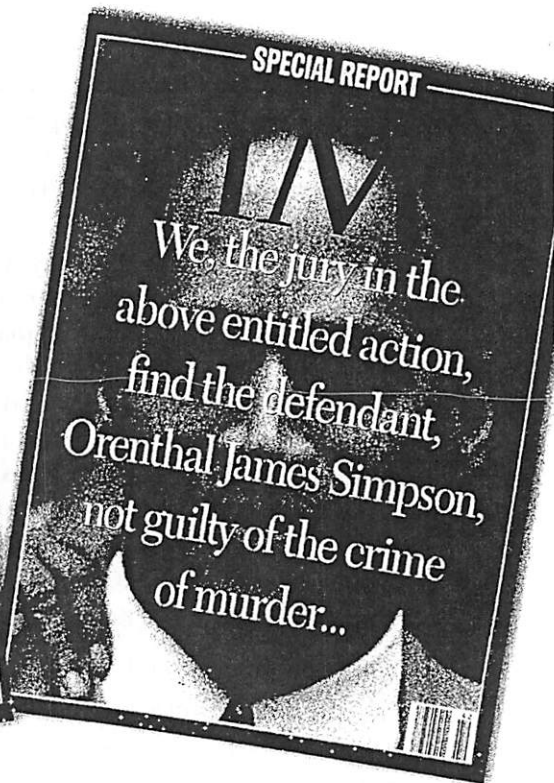
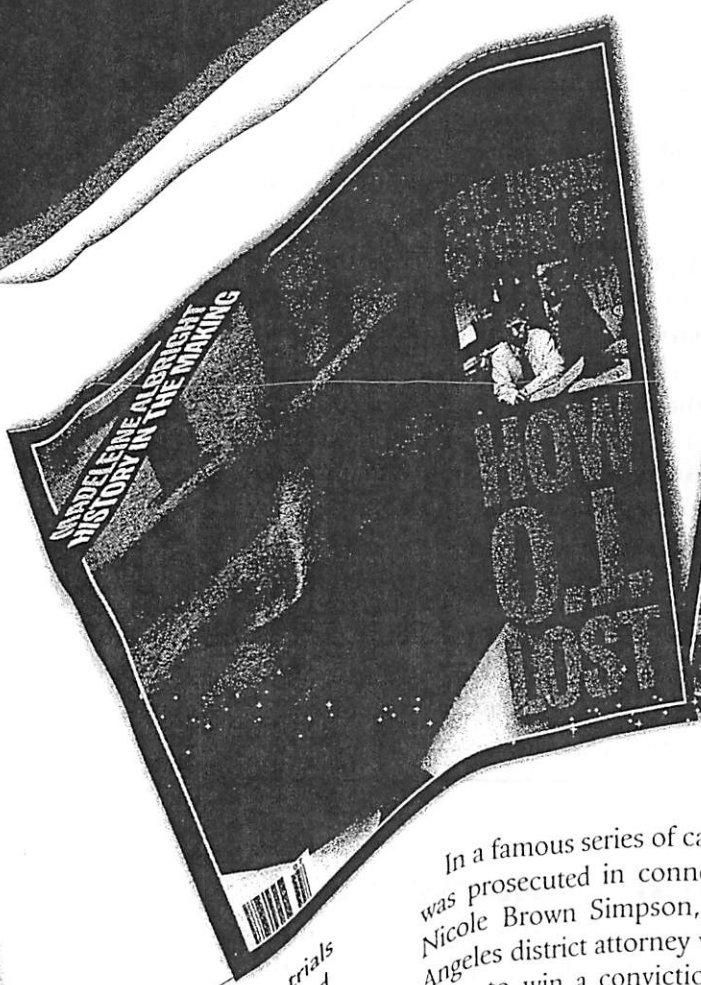
- a. Why do you think the bystanders took no action?
- b. Did the bystanders commit a crime by not acting? Give your reasons.
- c. Did the bystanders do the right thing?
- d. Should the law hold citizens responsible for not helping out in cases such as this one?

Kinds of Laws

Laws fall into two major groups: criminal and civil. **Criminal laws** regulate public conduct and set out duties owed to society. A criminal case is a legal action that can only be brought by the government against a person charged with committing a crime. Criminal laws have penalties, and offenders are imprisoned, fined, placed under supervision, or punished in some other way. In the U.S. legal system, criminal offenses are divided into **felonies** and **misdemeanors**. The penalty for a felony is a term of more than one year in prison. For a misdemeanor, the penalty is a prison term of one year or less. Felonies, such as murder or robbery, are more serious crimes. Less serious crimes, such as simple assault or minor theft, are called misdemeanors.

Civil laws regulate relations between individuals or groups of individuals. A **civil action** is a lawsuit that can be brought by a person who feels wronged or injured by another person. Courts may award the injured person money for the loss, or they may order the person who committed the wrong to make amends in some other way. An example of a civil action is a lawsuit for recovery of damages suffered in an automobile accident. Civil laws regulate many everyday situations, such as marriage, divorce, contracts, real estate, insurance, consumer protection, and negligence.

Sometimes behavior can violate both civil and criminal laws and can result in two court cases. A criminal case is brought by the government against a **defendant**, the person accused of committing the crime. A civil case is brought by the **plaintiff**—the person or company harmed—against the defendant.



The O.J. Simpson trials attracted national and international media attention. Did the public understand the difference between the civil and criminal law in these cases?

Law is the science of law.
— Sir Edward Coke

In a famous series of cases, former star football player O.J. Simpson was prosecuted in connection with the deaths of his former wife, Nicole Brown Simpson, and her friend, Ron Goldman. The Los Angeles district attorney was the prosecutor in this criminal case. In order to win a conviction, the district attorney had to prove that O.J. Simpson was guilty beyond a reasonable doubt. This means that if the jury (or the judge in a case tried without a jury) has any reasonable doubts about the defendant's guilt, then it must vote not to convict. The jury verdict in Simpson's criminal case was *not guilty*.

Several months later, the parents of Ron Goldman brought a civil suit against O.J. Simpson to recover damages resulting from the wrongful death of their son. In a civil case, the plaintiff wins by convincing the jury (or the judge in a case tried without a jury) by a preponderance of the evidence. The jury (or judge) needs only to decide if it is more likely than not that the plaintiff's complaint is true. This is a lower requirement for proof than the beyond-a-reasonable-doubt standard used in criminal cases. The reason for the different standards of proof is that a defendant loses money in a civil case, but can suffer lengthy imprisonment or even the death penalty as a result of a criminal conviction. The Goldmans won their civil case against O.J. Simpson. Because the public tends not to understand the difference between civil and criminal cases, there was much confusion about how a person could be found not guilty in a criminal case and then responsible in a civil suit for damages for the same act.

You will learn much more about criminal law in Unit 2 of *Street Law* and much more about civil law in Units 3 through 6.

Problem 1.7

Matt and Kenji decide to skip school. They take Kenji's brother's car without telling him and drive to a local shopping center. Ignoring the sign "Parking for Handicapped Persons Only," they leave the car and enter an electronics shop.

After looking around, they buy a portable CD player. Then they buy some sandwiches from a street vendor and walk to a nearby park. While eating, they discover that the CD player does not work. In their hurry to return it, they leave their trash on the park bench.

When Matt and Kenji get back to the shopping center, they notice a large dent in one side of their car. The dent appears to be the result of a driver's carelessness in backing out of the next space. They also notice that the car has been broken into and that the car stereo has been removed.

They call the police to report the accident and theft. When the police arrive, they seize a small, clear bag containing illegal drugs from behind the car's back seat. Matt and Kenji are arrested.

- a. List all the things you think Matt and Kenji did wrong.
 - b. What laws are involved in this story?
 - c. Which of these are criminal laws? Which are civil laws?
-

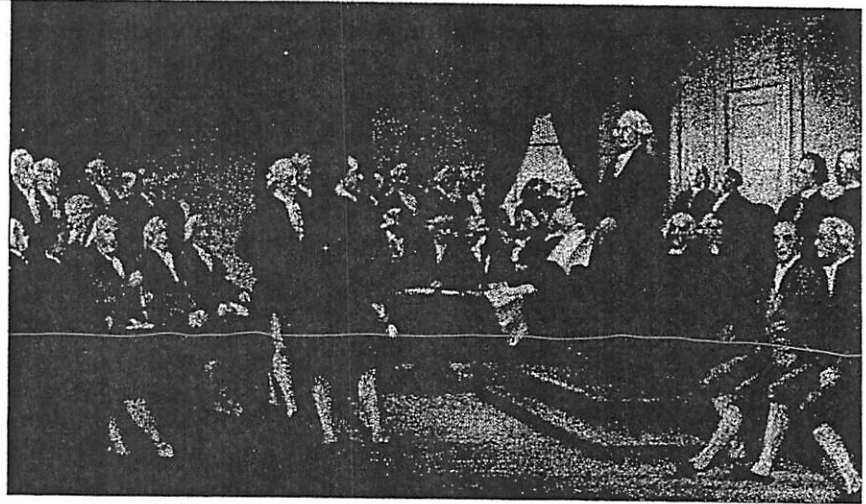
Our Constitutional Framework

The U.S. Constitution is the highest law of the land. Drafted more than two hundred years ago, this remarkable document is the longest-lasting written constitution in the world. It sets forth the basic framework of our government. It also lists the government's powers, the limits on those powers, and the people's freedoms that cannot be taken away by the government. (The text of the entire Constitution is provided on pages 570–599.)

Integral to the Constitution is the principle of **limited government**. Before the U.S. Constitution was written and ratified, the individual states were reluctant to give up power to the national government. After all, a revolution had just been fought against the government of the king of England to preserve individual liberty and the freedom to govern without interference. As a result, the Constitution created a national government of limited powers, with authority to pass laws only in the areas specifically listed in Article I of the Constitution. Those who criticize the power and reach of the federal government today often cite these historic reasons for limiting its power.

Perhaps nothing is more important in the Constitution than the division of lawmaking power among the three branches of government: the executive, the legislative, and the judicial. This division is known as the **separation of powers**. The executive branch, which includes the president and federal agencies, is primarily responsible for enforcing the law. However, the executive branch often issues

• *The Adoption of the Constitution* by J.B. Stearns depicts the members of the Constitutional Convention formally endorsing their new plan of government. What is the purpose of the U.S. Constitution?



rules and executive orders that have the force of law. The legislative branch, or Congress, uses lawmaking power when it passes laws, or **statutes**. The judicial branch, or judiciary—the courts—clarifies, and in some instances establishes laws through its rulings. These ruling may interpret a provision of the Constitution, a statute, or a rule issued by an executive agency.

The three branches of government are independent, but each has the power to restrain the other branches in a system of **checks and balances**. The system was designed to prevent one branch from becoming too powerful and abusing its power. Examples of checks and balances include congressional investigations of actions by the president or other executive officials, the prosecution in court of members of Congress or the executive branch for violating the law and impeachment. Another check is the president's power to veto (refuse to approve) laws passed by Congress.

One of the most visible and important checks of one branch on another is the courts' power of **judicial review**. Judicial review enables a court to declare unenforceable any law passed by Congress or a state legislature that conflicts with the nation's highest law, the Constitution. For example, Congress might pass a law prohibiting media criticism of elected officials. If challenged in court, this law would be declared invalid and unconstitutional because it violates the freedom of press guaranteed in the First Amendment. In general, the courts can declare a law **unconstitutional** either because (1) the government has passed a law which the Constitution does not give it the power to pass or (2) the government has passed a law that violates somebody's rights. Judicial review also gives the courts the power to declare an action of the executive or legislative branch to be unconstitutional. For example, the courts can strike down a regulation improperly issued by an executive branch agency. The courts may also prevent Congress from taking away the president's power to grant pardons.

Just as the Constitution restricts the power of the branches, it also reflects the view that the federal government as a whole should be limited by the power of the states. This division of power between the states and the federal government is known as **federalism**. The federal government's powers to make laws are listed in the Constitution, and the remaining powers are reserved for the states. This is why most civil and criminal laws are passed by state legislatures or local governments. Consequently, many legal differences exist among the states. For example, a 16-year-old boy can obtain a license to drive a car in some states but not in others.

The principle of limited government is also reflected in the **Bill of Rights**, the first 10 amendments to the Constitution. The Bill of Rights defines and guarantees the fundamental rights and liberties of all Americans, including the freedoms of religion, speech, and press; the freedom from unreasonable search and seizure; and other individual rights. Courts have decided that most provisions of the Bill of Rights limit the power of state and local governments as well as the federal government.

Every state has a constitution, and most state constitutions reflect the major principles of the U.S. Constitution. All provide for different branches of government, separation of powers, checks and balances, and judicial review. Some state constitutions provide greater protection of rights than the U.S. Constitution. Our federal system allows states to do this if they wish. For example, some state constitutions have equal rights amendments guaranteeing women greater rights than they have under the U.S. Constitution.



Federal troops enforce the Constitution and forcibly integrate Little Rock High School in September 1957 after members of the Arkansas National Guard prevented Elizabeth Ann Eckford from entering the school. *What is the role of the federal government in protecting individual rights?*

*"All religions,
laws, morals and
political systems
are but necessary
means to preserve
social order."*

— Chien
Tu-Hsiu

The U.S. Constitution and most state constitutions are difficult to change. This is because they were drafted with the belief that they should not be changed without careful thought, discussion, and debate. The idea was to make these documents as permanent as possible. However, allowances were made to accommodate necessary changes. The U.S. Constitution may be changed in two ways. A proposed amendment must be approved either by a two-thirds vote of both houses of Congress or at a convention called by two-thirds of the states. In either case, it must then be ratified, or approved, by three-fourths of the states.

People try to change the Constitution for many reasons. One of the most common reasons for change has been to extend rights that were not originally written into the Constitution. Although ratification is difficult, 27 amendments have been added to the Constitution. These extensions of rights often reflect the changing viewpoints of citizens and their elected representatives. For example, when the original Constitution was ratified in 1789, most states restricted voting to white males who owned property. Since then, various amendments have extended voting rights to minorities, women, persons without property, and persons aged 18 to 20.

Amendments for a range of issues have been discussed and proposed over the years. Some think there should be a constitutional amendment to extend statehood to the District of Columbia. Another proposed amendment would require the federal government to adopt a balanced budget. Other amendments have been proposed in recent years to punish flag burning, protect victims of crime, and ban abortions. The Equal Rights Amendment passed Congress in 1972. It prohibited discrimination on the basis of sex. However, it failed to be ratified by the required 38 states, so it did not become a part of the U.S. Constitution. In 1992, the Twenty-Seventh Amendment became part of the Constitution. This amendment, first proposed by James Madison in 1789, bans midterm congressional pay raises.

Problem 1.8

Examine each of the following situations and determine for each whether it involves the principle of separation of powers, checks and balances, judicial review, federalism, or some combination of these principles. Specify the principle or principles involved and explain your answer.

- a. A state law requires that a prayer be said each day in public schools. The courts rule that the law violates a First Amendment clause that prohibits the government from establishing a religion.
- b. The U.S. Congress passes a law that restricts the import of handguns from other countries. The legislature in one state allows the sale of handguns to anyone over age 18.
- c. Because a prison is very old and overcrowded, a state court orders the state legislature to spend \$10 million on a new prison.

Lawmaking

The laws that U.S. citizens are expected to obey come from many sources, including federal and state governments. Constitutions set forth laws and also establish the structure of government. Legislatures, of course, make laws. In some situations, voters can act directly as lawmakers. Administrative agencies make many laws. Finally, laws are sometimes made by courts when they decide appeals.

"Even when laws have been written down, they ought not always to remain unaltered."

— Aristotle

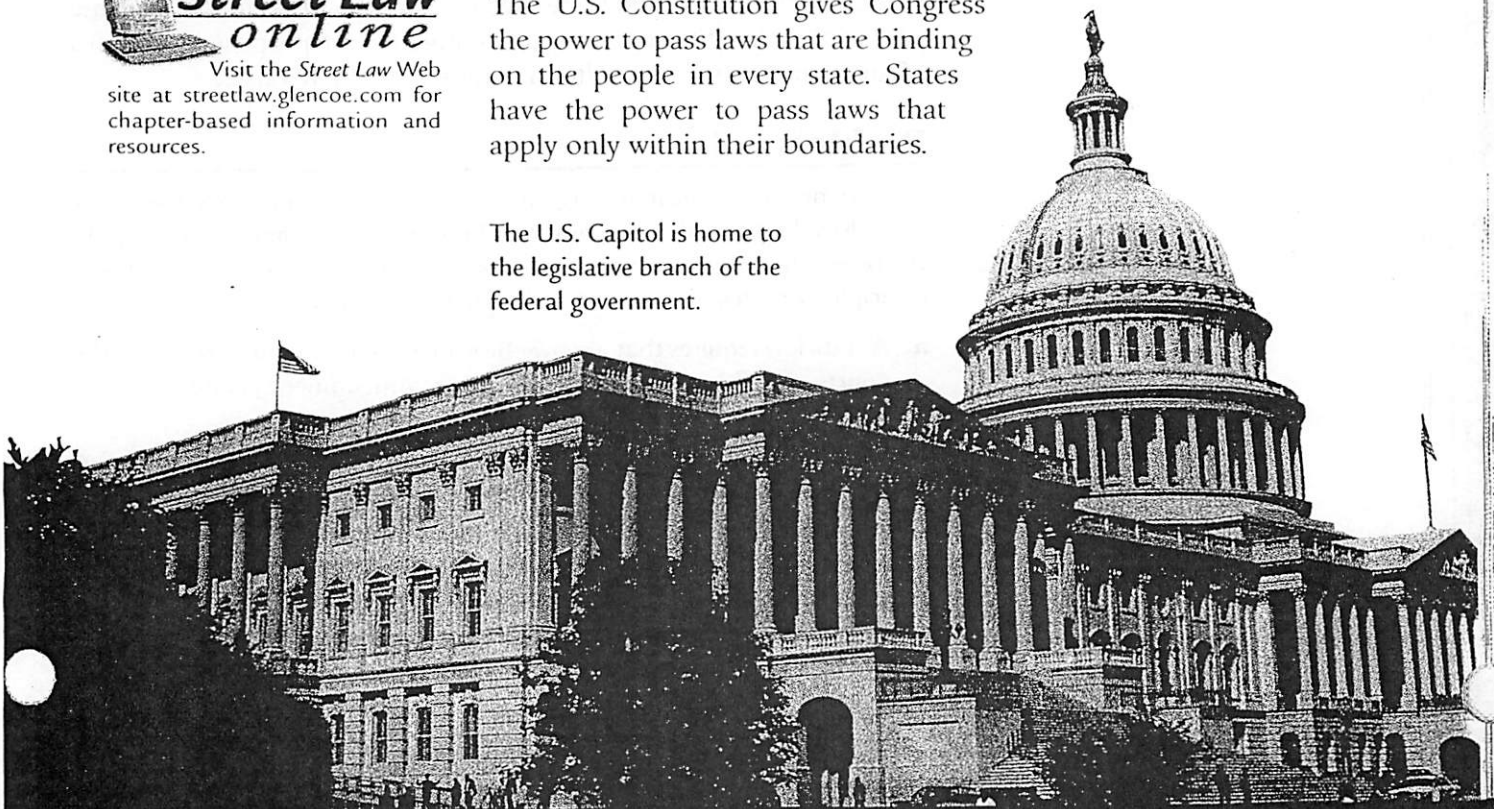
Legislatures

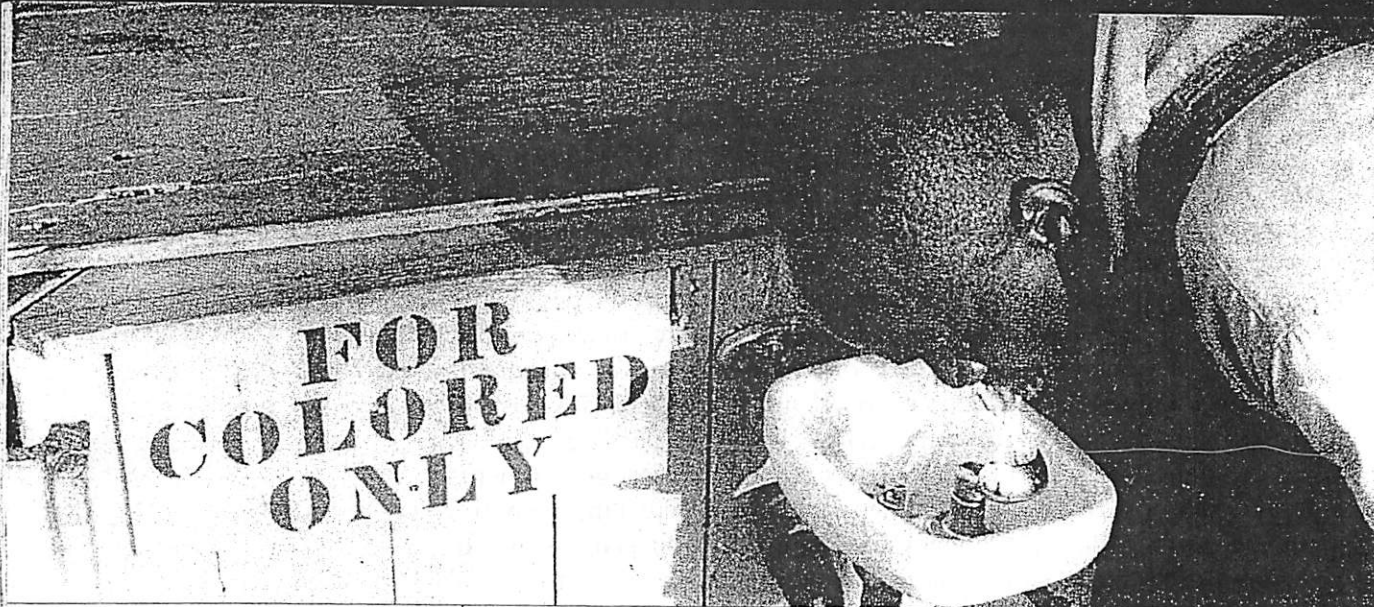
As you have seen, the U.S. Constitution divides the power to make laws between the federal government and the state governments. At both the federal and the state levels, legislatures are the primary law-making bodies. The U.S. Congress—the federal legislature—is made up of two houses. The Senate is composed of 100 members with two from each state, and the House of Representatives has 435 members with each state represented according to the size of its population. The U.S. Constitution gives Congress the power to pass laws that are binding on the people in every state. States have the power to pass laws that apply only within their boundaries.

The U.S. Capitol is home to the legislative branch of the federal government.

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Segregated drinking fountains were common in the American South in the 1960s. Why was the federal government concerned about this situation?

The lawmaking authority of Congress is exercised through the passage of laws known as federal **statutes**. When Congress passes a federal statute, it affects people in every state. Federal statutes deal with issues of national impact, such as environmental quality, national defense, homeland security, labor relations, veterans' affairs, public health, civil rights, economic development, postal services, and federal taxes.

The states' lawmaking powers are vested in their legislatures, which pass laws called state statutes. Except for Nebraska, every state has a two-house legislature. Most states' legislatures meet on an annual basis; in a few states, the legislatures meet every two years. States pass laws with statewide impact in such areas as education, traffic, state taxes (including how they will be spent), marriage and divorce, most criminal laws, and the powers and duties of state government officials. Although tribal governments of Native Americans vary a great deal, many place legislative authority—and sometimes executive authority as well—in a body known as the tribal council.

The power of the federal government to pass laws is limited. Congress cannot legislate unless given the power to do so in the Constitution. The states, on the other hand, have broader power to legislate. In general, the states have power to legislate in all those areas over which the national government was not granted power by the Constitution. For example, a state could not enter into a treaty with another country or coin money, as those are among the powers assigned to the national government. However, states can pass marriage and divorce laws, as those are not powers assigned to the national government.

Sometimes federal laws conflict with state laws. However, unless it can be shown that Congress is legislating in an area the Constitution delegated to the states, the courts will usually follow the federal law and not the state law. For example, in the 1960s, federal laws against racial segregation in restaurants and hotels came into conflict with

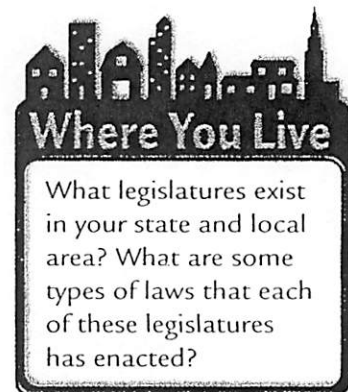
laws of some states that required separate accommodations for African Americans and whites. The courts ruled the state laws invalid based on Article VI of the Constitution, the **supremacy clause**, which states that “the Constitution and the Laws of the United States . . . shall be the supreme law of the land.”

In addition to the U.S. Congress and state legislatures, cities, towns, and counties have lawmaking bodies such as county or city councils, boards of aldermen, or local boards of education. Local governments pass laws known as ordinances or regulations. Legislative issues that concern local governments include land use, parking, schools, and regulation of local business. Laws passed by local governments apply only to a county, city, or town. The local lawmaking body has been given the power to enact ordinances by the state. Many of the laws most important to us in our daily lives are passed by local governments.

Problem 2.1

Decide whether each of the following laws is federal, state, and/or local. Then give one example, not listed among the following, of a federal, a state, and a local law.

- a. No parking on the east side of Main Street between 4:00 P.M. and 6:00 P.M.
- b. All persons between the ages of 6 and 16 must attend school.
- c. Whoever enters a bank for purposes of taking by force or violence the property or money in custody of such bank shall be fined not more than \$5,000 or imprisoned not more than 20 years or both.
- d. In order to sell any product on public streets, the seller must first apply for and receive a vendor’s permit.
- e. No employer of more than 15 persons may discriminate on the basis of race, color, religion, sex, or national origin.
- f. All persons traveling on interstate airline carriers are subject to search before entering the airplane departure area.



Legislatures and other lawmaking bodies try to respond to the needs of the citizens they represent by introducing legislation in the form of **bills**. Bills are used to enact new laws or amend or repeal old laws. Ideas for bills can come from legislators, the executive branch, individual citizens, citizens’ groups, businesses, or lobbyists representing various groups. The courts also sometimes identify problems that legislatures need to address. A bill passed by the legislature and not vetoed by the executive branch becomes a law.

After a bill becomes a law, the people must obey it. Sometimes, though, the language of a law is open to differing interpretations. It is not always easy to know exactly what a law prohibits or allows. Disputes over what a law means frequently end up in court. A judge who interprets what the legislature means is determining **legislative intent**.

The Case of . . .

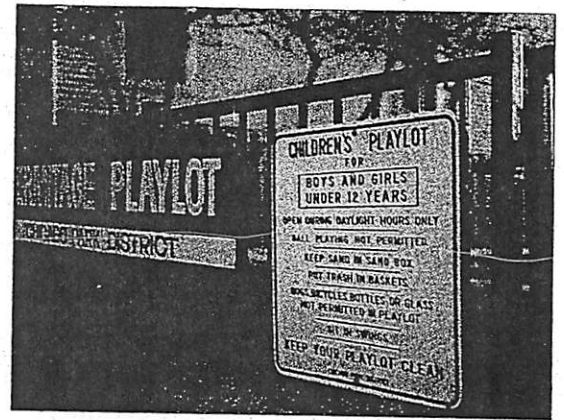
The Unclear Law

The city of Beautifica has established a lovely park in the city. The city council wishes to preserve some elements of nature, undisturbed by the city noise, traffic, pollution, and crowding. The park is a place where citizens can go and find grass, trees, flowers, and quiet. In addition, there are playgrounds and picnic areas, and at one time a road ran through the park. Now the road is closed. The city council has enacted a law requiring that at all the entrances to the park the following sign is to be posted: NO VEHICLES IN THE PARK.

Problem 2.2

The law seems clear, but some disputes have arisen over its interpretation. Interpret the law in the following cases, keeping in mind what the law says (the letter of the law) as well as the legislative intent. Examine each situation and decide whether or not the vehicle described should be allowed in the park. Write down the reasons for your choices. When you finish analyzing all of the situations, rewrite the law to make it clearer.

- a. Tony lives on one side of the city and works on the other. He will save ten minutes if he drives through the park.
- b. To keep the park clean, trash barrels are located throughout the area. The sanitation



Park rules should be clear to everyone.

- department wants to drive a truck into the park to collect the trash from the barrels.
- c. Two police cars are chasing a suspected bank robber. If one police car cuts through the park, it can get in front of the suspect's car and trap it between the patrol cars.
 - d. An ambulance is racing to the hospital with a dying patient. The shortest route is through the park.
 - e. Elena wants to take her baby to the park in a stroller.
 - f. A monument is being erected to the city's citizens who died in the Vietnam War. A tank, donated by the government, is to be placed beside the monument.
 - g. Amul had both legs amputated and uses an electric wheelchair. He wants to visit the park.

Drafting a Bill

No matter where the idea for a bill originates, eventually there must come a time when the bill is drafted—that is, when actual language is written. As you can see from The Case of the Unclear Law, sometimes even the simplest language is not clear enough for people to understand what is expected. Legislation is often drafted and redrafted before being introduced and discussed by a legislative body. Despite these efforts, many laws are difficult to read and understand. When misunderstandings occur, one of the basic purposes of law—letting

people know what conduct is expected of them, or what conduct is prohibited—is lost. When drafting laws or other types of rules, it is useful to ask the following questions to evaluate whether problems are likely to result.

- Is the law written in clear language?
- Is the law understandable?
- When does the law go into effect?
- Does the law contradict any other laws?
- Is the law enforceable? If so, by whom?
- Are the penalties for breaking the law clear and reasonable?

In deciding what a statute means, judges must follow certain rules. One rule is that courts will not enforce laws that are so vague that it is unclear exactly what conduct is prohibited. For example, a law that stated “it shall be illegal to gather on a street corner without a good reason” would be determined as being too vague. Another rule says that if there is doubt as to the meaning of a word in a criminal statute, the word must be strictly interpreted against the government.

Law in Action

Drafting a Law Simulation

Over the past year, traffic congestion in your town has worsened. One result has been an increase in accidents involving bicycles. Last year, there were nine accidents with serious injuries involving bicycles and cars or bicycles and pedestrians. A citizens’ group asks the town council to draft some bicycle safety legislation. After examining the town ordinances, the council realizes that there is no existing law explaining where and how people should ride bicycles.

Problem 2.3

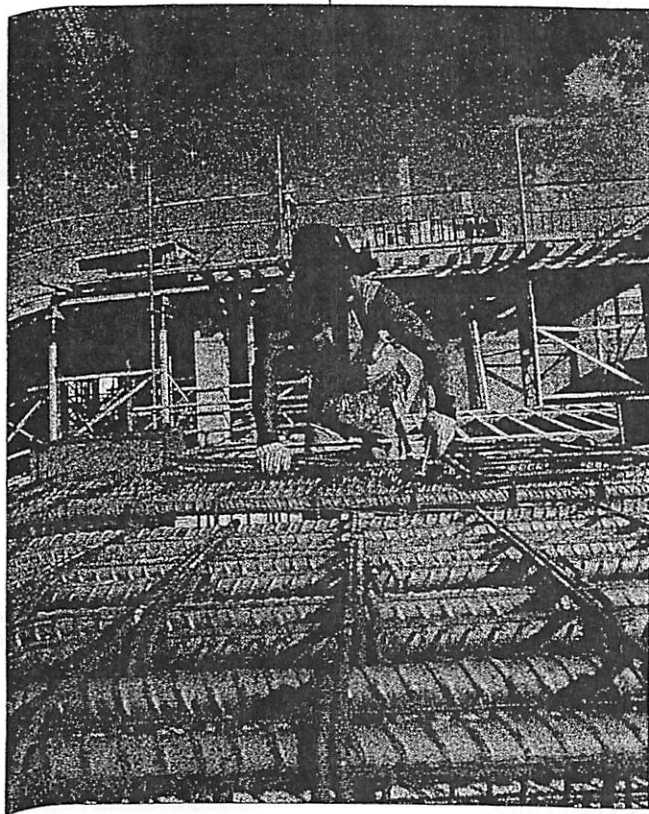
The town’s legislative drafting commission—of which you are a member—has been asked to draft a new ordinance

- a. What problem does the town council need to address with the proposed ordinance?
- b. What is the legislative intent of the town council in drafting the ordinance?
- c. List all the details you think should be included in the proposed ordinance.
- d. Create a draft of the proposed ordinance to deal with the problem. The draft should contain no more than 6 sentences.
- e. After the law is drafted, use the guidelines for drafting laws listed above to analyze possible problems with the law. Are there any? If so, what are they? How can they be solved?

"You are better off not knowing how laws and sausages are made."

— Anonymous

Specific rules and regulations are made by agencies, such as the Occupational Safety and Health Administration (OSHA). *Why do you think this agency is needed?*



This usually means that words are given their ordinary meaning by the court. These rules are meant to ensure that people are not punished for failing to obey an unclear law.

Clarity in legal language is important. For that reason, some legislatures now attempt to write in simple, clear English rather than traditional legal language. Those who favor this practice argue that laws have been written in language that is too complex and should instead be written so that a person of ordinary intelligence and education can understand what is expected. However, many laws are still written in language that is difficult to understand.

Agencies

Many of the laws that affect you are made by government agencies. Legislative bodies usually deal with problems in only a general way. They authorize administrative agencies to develop rules and regulations to make laws more specific. These regulations influence almost every aspect of our daily lives and have the force of law. For example, Congress passed a law requiring safe working conditions in places of employment. To implement the law, Congress established the Occupational Safety and Health Administration (OSHA). This agency develops specific regulations governing health and safety on the job. These regulations dictate specifics, such as the height of guardrails in

factories, the number of fire exits, and the type of safety equipment to be worn by employees in various occupations.

Another example of a government agency is the Environmental Protection Agency (EPA). It works with other federal agencies, state and local government, and Native American groups to develop and enforce regulations under existing environmental laws passed by Congress. The EPA sets national standards that help protect human health and safeguard the national environment with enforcement delegated to state governments. The agency also works with industry and government at various levels on pollution prevention and energy conservation.

In response to the attacks of September 11, 2001, the federal government created new agencies, and reorganized existing ones, to protect homeland security. For example, in November 2002 President Bush signed a bill creating a new federal Department of Homeland Security. The department's primary mission is to help



Former Pennsylvania governor Tom Ridge was named as the first secretary of the new Department of Homeland Security in January 2003. *Why did the U.S. government create a new agency after the September 11, 2001, terrorist attacks?*

prevent, protect against, and respond to acts of terrorism on U.S. soil. An existing agency, the Department of Transportation (DOT), was also reorganized when the Transportation Security Administration (TSA) was created within DOT to protect the nation's transportation system. When you travel by air, TSA employees screen you and your luggage to ensure the safety of your flight.

The administrative agencies with the greatest impact on your daily life are those at the state and local levels. For example, a zoning commission and other local agencies where you live may have developed a plan that determines what kind of buildings can be located in specific parts of your town. A local agency may hold public hearings to determine whether a new restaurant can serve alcohol and feature live music. And your state or local school board may have taken some administrative action that allows your school to offer this Street Law course!

Administrative agencies, then, are really hidden lawmakers, making numerous rules and regulations that affect business and industry, as well as individuals. For example, regulations govern the amount of pesticide that can be used on produce, the number of animals that can be killed by hunters, the ingredients that can be used in canned food, the costs of phone calls and electricity, the hours of operation for bars and restaurants, the qualifications of people employed in various professions, and hundreds of other issues. In addition to their lawmaking functions, agencies also administer government programs and provide many services.

Regulations issued by these agencies become law without being voted upon. However, agencies usually hold **public hearings** before issuing proposed regulations. These hearings give individuals or businesses an opportunity to express their views on the proposals. In addition, regulations proposed by the federal government must be published in a special newspaper called the *Federal Register*. This allows people to learn about and comment on proposed rules.

Where You Live

① Visit the EPA online at www.epa.gov to find environmental information about your local community. Information about environmental agencies and laws in your state is also available from the EPA online.



② What are the major departments or agencies of your state government? How are they organized and what do they do?

In recent years, there has been much criticism about the number of rules and regulations affecting businesses and individuals. Some groups have called for a limit on new regulations or the repeal of regulations they consider too costly and burdensome. Others say administrative regulations are an essential part of modern life.

Problem 2.4

Complete one of the following exercises as a research project.

- a. Find an article in your local newspaper about an administrative agency. Then answer the following questions about the agency: What is its name? What does it do? Is the agency part of the federal, state, or local government? What does the article say about the agency?
 - b. Find evidence of an agency at work on a street in your community. What agency is acting? What action is the agency taking? Is there any way for the public to have an impact on the agency? If so, how? Is the agency part of the federal, state, or local government?
 - c. Choose an occupation or profession (such as an electrician, physician, lawyer, schoolteacher, or hair stylist). Interview someone in that occupation to get answers to the following questions: What agency or organization regulates the profession? What are the qualifications for the profession? Are any licenses or tests required? How does the agency decide who gets a license? Is the agency part of the federal, state, or local government?
-

Courts

Law is also made by courts. Later in this unit you will learn much more about how the court system is organized. But for now, think about courtroom scenes you have watched on television. These courts were conducting **trials**. The person who loses a trial can sometimes ask a higher court to review and change the result of the trial. These higher courts are called **appeals** or **appellate courts**. When an appeals court decides a case, it issues a written opinion that sets a **precedent** for similar cases in the future. All lower courts in the jurisdiction where the precedent was issued must follow it. For example, if a state's supreme court ruled that the state's constitution required that school funding be equalized throughout the state—richer and poorer school districts would each have to spend the same amount per student—then all lower courts in that state would have to follow that precedent.

International Lawmaking

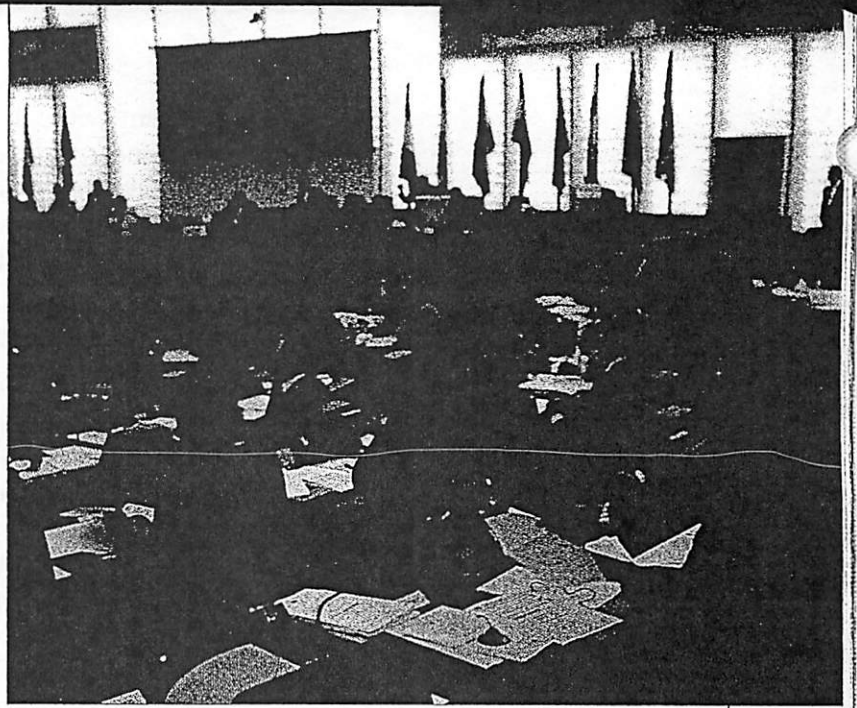
International law is usually defined as the law that applies to the conduct of countries. It is most often made when national governments make treaties with each other or with a group of countries. A **treaty**

is an agreement or contract between countries. These treaties are sometimes created by the joint action of countries, or by actions taken by the United Nations. Various international laws, usually made by treaty, regulate commerce among countries, refugees crossing national borders, ownership of property including copyrights and patents, the environment, and many other areas. The U.S. Constitution provides that treaties are the supreme law of the land if they are signed by the president and then ratified by two-thirds of the U.S. Senate.

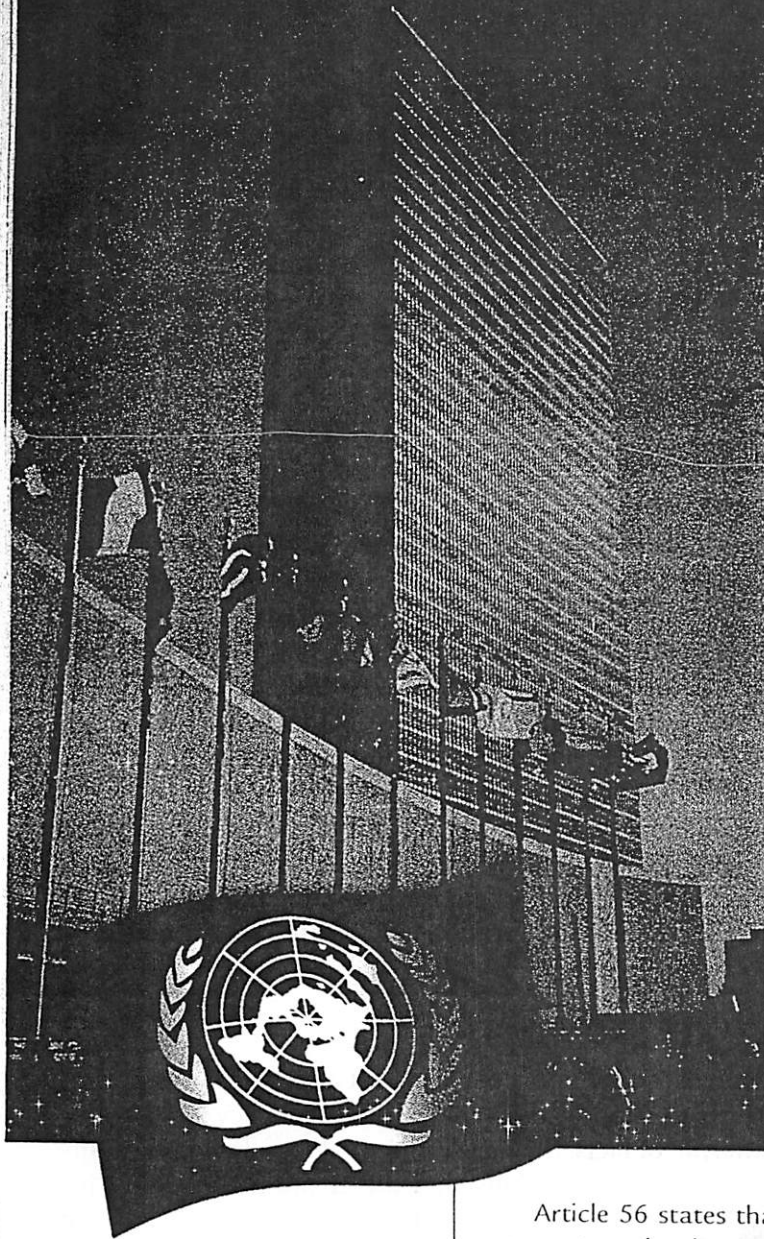
Important international law has been made by a series of treaties, signed since 1950 by various European countries, which formed the European Union (EU). These treaties established a European Parliament, which has the power to make laws that promote political and economic cooperation in Europe. A very visible example of this has been the EU's agreement to have a new common currency called the euro. In 2003 fifteen countries belonged to the European Union, and 13 others—mostly former member countries of the Soviet Union—were awaiting entry into the EU. Countries that join do not give up most of their sovereign power to make laws that are binding within their borders. However, in order to benefit all member countries they do give up power in selected areas by delegating some lawmaking authority to a European-wide organization.

The United Nations (UN), formed in 1945 and headquartered in New York City, has nearly 200 member countries as well as many affiliated organizations such as the Commission on Human Rights, United Nations Educational, Scientific and Cultural Organization (UNESCO), International Monetary Fund (IMF), World Trade Organization (WTO), World Health Organization (WHO), and the World Bank. The UN also maintains a system of international courts and has become the most important institution in the area of international law. Countries that join the United Nations agree to abide by the provisions of its charter.

The United States was one of the founding members of the UN, and over the years it has been its biggest financial supporter. But many in the United States have criticized the UN for being a bloated bureaucracy that is slow to act, often wasting time and money. Others criticize the United States for not fully supporting UN actions, especially in instances when most UN member countries do not agree with U.S. policy.



The process of European integration has resulted in the creation of the European Parliament, the body that passes the majority of European laws. *Why are so many countries eager to join the EU?*



The United Nations building in New York City is the center of the organization's activities, which support global cooperation and world peace. *How does the UN influence international law?*

Problem 2.5

The government of an African country has been very corrupt for many years and has violated the human rights of many of its citizens by jailing and executing opposition leaders who are all from one ethnic group. The United States and most other countries have been critical of this government for its actions. The opposition groups in the country want to overthrow the government. The government reacts by rounding up and executing hundreds of members of the ethnic group leading the opposition.

The United States and many other governments around the world speak out against this. The United Nations is considering a resolution authorizing sending UN troops into the country to stop what some are calling genocide, the systematic killing of an ethnic or racial group. The U.S. government is reluctant to get involved militarily in the internal affairs of another country.

The UN Charter (Article 55) states: With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote . . . universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Article 56 states that all members pledge themselves to take joint and separate action in cooperation with the organization for the achievement of the purposes set forth in Article 55.

- a. If you were the president of the United States, would you instruct our UN delegate to support the authorization to send troops into this African country? Explain.
- b. Assume the U.S. government does not think sending troops is the best way to solve this problem, but more than two-thirds of the countries in the UN vote in favor of the resolution. Should the United States contribute troops to the UN effort? Explain.
- c. After a presidential election and change of administrations in the United States, assume the U.S. government believes that forceful action must be taken against this African government, but most other governments come to believe that the UN should not take joint action in this case. Should the United States take action alone?

CHAPTER 3

Advocacy

"Never doubt that a small group of thoughtful citizens can change the world. Indeed, it is the only thing that ever has."

—Margaret Mead

In the first two chapters of this unit, you were introduced to law and lawmaking. Now you will move on to learn about advocacy. Chapter 3 addresses one of the most important goals of *Street Law*—promoting positive involvement in public affairs. This chapter will teach you how citizen involvement can influence the lawmaking process.

In our democracy, the people are responsible for making the law, usually through their elected representatives. While voting is, of course, an important obligation of citizenship, an individual's law-making role is much broader than voting. Citizens are responsible for working to change laws that are not helping to solve problems. They are also responsible for working for new laws and policies that address problems in their communities, cities, states, or countries.

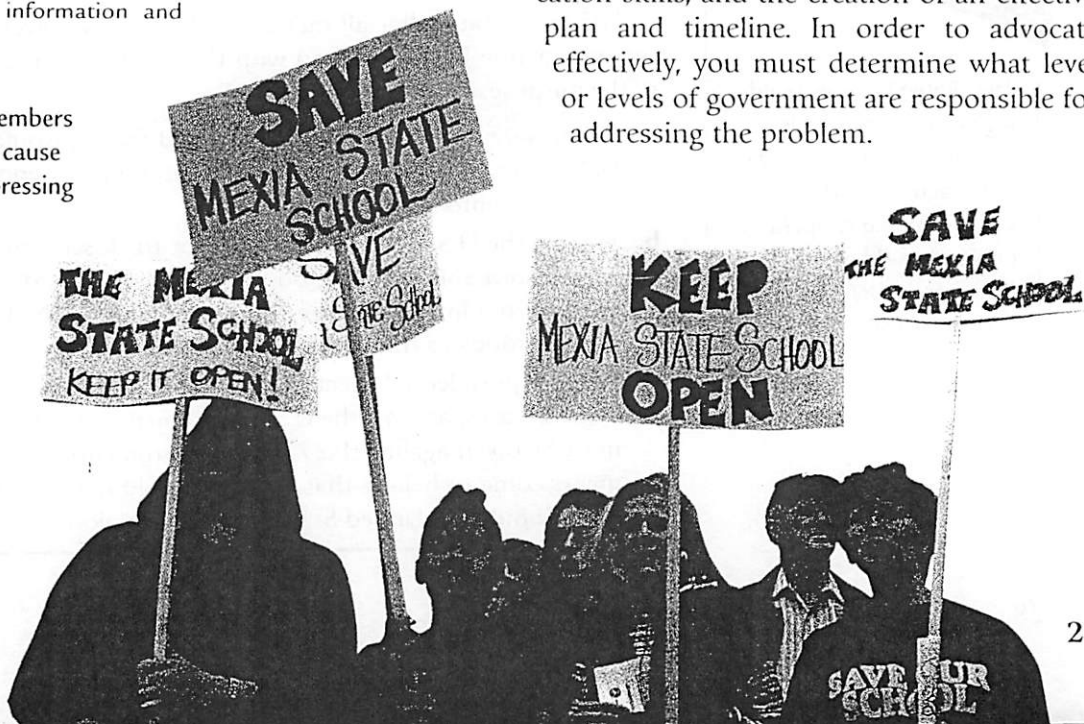
The Art of Advocacy

Advocacy is the active support of a cause. It also involves the art of persuading others to support the same cause. Advocacy is based on the careful gathering of facts, the development of excellent communication skills, and the creation of an effective plan and timeline. In order to advocate effectively, you must determine what level or levels of government are responsible for addressing the problem.



Visit the *Street Law* Web site at streetlaw.glencoe.com for chapter-based information and resources.

Community members advocate their cause by publicly expressing their opinions.



High school students all over the country have become effective advocates for a variety of important issues ranging from national issues like violence prevention and homelessness to local concerns such as school attendance and school uniform policies. In some instances students have advocated change with their local schools and town (or city) councils; in other instances they have communicated with state representatives or with their representatives in Congress.

For example, high school students concerned about smoking in student bathrooms lobbied to get themselves on their school's safety committee. Once on the committee, they worked with the school resource officer, building principal, and assistant principal to convince their county board of education to give them funds to purchase smoke detectors. Then they lobbied their state representative, who was so impressed with the students' solution that he introduced a bill in the next legislative session to make smoke detectors mandatory in public school bathrooms across the entire state.

Law in Action

Changing the Law: Research and Role-Play

Divide the class into four groups. Each group should research one of the following proposed laws and answer the questions that follow. The proposed laws would:

- Require everyone under 18 years of age to wear a helmet while riding a bicycle on public property.
- Require a one-week waiting period and a background check for anyone who buys a handgun.
- Require that any teenage driver with less than one year of experience as a licensed driver drive only during daylight hours and never with more than one other teenage passenger (except siblings).
- Establish a curfew requiring that people under 18 years of age be off the streets by 12:00 a.m. on Friday and Saturday, and 11:00 p.m. on Sunday through Thursday, and

by 1:00 a.m. on Friday and Saturday unless commuting to and from work or traveling with a parent or guardian.

Problem 3.1

- What arguments could be presented for and against the proposed law?
- What groups, organizations, or businesses are likely to lobby for or against the proposed law? What techniques could they use to influence legislators?
- Predict the outcome if your community held a voter referendum on the proposed law.
- Role-play a meeting between legislators and groups of students who favor and oppose the proposed law. Discuss which lobbyists were effective, which were not, and why.

Lobbying

Lobbying is a way to influence the law-making process by convincing lawmakers to vote as you want them to. The word *lobbying* comes from the seventeenth century, when interested persons would corner legislators in the outer waiting room of the legislature—the lobby. While lobbying often has a negative connotation, it is actually a basic right protected by the U.S. Constitution. Lobbying involves the right of free speech and often other rights such as assembly, association, and freedom of the press.

A lobbyist is someone who tries to convince a lawmaker to vote for or against a particular issue. Anyone can be a lobbyist. As a private individual, you can lobby elected officials on issues you care about. You can influence elected officials by expressing your opinions individually or as part of a group, either in person or by letter, phone, or e-mail. Lobbyists also use political contributions, ads, favors, letter-writing campaigns, and other techniques to influence legislation.



Texas teens meet with Representative Terry Keel. *What techniques do lobbyists use to influence legislation?*

Steps to Take

Writing a Public Official

- **Write in your own words.** Personal letters are far more effective than form letters or petitions. Tell how the issue will affect you and your friends, family, or job.
- **Keep your letter short and to the point.** Deal with only one issue per letter. If you are writing about some proposed bill or legislation, identify it by name (for example, the National Consumer Protection Act) and by number if you know it (for example, H.R. 343 or S. 675).
- **Begin by telling the official why you are writing.** Ask the official to state his or her own position on the issue. Always request a reply, and ask the official to take some kind of definite action (for example, vote for or against the bill).
- **Always put your return address on the letter, sign and date it, and keep a copy, if possible.** Your letter doesn't have to be typed, but it should be legible. Perhaps most importantly, it should reach the official before the issue is voted on.
- **Consider using e-mail to contact public officials.**

*"A president
only tells Congress
what they should
do. Lobbyists tell 'em
what they will do."*

— Will Rogers

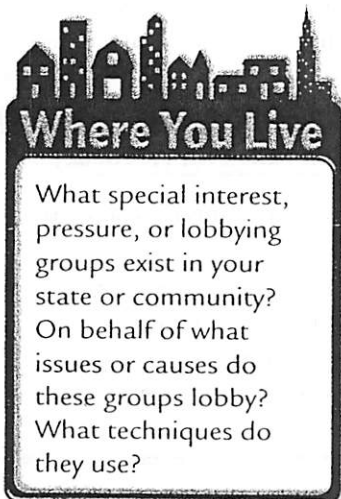
Today, special interest groups and organizations lobby on behalf of every imaginable cause and issue. Businesses and organizations hire professional lobbyists to influence federal, state, and local legislators. For example, the National Rifle Association employs lobbyists to oppose restrictions on gun ownership and use, while Handgun Control, Inc., lobbies for gun control. Literally thousands of professional lobbyists work in Washington, D.C., and in state capitals throughout the country. Those who lobby the federal government must register with Congress and file reports four times a year. In these reports, they must identify their clients and the specific bills on which they are working. They must also indicate how much money they have been paid for their lobbying work and how much they have spent lobbying (for example, the costs of organizing grassroots letter-writing campaigns).

Professional lobbyists often have an advantage over grassroots lobbyists because they have more money behind them and they know legislators and their staffs personally. But grassroots lobbyists can be very effective, particularly when they join with others. Demonstration of grassroots support by large numbers of people is a very effective lobbying technique because legislators care about what voters think.

Many critics of the lobbying system in the United States say it enables some people and businesses to "buy legislation." It is true that contributors to political campaigns may have greater access to legislators and greater influence over how they vote on certain issues. However, others argue that lobbying is an integral part of American democracy. They claim that the use of money and influence is a legitimate way for groups to make their views heard.

Problem 3.2

- a. Select a current issue that concerns you. Search the Internet to find sites that deal with this issue. What information is available at each site? Does the information seem reliable? How can you tell? Do any of the sites suggest strategies one could use to lobby for the issue?
- b. Select a current issue that concerns you. Draft a letter about it to a public official. Use the guidelines listed in the Steps to Take box on page 31. For example, you may write to your mayor, city council member, state legislator, or federal representative or senator. Send your letter to the elected official and then analyze your letter and any reply you receive. Did the official acknowledge your concern for the issue? Did he or she answer your questions or provide additional information?
- c. Do persons with more money have greater influence over legislators than those with less money? If so, is this unavoidable in a society like ours, or should steps be taken to reform the lobbying system? Conduct a class debate in which opposing groups discuss this issue.



Where You Live

What special interest, pressure, or lobbying groups exist in your state or community? On behalf of what issues or causes do these groups lobby? What techniques do they use?

Guidelines for Advocates

Before you begin to advocate, think through these steps for success:

1. **Identify the issue.** Think about your school or neighborhood. Is there a problem that needs to be addressed? How do you know it is a problem? Is it causing harm or preventing good? Can a new policy or rule address this issue?
2. **Set a goal.** Visualize a better tomorrow by answering the following questions:
 - What is the public policy solution you are proposing?
 - How will your community be improved if your policy is implemented?
3. **Become an expert on the issue.** Know the facts. Collect information to support your position. Monitor the media, search the Internet, go to the library, and interview community members. Learn both sides of the issue.
4. **Recruit allies. Identify roadblocks.** Identify coalitions already working on your issue. Recruit people harmed by the problem and others who may benefit from the policy change to act as allies. Identify your opponents. Why would they be against your proposed policy? What strategies might they use to resist your efforts? Who will be their allies?
5. **Identify your strategies.** To advocate effectively, you will likely use a variety of Take Action Strategies. Consider the following:
 - start a letter-writing campaign;
 - send out e-mail action alerts;
 - conduct a survey;
 - circulate a petition;
 - post your advocacy message on a community bulletin board;
 - coordinate a public rally, march, or vigil;
 - lead a protest or speak-out;
 - testify at a public hearing on your issue;
 - lobby in person; or
 - attend a community meeting.
6. **Plan for success.** What needs to be done first, second, etc.? Who will be responsible for what? How will you know you have been successful?
7. **Work the media.** The media is the best tool to get your solution out to a large audience. Seek to explain your issue in a convincing 15-second sound bite. Incorporate your "sound bite" into the following strategies:
 - write a letter to the editor;
 - hold a press conference;
 - create a public service announcement;
 - appear on a community cable television program or radio talk show; and
 - circulate posters, flyers, and brochures.
8. **Create a resource pool.** Money is only one resource that may be useful in your effort. Identify resources that exist within your group. What talents and skills do you and your team have to offer? Do you know a business or organization that may be willing to donate space, food, or other items to advance your cause?

Three Golden Rules for Advocacy

1. **Clarity:** create a single message and stick to it.
2. **Quantity:** create as large a network as possible to support your cause.
3. **Frequency:** get your message out to as many people as possible as frequently as possible.

Voting

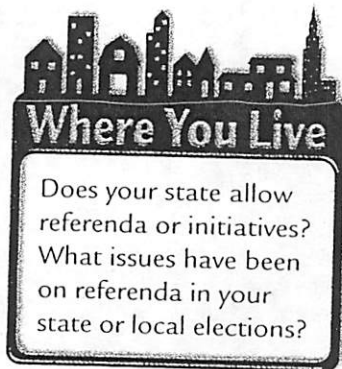
Voting is a basic constitutional right. Eligible voters may vote for president, vice president, two U.S. senators, and one U.S. representative. They may also vote for governor, state legislators, and numerous other state, tribal, and local officials.

Initiative and Referendum

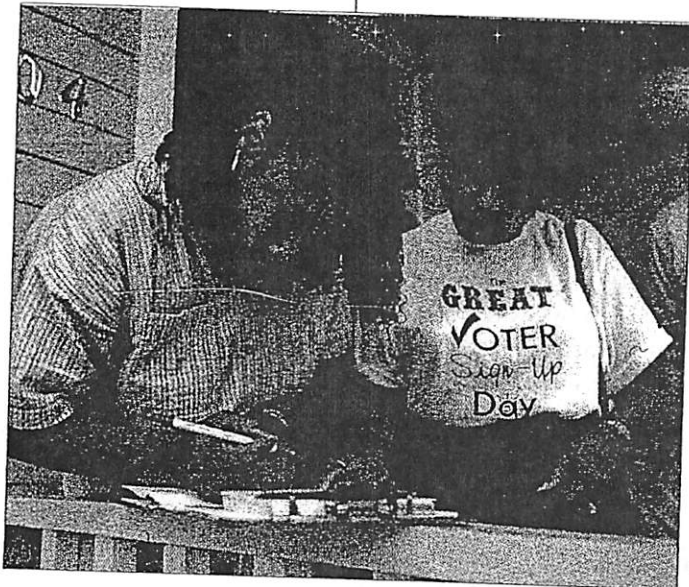
In a representative democracy, laws are usually made by elected legislators acting on the voters' behalf. However, in some situations, the people can vote directly on proposed laws. Initiatives and referenda allow citizens to circulate petitions and put proposed laws on the ballot. An **initiative** is a procedure that enables a specified number of voters to propose a law by petition. The proposed law is then submitted to either the electorate or the legislature for approval. A **referendum** occurs when a legislative act is referred to voters for final approval or rejection. Recent state referenda have been held on issues such as gun control, gay rights, abortion, environmental protection, and funding for schools, parks, roads, and other government programs. Many states also permit **recall** elections, which allow voters to remove elected officials from office.

Some argue that allowing voters to express their opinions directly through initiatives or referenda, rather than indirectly through representatives, is a more democratic system of lawmaking. Rather than being a true democracy, the United States is technically a republic, because the people elect representatives to vote on laws instead of voting on them directly. Supporters of the initiative and referendum processes point out that they promote direct involvement in lawmaking and reflect the true will of the people. Others argue that allowing direct voting on laws will sometimes result in the majority voting to take away rights from minorities.

Some form of direct voting exists in 24 states. In 1897 South Dakota became the first state to adopt statewide initiative and popular referendum. Most of the states that now have this system adopted it during the first two decades of the twentieth century. Through the initiative process many laws have been proposed including the right to vote for women, the eight-hour workday for government employees, term limits for elected officials, campaign finance reform, and environmental protection. This system has also been used to pass laws and establish public policy related to affirmative action.



People go door-to-door encouraging voter registration. What other ways can citizens register to vote?



Who Can Vote?

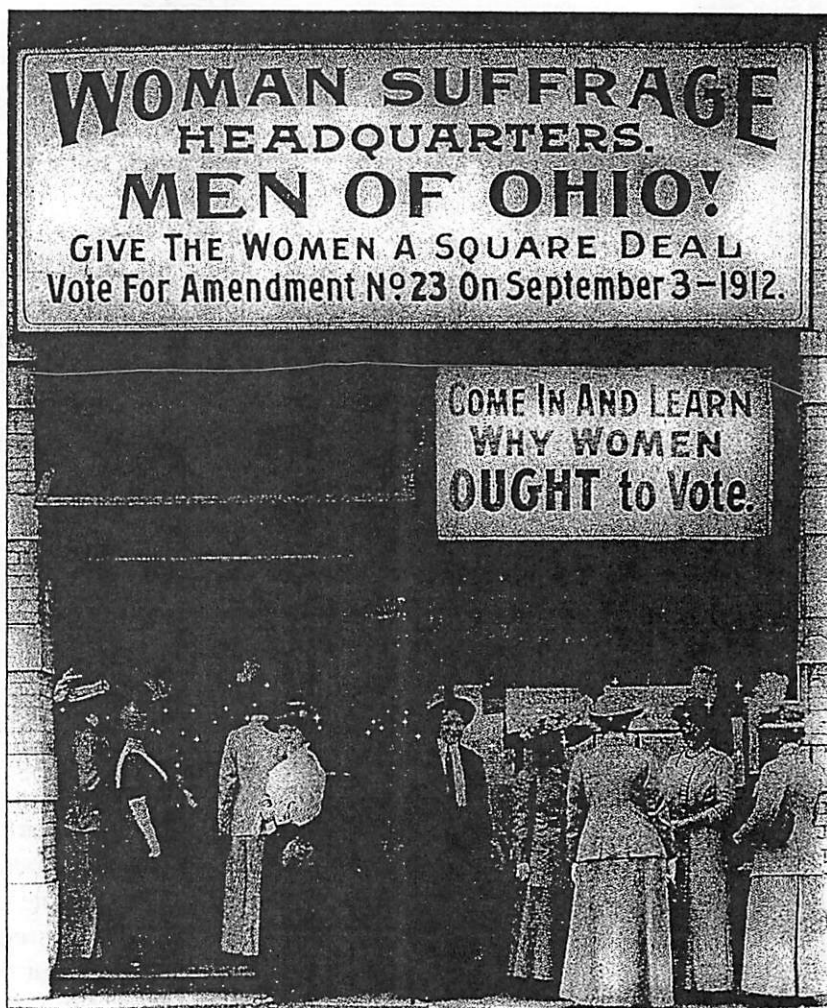
To register to vote, you must be a U.S. citizen by birth or naturalization, at least 18 years old by the date of the election, and a resident of the community in which you register. It is a violation of federal law to falsely claim U.S. citizenship in order to register to vote. You cannot register to vote in more than one place at a time.

Registering to vote is easy. Applicants usually register by completing an application form in person or by mail. The National Voter Registration Act, also known as the Motor Voter Act, requires states to make registration forms available not only at motor vehicle departments, but also at numerous state offices, welfare offices, and agencies that serve the disabled. In addition, some organizations make voter registration forms available on the Internet.

A fair election requires that voters have access to information about the candidates, the issues, and the details of the voting process. Many organizations—some partisan and some non-partisan—provide election information on the Internet. The League of Women Voters (www.lwv.org) provides online information about federal, state and local elections and candidates. The League of Women Voters also sponsors DemocracyNet (www.dnet.org), an interactive Web site on which candidates address a wide range of topics by speaking directly to the voting public. On this site, candidates enter their own statements without any outside editing.

Information about federal elections, including past statistical data, is available from the Federal Election Commission (www.fec.gov). The FEC also provides online access to the National Mail Voter Registration Form, which has been translated into Spanish, Chinese, Pilipino, Japanese, Korean, Vietnamese, and Tagalog to encourage registration by language minority groups.

Registering to vote was not always as easy as it is today. African Americans did not receive the right to vote until 1870, with the passage of the Fifteenth Amendment. Until then, most states allowed only white males with property to vote. Women gained the right



Women were effective in lobbying—their defeat of local candidates was especially persuasive in convincing Congress to pass the Nineteenth Amendment. *Why do some people believe that voting is the most important political right?*

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

— Fifteenth
Amendment
to the U.S.
Constitution

to vote in 1920. Congress did not grant citizenship and therefore the right to vote to all Native Americans until 1924, although some Native Americans had been granted citizenship by special federal legislation before then (for example, veterans of World War I). Until 1965, some states had barriers such as poll taxes, literacy tests, and character exams that kept millions of people from voting. In 1971, the Twenty-sixth Amendment gave 18-year-olds the right to vote. Persons convicted of serious crimes usually lose the right to vote. In some states, however, these persons may regain the right to vote five years after their sentence is completed.

According to the Federal Election Commission, 76 percent of the voting age population was registered to vote in 2000, and 67.5 percent of those registered did in fact vote in the presidential election. This means that 51 percent of the voting age population voted in that election. During the past few decades, turnout in national elections has generally fallen from about 62 percent for the 1964 presidential election to 51 percent in 2000. Turnout for congressional elections in non-presidential election years is even lower. Voter turnout in Mexico and Canada are approximately the same as in the United States. However, many countries—including some of the world's newest democracies—have much higher voter turnout for national elections.

Problem 3.3

- a. Make two lists: one of all the reasons given for voting, and another of all the reasons given for not voting.
- b. Are you eligible to vote? If so, have you registered and voted? Why or why not?
- c. The following proposals have been made to encourage more people to vote. Do you favor or oppose each proposal? Explain your answers.
 - Levying a \$20 fine on a person who is eligible to vote but does not do so and has no good excuse.
 - Allowing people to register and vote on the same day.
 - Lowering the voting age to 16 so students in high school could vote.
 - Keeping the polls open for a week instead of one day.
 - Holding all elections on weekends.
 - Reducing people's taxes by \$10 each if they vote.
 - Allowing people to vote not just for representatives, but directly for or against issues on the ballot that they care about.
 - Prohibiting the media from reporting poll results or projections until all polls are closed.
 - Automatically registering everyone with a driver's license.

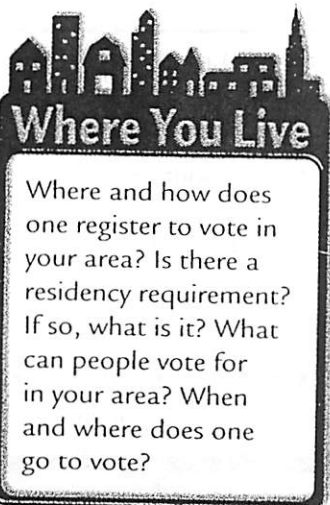


FIGURE 3.1 National Voter Turnout in Federal Elections: 1964–2000

Year	Voting Age Population	Registration	Turnout	% T/O of VAP
1964	114,090,000	73,715,818	70,644,592	61.92%
1966	116,132,000	76,288,283*	56,188,046	48.39%
1968	120,328,186	81,658,180	73,211,875	60.84%
1970	124,498,000	82,496,747**	58,014,338	46.60%
1972	140,776,000	97,328,541	77,718,554	55.21%
1974	146,336,000	96,199,020***	55,943,834	38.23%
1976	152,309,000	105,037,986	81,555,789	53.55%
1978	158,373,000	103,291,265	58,917,938	37.21%
1980	164,597,000	113,043,734	86,515,221	52.56%
1982	169,938,000	110,671,225	67,615,576	39.79%
1984	174,466,000	124,150,614	92,652,680	53.11%
1986	178,566,000	118,399,984	64,991,128	36.40%
1988	182,778,000	126,379,628	91,594,693	50.11%
1990	185,812,000	121,105,630	67,859,189	36.52%
1992	189,529,000	133,821,178	104,405,155	55.09%
1994	193,650,000	130,292,822	75,105,860	38.78%
1996	196,511,000	146,211,960	96,456,345	49.08%
1998	200,929,000	141,850,558	73,117,022	36.39%
2000	205,815,000	156,421,311	105,586,274	51.30%

* Registrations from IA, KS, MS, MO, NE, and WY not included. Washington, D.C., did not have independent status.

** Registrations from IA and MO not included.

*** Registrations from IA not included.

Problem 3.4

Study the table above showing voter turnout in federal elections from 1964 to 2000.

- What voting trends do you notice when you compare voter turnout in the years when there was a presidential election to the years where there was no presidential election?
- What voting trends do you notice over time when you look at the voter turnout in presidential elections?
- Have registration figures, as a percentage of the voting age population, changed from 1976 to 2000? If so, how?
- What conclusions can you draw from your analysis of this information?

Sources: Data drawn from Congressional Research Service reports, Election Data Services Inc., and State Election Offices



Visit streetlaw.glencoe.com and click on **Textbook Update—Chapter 3** for an update of the data.

Campaign Finance Reform

Our 200-year tradition of privately financed elections has been accompanied by 200 years of campaign finance reform. However, efforts to counteract the influence of money on politics have usually been unsuccessful. Politicians have been quick to condemn fundraising scandals but slow to agree on campaign finance reform legislation.

According to the League of Women Voters, those who support campaign finance reform want to improve methods of financing political campaigns in order to ensure the public's right to know, combat corruption and undue influence, enable candidates to compete more equitably for public office, and promote citizen participation in the political process. Some groups argue for complete public funding of certain elections.

In recent years, federal elections have become extraordinarily expensive. To win, candidates have to be rich, be skillful fundraisers, or both. In fact, the candidate who raises the most money seldom loses the election.

Critics of the current system argue that (1) people of low or middle income cannot run for office successfully because they cannot raise huge sums of money; (2) special interests receive favors in exchange for substantial campaign contributions; and (3) elected officials spend too much time raising money and not enough time doing their jobs. Others argue that political contributions are a form of political speech and should be protected by the First Amendment to the

Senator John McCain (left) and Senator Russ Feingold (far right) hold a news conference after the approval of legislation to reduce the influence of big money in political campaigns.

Describe the arguments in support of campaign finance reform. Describe the arguments against it.



U.S. Constitution. From their perspective it violates a voter's or a candidate's rights to limit the amount of money that can be contributed to a campaign.

Campaign finance laws are complex. During the 1990s large amounts of money were contributed by corporations and labor unions to political parties for the purpose of "party building." Laws during that time already prohibited corporations and labor unions from contributing directly to candidates, and individuals were limited in terms of how much they could contribute. The funds given to political parties were called "soft money." While the original idea behind these funds was to strengthen political parties through voter registration and get-out-the-vote drives, much of the soft money was used to pay for negative ads against candidates of the other party. These negative ads actually discouraged voters and reduced turnout, although they were often effective in terms of the outcome of the election.

Other significant funding outside of existing campaign finance rules occurred through ads that advocated issues such as a clean environment, gun control, and stiffer penalties for criminals rather than specifically for candidates. As long as these ads did not say "vote for," "elect," or "Jones for Congress," the courts viewed them as "issue ads." Unlike express campaign ads, the Federal Election Commission did not regulate the funding for these ads.

After years of discussion, Congress passed and President Bush signed the *Bipartisan Campaign Reform Act of 2002*. Many have referred to this as the McCain-Feingold law because those senators were the primary sponsors of the law in the U.S. Senate. This law was designed to ban the use of soft money in federal campaigns, prohibit certain types of broadcast political ads, and outlaw the solicitation of campaign contributions on federal property. Within a month of the passage of the bill, 84 plaintiffs filed 11 separate lawsuits challenging every provision of the act.

Problem 3.5

Read each of the statements that follow. Which is closest to your view in terms of campaign finance? Explain your reasoning.

- a. The only way to take money out of politics is to have full federal funding of presidential and congressional elections.
 - b. In a free country it makes no sense to try to limit how much voters and candidates can give to elections. If people have the money and want to spend it on campaigns (either their own or for the candidate of their choice), they should be able to.
 - c. We have to balance the rights of those that want to contribute money to campaigns against the need to fight corruption and undue influence. The best way to do this is through disclosure laws—let everyone see who is giving money to candidates. If the candidates vote for the special interests that fund them, the voters can then vote that candidate out of office.
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CHAPTER 4

Settling Disputes

"Our task is not to fix the blame for the past . . . but to fix the course for the future."

—John F. Kennedy



Street Law
online

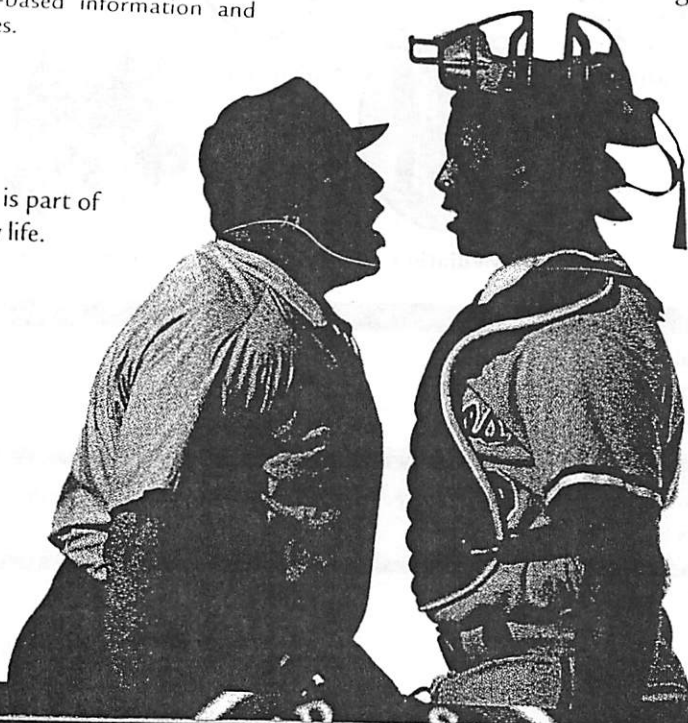
Visit the *Street-Law* Web site at streetlaw.glencoe.com for chapter-based information and resources.

Conflict is part of everyday life.

Effective community advocates work to solve community problems by proposing and lobbying for better laws and public policies. In doing so, they often use the legislative process to handle conflict. Conflict—sometimes called controversy in the public arena—creates an important opportunity to learn about issues that are of public concern in a democracy. The ability to collect the facts about an issue, formulate an opinion, listen to competing ideas, and discuss and debate the best course of action are all valuable civic skills in settling conflict. As you will learn later in this unit, courts can also help resolve conflicts, but most conflict is settled before it ever gets to court.

Since conflict is a natural part of everyday life, it is important to consider how to handle it. When we say we are in conflict with someone, we usually mean that we have had some type of unfriendly encounter. We frequently think of conflict as a problem, but it can also be productive. When conflict is managed responsibly, it can provide a great opportunity to learn. So the most important question is not whether there is going to be conflict in your life, but how you will handle it.

There are sometimes disadvantages in going to court to resolve conflict. The court process can be time-consuming and expensive. Going to court can even make some problems worse. For example, in divorces and child custody disputes, going to court often causes extreme anger and bitterness. Some people feel that by going to court, they will lose even if they win!

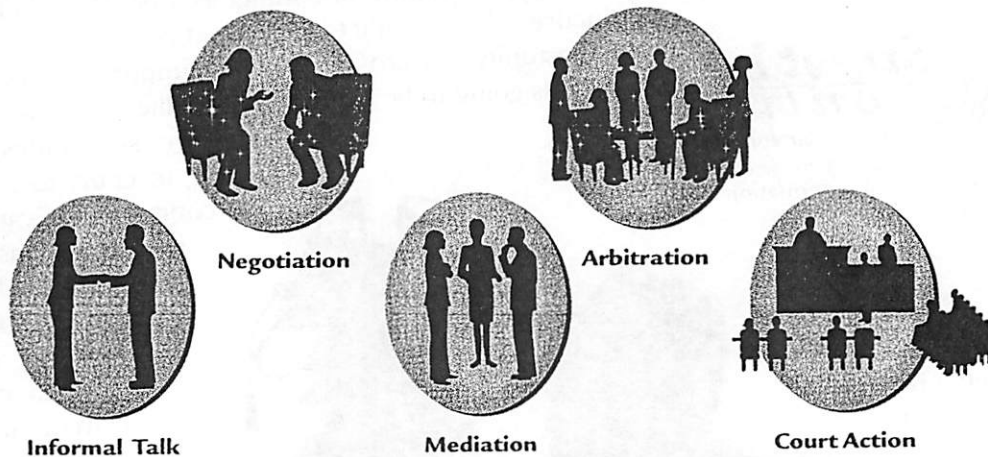


Methods for Solving Disputes

Among the most common methods for solving disputes out of court are negotiation, arbitration, and mediation. As you will learn, negotiation is the most informal of these methods. Arbitration is more formal, and in some ways, it resembles going to court. Mediation is also more formal than negotiation.

Negotiation is the process by which people involved in a dispute discuss their problem and try to reach a solution acceptable to all. It is important to learn to negotiate because the skills involved in handling conflict responsibly are used everyday by people in all aspects of life. You negotiate when you have a disagreement with your parents, your friends, or your teacher and you work out an agreement. The informality of negotiation makes it ideal for many types of problems. Sometimes people hire attorneys to negotiate for them. For example, people involved in auto accidents sometimes hire attorneys to negotiate with the insurance company over payments for injuries or damages to their cars. However, even if you use an attorney to negotiate, you must approve any agreement before it becomes final. Attorneys sometimes file a case in court and then still attempt to work out a **settlement**, or agreement, before the case goes to trial. A large number of civil cases are settled this way, saving both time and money.

FIGURE 4.1 Methods of Dispute Resolution



- Less formal
- Just the disputants settle things
- Not legally binding

- More formal
- Many people involved
- Enforceable by courts

There are several ways to solve disputes without violence. **ANALYZE THE DATA** How is negotiation different from mediation? From arbitration?



Divorce negotiations often become heated as both parties try to agree upon the best possible solutions to their problems. *Why is it important to separate the demands (positions) from what the parties really want (interests) during the negotiation process?*

It is helpful to think of negotiation in three phases—preparation for negotiation, negotiation, and post-negotiation. Each phase contains a set of steps that encourage a fair negotiation process. Each party in the dispute should follow all of the steps in each phase to make sure the process helps to resolve the problem.

The steps in the first phase help both parties prepare to negotiate. First, all involved should come to the discussion with a sincere interest in settling the problem. Then the issue that is causing the conflict must be identified as clearly as possible. Everyone should think about the issue that is really causing the problem, and try to separate the demands (positions) from what the parties really want (interests). In the third step, each party should

consider the issue from the perspective of the other in order to help them understand the concerns and feelings on the other side of the conflict. Finally, each party should sort out his or her feelings about the problem so they both can understand how the interests of each party differ. From this, both parties should identify two workable solutions that might resolve the problem.

The steps in the second phase focus on the negotiation itself. Both parties must work together to identify the real issue that needs to be resolved. This involves listening carefully, understanding what is being said, and asking questions to clarify and gain more information. Once the issue is identified, both parties should work together to create a list of as many solutions to the problem as possible. Then the two or three most workable solutions should be identified from this list. Each party should be realistic about the solutions that are chosen, perhaps by giving examples so everyone can see how the potential solution will work. To conclude the negotiation, the main points of the agreement should be repeated to be sure that both parties understand them. It is also a good idea to write down the agreement and decide what should happen if the agreement is broken.

In the third phase of the negotiation process both parties to the dispute should make a few final decisions. For example, they should decide what to tell others about how the problem was handled. Everyone involved should be in agreement on what people outside of the negotiation will be told. This could help deter problems in the future. In addition, both parties should be willing to discuss the problem again if the agreement does not seem to be working.

In **arbitration**, both parties to a dispute agree to have one or more persons listen to their arguments and make a decision for them. The arbitrator is like a judge, but the process is less formal than a trial. Arbitrators, like judges, have the authority to make the final decision, and the parties must follow it (except in nonbinding arbitration). Arbitration is common in contract and labor-management disputes and in some international law cases. Agreements between labor unions and employers include arbitration clauses. This means that the union and the employer agree in advance to submit certain disputes to arbitration and to be bound by the arbitrator's decision.

Mediation is another method of alternative dispute resolution. It takes place when a third person helps the disputing parties talk about their problem and settle their differences. Unlike arbitrators, mediators cannot impose a decision on the parties. The agreement is the result of the parties' willingness to listen carefully to each other and



For Your Information . . .

Steps in a Typical Mediation Session

Step 1. Introduction

The mediator helps the people involved in the dispute feel at ease and explains the ground rules for behavior during the mediation. These ground rules can include such things as agreeing to remain seated and agreeing that any party may request a break during the mediation.

Step 2. Telling the Story

Each person tells what happened. The person who brings up the problem usually tells his or her side of the story first. No interruptions are allowed. Then the other person explains his or her side. These people are the disputants.

Step 3. Identifying Positions and Interests

The mediator tries to make certain that each disputant is clearly understood by listening carefully to each side, summarizing each person's view, and asking questions. Sometimes the mediator will encourage the disputants to ask questions and summarize each other's point of view in order to check for understanding.

Step 4. Identifying Alternative Solutions

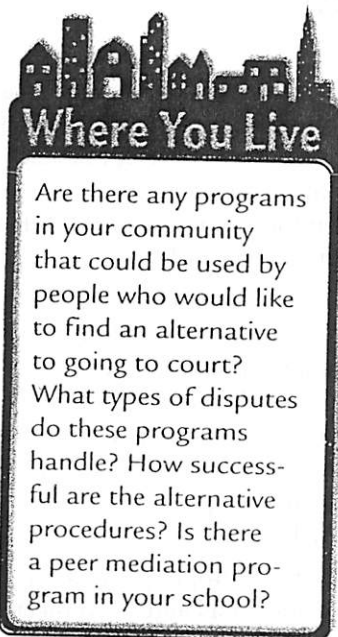
The disputants think of possible solutions to the problem. The mediator makes a list and then asks each disputant to explain his or her feelings about each possible solution. Sometimes in a difficult situation, the mediator might also meet with each disputant separately.

Step 5. Revising and Discussing Solutions

Based on the feelings of the disputants involved, the mediator may help the disputants change some of the possible solutions and identify a better solution to which the disputants can agree.

Step 6. Reaching an Agreement

The mediator helps the disputants reach an agreement that both can accept. The agreement is written down. The disputants also discuss what will happen if they find out the agreement isn't working for them.



come up with a reasonable settlement. The mediator acts as a neutral third party by listening carefully to both sides. He or she also tries to help the parties understand each other's positions and find ways to resolve the dispute. Mediation is voluntary; the disputants themselves must reach a decision about the problem. Mediation allows the disputants to air their feelings, avoids placing blame, and concentrates on the future relationship between the parties. The key issue is how the disputants will work or live together after the mediation.

Mediation is used to solve a variety of disputes. Community mediation programs help settle disputes between husbands and wives, landlords and tenants, and consumers and businesses. For example, the Better Business Bureau (BBB) often mediates disputes between shoppers and store owners. In other places, neighborhood justice centers help settle disputes between community residents. Government agencies and some universities have **ombudspersons** who investigate complaints and then help the parties reach some agreement. Some schools train students to mediate conflicts and settle disputes that occur at school. To locate a mediation program in your community, contact your local court, district attorney's office, or social services agency.

The key to the success of both negotiation and mediation is that the ideas for resolving the conflict come from the people who have the conflict. The disputants take responsibility for their actions and work out the problem. Unlike court cases, both of these processes result in an agreement that is focused on the future relationship between the disputing parties. Because the solution comes from the parties, they are more interested in making the solution work.

Problem 4.1

Examine the following situations and decide the best method for solving each problem. Consider informal discussion, negotiation, arbitration, mediation, going to court (including small claims court), a government agency, and other methods. Discuss the reasons for your answers.

- a. Two sisters share a room. However, they disagree over how the room should be arranged and decorated.
- b. A new stereo breaks after two weeks, and the salesperson refuses to fix it.
- c. A landlord will not make needed repairs because he believes the tenant caused the damage.
- d. A labor union and an employer disagree over the wages and conditions of employment.
- e. A married couple wants a divorce.
- f. The Internal Revenue Service sends you a letter claiming that you owe another \$200 in taxes. You disagree.
- g. Carl invites Raquel to the prom, and she agrees to go with him. Then Miguel invites her to the prom. Raquel really wants to go with Miguel and accepts his invitation. Carl finds out about her decision after he has purchased flowers and paid for a limousine to take them to the prom.

Problems at the Mall

Magda, David, and Rashida have been friends since the sixth grade. One of their favorite activities is to go to the mall and look around in the stores. Sometimes they make purchases and sometimes they are just window-shopping. There are lots of young people who do this, and it is fun to see people and hang out.

Recently, a number of stores in the mall have experienced an increase in shoplifting and vandalism. As a result, the stores have made a policy that no one under 16 years of age can enter without a parent or guardian. The new rules also

state that if you are between the ages of 16 and 18 you cannot enter the store in groups larger than two. Other teens have to wait outside until each pair leaves. Store owners have threatened to call the police if the young people give them any trouble about the new policies.

This policy makes Magda, David, and Rashida angry. They feel it is unfair. After all, they are paying customers and spend money in these stores. Why is the rule directed only at young people? They do not want to get into trouble with the police, but they don't understand why they have to be treated as problems when they have not done anything wrong.

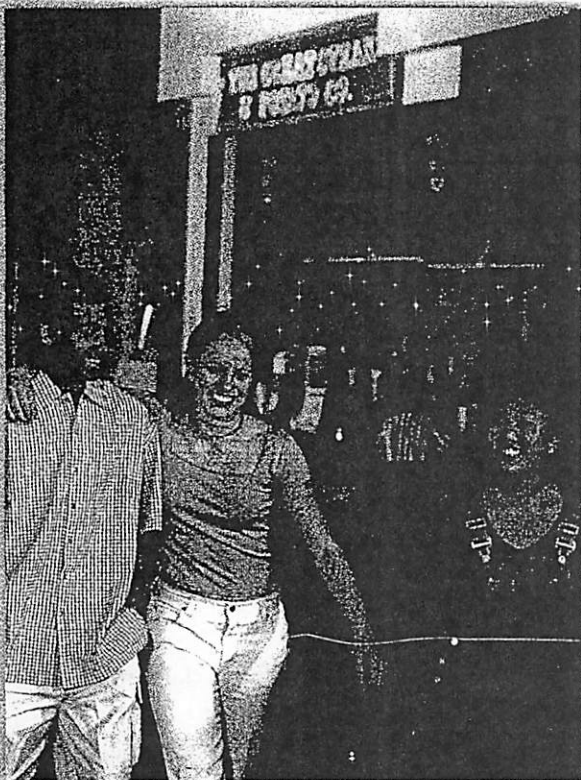
The manager of the shopping mall along with one of the store owners has agreed to meet with two of the teens and a mediator to try to find some workable solutions.

Problem 4.2

In preparation for the mediation session, the disputants should consider the following issues:

1. What are your concerns? How would you state the issue in the dispute?
2. What is your starting position (demand)? What are your underlying interests (what do you really want)?
3. What is the best conceivable outcome from your perspective?
4. What do you think the starting position and underlying interests of the other side will be?
5. Identify two workable solutions that would solve the conflict.

Use the Steps in a Typical Mediation Session on page 43 to walk through the process and develop a reasonable solution for the disputants.



Teens at the mall

CHAPTER 5

The Court System

The United States has many court systems. Each state has its own court system, and there is also a system of federal courts. Each of these systems has trial and appeals courts. There are also a number of tribal justice systems. The highest court in the land is the Supreme Court of the United States. The Supreme Court hears appeals from the other court systems.

“Three features mark the Anglo-American system as different from all others. One is the extent to which our law is formed in litigation. Another feature is the way we conduct these cases: we pit antagonists against each other, to cast up from their struggles the material of decisions. A third—and largest in the public consciousness—is the trial by jury.”

— Charles Rembar,
The Law of the Land

Trial Courts

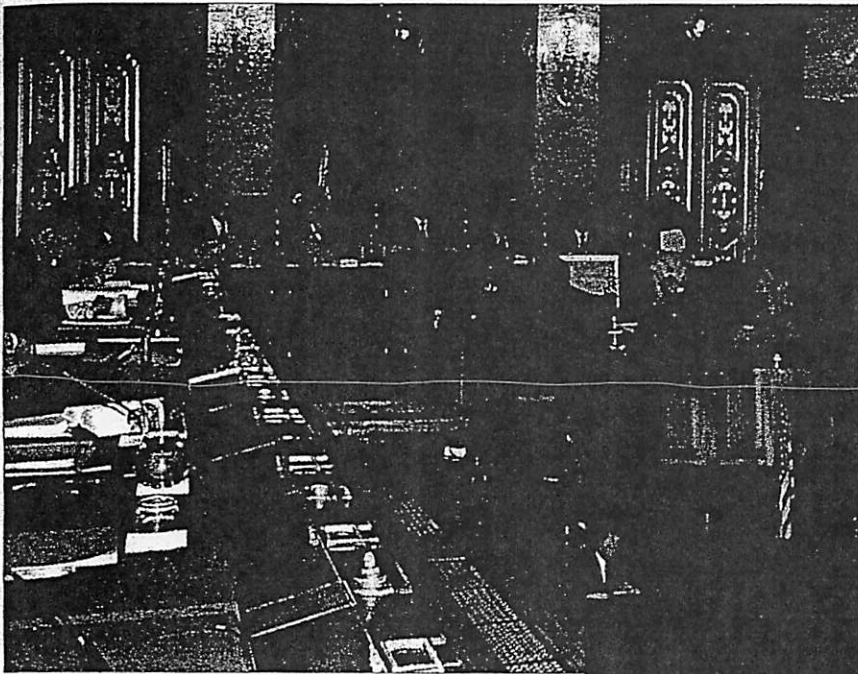
Trial courts listen to testimony, consider evidence, and decide the facts in disputed situations. Evidence is provided by witnesses who are called to testify in the case. In a trial there are two **parties**, or sides, to each case. In a civil trial, the party bringing the legal action is called the **plaintiff**. In a criminal trial, the government (state or federal) initiates the case and serves as the **prosecutor**. In both civil and criminal trials, the party responding to the plaintiff (civil) or prosecution (criminal) is called the **defendant**. Once a trial court has made a decision, the losing party may be able to appeal the decision to an appellate, or appeals, court.

The use of juries builds the values of democracy into the court system.

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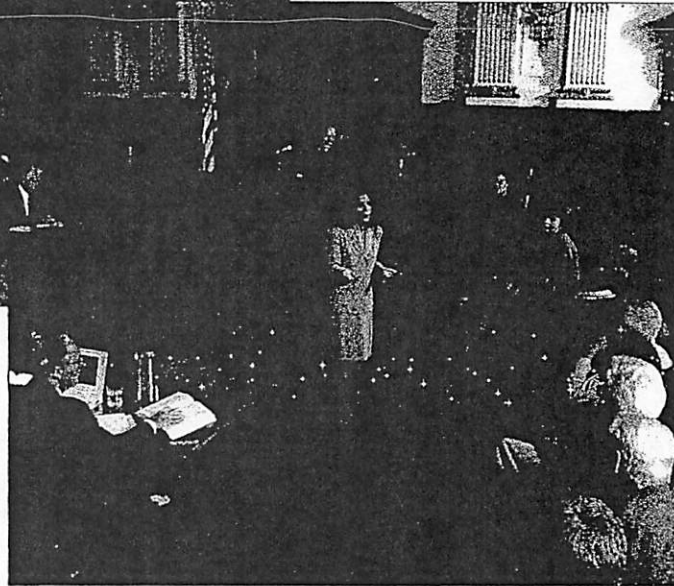


Judges play a more active role under the inquisitional system than they do in the adversarial system. *In what ways are judges more involved in the court proceedings of an inquisitional system?*

The trial system in the United States is an **adversarial system**. This means it is a contest between opposing sides, or adversaries. The theory is that the trier of fact (the judge or jury) will be able to determine the truth if the opposing parties present their best arguments and show the weaknesses in the other side's case.

The adversarial process is not the only method for handling legal disputes. Many countries have different trial systems. Some European countries use the **inquisitional system**, in which the judge is active in questioning witnesses and controlling the court process, including the gathering and presenting of evidence. These judges can order witnesses to appear, conduct searches, present and comment on evidence, and, in general, take the lead role in trying to uncover the truth. This differs from the adversarial process, in which these matters are left to the competing parties, with a decision being made by the judge or jury based on the arguments and evidence presented.

The adversarial process is often criticized. Critics say that it is not the best method for discovering the truth with respect to the facts of a specific case. They compare the adversarial process to a battle in which lawyers act as enemies, making every effort *not* to present *all* the evidence. According to this view, the goal of trial is "victory, not truth or justice." Despite its drawbacks, the adversarial process is the cornerstone of the American legal system. Most attorneys believe that approaching the same set of facts from totally different perspectives will uncover more truth than would other methods.



Problem 5.1

- 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 that ten guilty persons go free than that one innocent person 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 knew was guilty? Explain.
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Judges and juries are essential parts of our legal system. The judge presides over the trial and has the duty of protecting the rights of those involved. Judges also make sure that attorneys follow the rules of evidence and trial procedure. In nonjury trials, the judge determines the facts of the case and renders a judgment. In jury trials, the judge is required to instruct the jury as to the law involved in the case. Finally, in criminal trials in most states, judges sentence individuals convicted of committing crimes.

The Sixth Amendment to the U.S. Constitution guarantees the right to trial by jury in criminal cases. This right applies in both federal and state courts. The Seventh Amendment guarantees a right to trial by jury in civil cases in federal courts. This right has not been extended to state courts, but many state constitutions confer a right to jury trial in civil cases. However, the fact that a constitution protects the right to trial by jury does not mean that a jury is required in every case. Juries are not used as often as one might think. In civil cases, either the plaintiff or the defendant may request a jury trial. In criminal cases, the defendant decides whether there will be a jury. Most civil cases result in out-of-court settlements or trials by a judge. Most criminal cases are never brought to trial. Instead they are disposed of by a plea bargain, or pretrial agreement, between the government (prosecutor) and the defendant.

If a jury trial is requested, a jury is selected and charged with the task of determining the facts and applying the law in a particular case. To serve on a jury, you must be a U.S. citizen, at least 18 years old, able to speak and understand English, and a resident of the state. As citizens we have a duty to serve on juries when called upon. At one time, people from certain occupations were exempt from jury service. These included members of the clergy, attorneys, physicians, police officers, firefighters, and persons unable to undertake juror tasks because of mental or physical disability. In some places, these persons are no longer excluded. Convicted felons are usually ineligible for jury service unless their civil rights have been restored. People who are not exempt and are called for jury duty are sometimes excused if they can show "undue hardship or extreme inconvenience."

"We have a jury system which is superior to any in the world. Its efficiency is only marred by the difficulty of finding twelve men every day who don't know anything and can't read."

— Mark Twain



For Your Information . . .

Steps in a Trial

The following is a short explanation of the steps in either a civil or a criminal trial.

Step 1. Opening Statement by Plaintiff or Prosecutor

Plaintiff's attorney (in civil cases) or the prosecutor (in criminal cases) explains to the trier of fact (the judge or jury) the evidence to be presented as proof of the allegations (unproven statements) in the written papers filed with the court.

Step 2. Opening Statement by Defense

Defendant's attorney explains evidence to be presented to disprove the allegations made by the plaintiff or prosecutor.

Step 3. Direct Examination by Plaintiff or Prosecutor

Each witness for the plaintiff or prosecution is questioned. Other evidence (such as documents and physical evidence) in favor of the plaintiff or prosecution is presented.

Step 4. Cross-Examination by Defense

The defense has the opportunity to question each witness. Questioning is designed to break down the story or to discredit the witness.

Step 5. Motions

If the prosecution's or plaintiff's basic case has not been established from the evidence introduced, the judge can end the case by granting a motion (oral request) made by the defendant's attorney.

Step 6. Direct Examination by Defense

Each defense witness is questioned.

Step 7. Cross-Examination by Plaintiff or Prosecutor

Each defense witness is cross-examined.

Step 8. Closing Statement by Plaintiff or Prosecutor

Prosecutor or plaintiff's attorney reviews



Cross-examination

all the evidence presented (noting uncontradicted facts), and asks for a finding of guilty (in criminal cases) or a finding for the plaintiff (in civil cases).

Step 9. Closing Statement by Defense

Same as closing statement by prosecution/plaintiff. The defense asks for a finding of not guilty (in criminal cases) or for a finding for the defendant (in civil cases).

Step 10. Rebuttal Argument

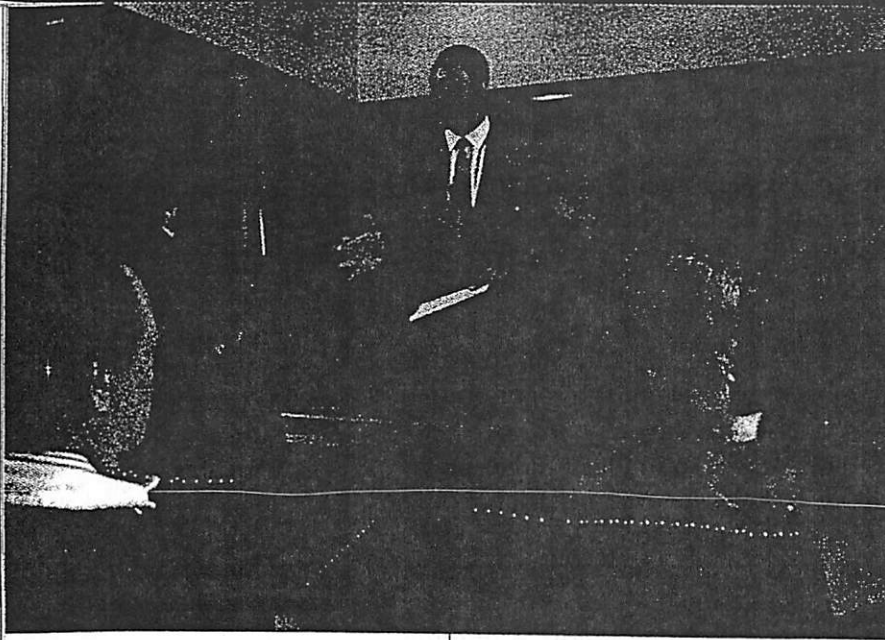
Prosecutor or plaintiff has the right to make additional closing arguments that respond to points made by the defense.

Step 11. Jury Instructions

Judge instructs jury as to the law that applies in the case.

Step 12. Verdict

In most states, a unanimous decision is required for a verdict. If the jury cannot reach a unanimous decision, it is a hung jury, and the case may be tried again.



Attorneys for both the defense and the prosecution screen prospective jurors through the process of voir dire examination. Why might a prospective juror be dismissed?

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

— Robert Frost

Jury service is a very important civic duty. It is necessary to preserve the constitutional right to trial by jury. To determine who is called for jury duty, the clerk of the court uses a list with names of registered voters, licensed drivers, or some combination of the two. Usually a questionnaire is sent out to potential jurors to determine whether they are eligible to serve. Employers are required to let their employees take time off for jury service. Most courts pay jurors a small daily stipend, and some courts also provide a transportation

fee. Some employers pay their employees during their jury service, but they are not required to do so. To reduce the burden of jury service, many courts have instituted a one-day, one-trial plan. A juror must show up on the day called. A juror selected for a trial on that day must then return for the duration of the trial. If not selected, the juror will not be called again for some period of time, usually at least a year.

Once selected, jurors are assigned to specific cases after being screened through a process known as **voir dire** examination. In this process, opposing lawyers question each prospective juror to discover any prejudices or preconceived opinions concerning the case. After questioning each juror, the opposing attorneys may request the removal of any juror who appears incapable of rendering a fair and impartial verdict. This is called **removal for cause**. In addition, each attorney is allowed a limited number of **peremptory challenges**. This means the attorneys can have prospective jurors removed without stating a cause.

Problem 5.2

- 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 serve 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?

Appeals Courts

In an **appeals court**, one party presents arguments asking the court to review the decision of the trial court. The other party presents arguments supporting the decision of the trial court. There are no juries or witnesses, and no new evidence is presented. Only lawyers appear before the judges to make legal arguments.


Not everyone who loses a trial can appeal. Usually, an appeal is possible only when there is a claim that the trial court has committed an error of law. An **error of law** occurs when the judge makes a mistake as to the law applicable in the case. For example, a judge might give the wrong instructions to the jury or permit evidence that should not be allowed. A judge's error is considered minor as long as it does not affect the outcome of the trial. In cases involving minor errors of law, the trial court decision will not be reversed.

When an appeals court decides a case, it issues a written opinion or ruling. This opinion sets a **precedent** for similar cases in the future. All lower courts in the area where the decision was made must follow the precedent set in the opinion. This is what is meant by courts "making law." However, a higher court has the power to reverse or change the precedent. Courts in other parts of the country are not required to follow the precedent. A court in another jurisdiction or state can disagree with this precedent.

Typically, a panel of judges—or justices, as appellate judges are sometimes called—decides such cases. The panel may consist of three or more judges. Nine justices hear cases argued before the Supreme Court of the United States.

When these judges disagree on a decision, two or more written opinions may be issued in the same case. The majority opinion states the decision of the court. Judges who disagree with the majority opinion may issue a separate document called a **dissenting opinion**, which states the reasons for the disagreement. In some instances, judges who agree with the majority opinion, but for reasons different from those used to support the majority opinion, may write a **concurring opinion**.

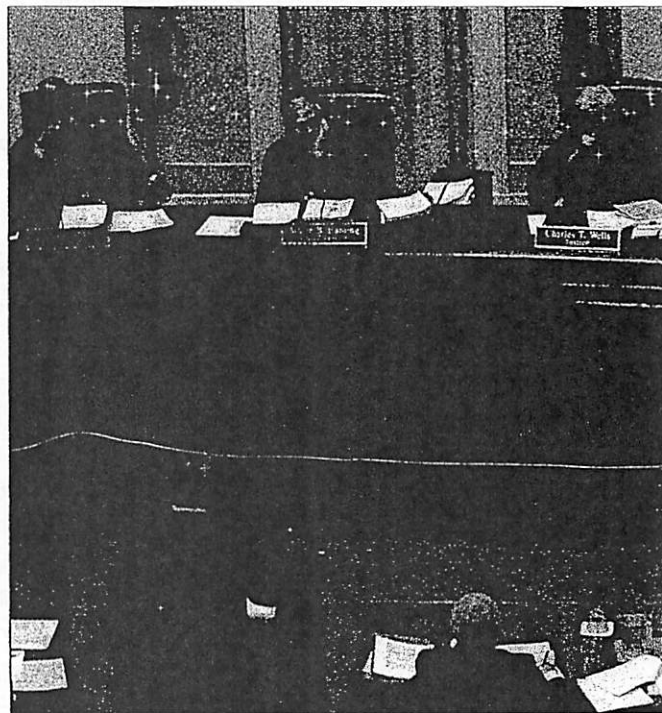
Dissenting opinions are important because their reasoning may become the basis of future majority opinions. As society and the views of judges on appellate courts change, so can legal opinion. An example is the 1896 case of *Plessy v. Ferguson*, which upheld racial segregation in railroad cars as long as facilities for whites and African Americans were "separate but equal."



Where You Live

How are jurors selected by the courts in your community? How many persons are on the jury in a civil trial? In a criminal trial? Is a unanimous verdict required in a civil trial? In a criminal trial?

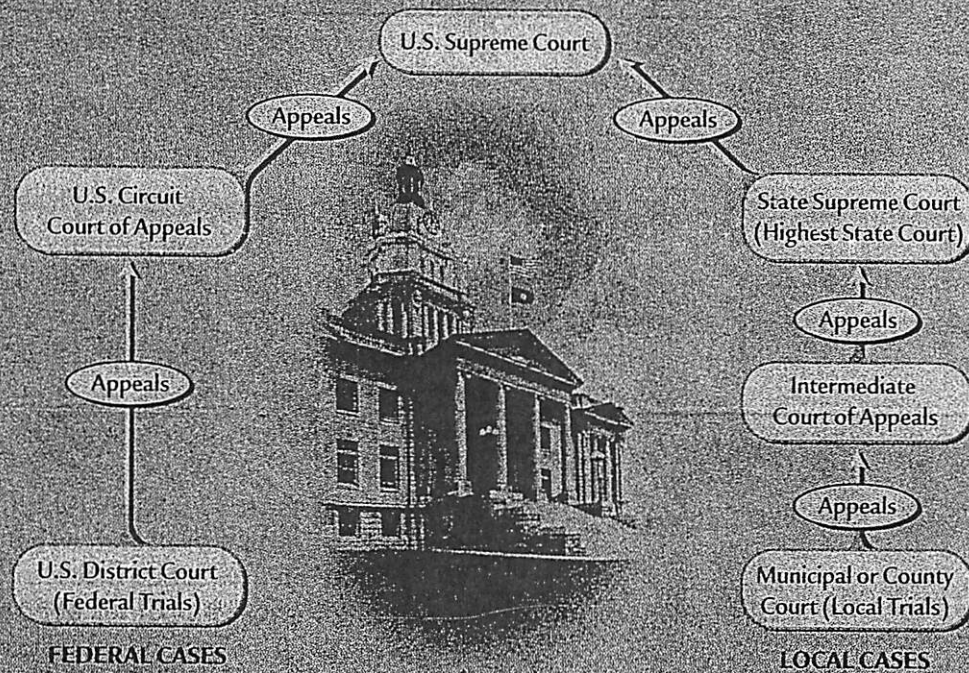
Only lawyers appear to make legal arguments before judges in an appellate court. *When is an appeal possible?*



trial courts are often specialized to deal with specific legal areas. Examples include family, traffic, criminal, probate, and small claims courts.

Family or domestic relations courts hear actions involving divorce, separation, and child custody. Cases involving juveniles and intrafamily offenses (fights within families) may also be heard. Sometimes, cases involving juveniles are heard in a special juvenile court. Traffic courts hear actions involving violations committed by persons driving motor vehicles. Criminal courts hear cases involving violations of laws for which the violators could go to jail. Frequently, criminal court is divided between felony and misdemeanor cases. Probate courts handle cases involving wills and claims against the estates of persons who die with or without a will. Small claims courts hear cases involving small amounts of money (maximums of \$500, \$750, \$1,000, or more, depending on the state). Individuals may bring cases to small claims court without lawyers—though it is sometimes advised that lawyers be present—and the court fees are low.

FIGURE 5.1 Federal and State Court Systems



The U.S. judiciary consists of parallel systems of federal and state courts. **ANALYZE THE DATA** How are the systems the same? Different?

Taking a Car by Mistake

Joe Harper left the key in his 2002 blue sports utility vehicle while he ran an errand. When he came back an hour later, he got into someone else's blue SUV by mistake. This car also had the key in the ignition. Harper, who did not notice it was a different car, started it and drove away. He was arrested for auto theft as a result of his mistake.

At the trial, the judge told the jury it was not necessary for them to consider whether Harper intended to steal the car. Instead, the judge instructed the jury that to find Harper guilty of auto theft, they only had to decide whether he was caught driving a car that was not his. Using these guidelines, the jury found Joe Harper guilty.

This case illustrates an error of law that could be appealed. Auto theft law requires that the accused person must have intended to steal the car. Since Harper did not intend to steal the car, the guilty verdict could be reversed by an appellate court.

Justice John Marshall Harlan dissented from the majority opinion because it allowed a state to pass regulations solely based on race, which he believed violated the U.S. Constitution. In the 1954 precedent-setting case of *Brown v. Board of Education*, some of the reasoning expressed in Justice Harlan's dissent in *Plessy* was accepted by the Supreme Court, and the "separate but equal" doctrine was declared unconstitutional.

State and Federal Court Systems

Figure 5.1 illustrates the two separate court systems in the United States—state and federal. State courts are courts of general jurisdiction. They can hear cases that deal with state law as well as many areas of federal law. The federal courts are courts of limited jurisdiction. Their power is limited to deciding certain types of cases. Federal courts hear criminal and civil cases involving federal law. They also hear some civil cases involving parties from different states when the amount in dispute is more than \$75,000. Federal trial courts are known as U.S. District Courts. If you lose a trial in the U.S. District Court, you may be able to appeal to the U.S. Circuit Court of Appeals in your region. The United States has 94 district courts and 13 circuit courts. The court of final appeal is the U.S. Supreme Court.

State Courts

Most state court systems resemble the federal courts in structure and procedure. All states have trial courts. These are called superior, county, district, or municipal courts, depending on the state. State





What courts exist in your community? What kinds of cases do they handle? How are appeals handled in your state? What is the highest court in your state, and where is it located?

If you lose your case in the trial court, you may be able to appeal to an intermediate court of appeals or, in some states, directly to the state supreme court. If a state supreme court decision involves only state law it can be appealed no further. Each state's highest court has the final say on interpretation of state laws and the state constitution. If a state supreme court decision involves federal law or a federal constitutional issue, it can then be appealed to the U.S. Supreme Court.

Problem 5.3

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.

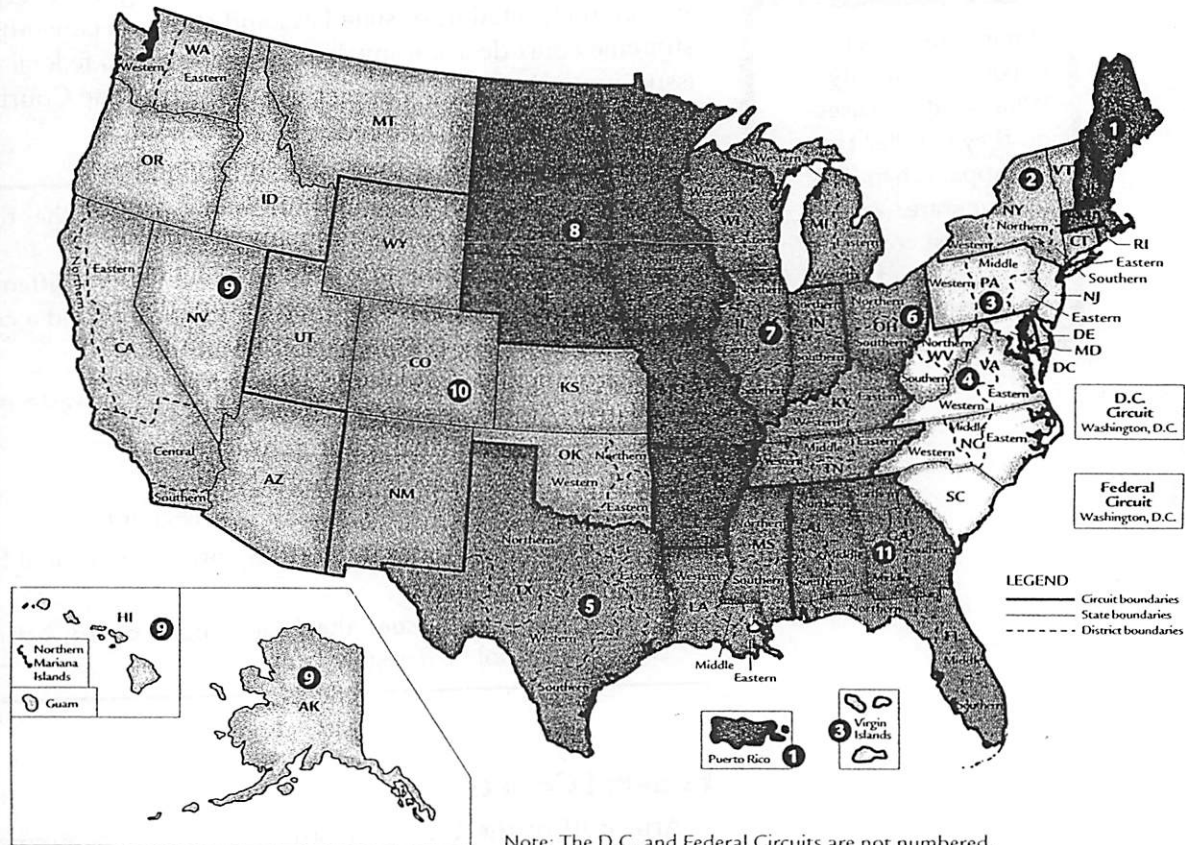
- A state sues a neighboring state for dumping waste in a river that borders both states.
- A wife sues her husband for divorce.
- A person is prosecuted for assaulting a neighbor.
- Two cars collide. One driver sues the other for hospital bills and auto repairs.
- A group of parents sues the local school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

Federal Courts

Article III of the U.S. Constitution creates a Supreme Court and gives Congress the power to create lower courts. Congress has divided the country into 94 federal judicial districts, with each having a district court known as a federal trial court. Within each district is a U.S. bankruptcy court that administers the federal bankruptcy laws. Approximately 70 percent of the cases filed in federal court each year are bankruptcy cases. (Bankruptcy is discussed in Chapter 25 on pages 307–308.) As Figure 5.2 shows, some federal judicial districts cover an entire state, while other states have several districts within their boundaries.

Congress placed the 94 districts in 12 regional circuits, each of which has a court of appeals. Court of appeals judges handle appeals of trial court decisions to determine whether district court judges applied the law correctly. There is also a U.S. Court of Appeals for the Federal Circuit, whose jurisdiction is defined by subject matter rather than by geography. This court, which meets in Washington, D.C., hears appeals from the U.S. Court of International Trade (which hears cases that deal with international trade and customs), the U.S. Court of Federal Claims (which hears claims for money damages against the federal government), and the U.S. Patent and Trademark Office

FIGURE 5.2 The Federal Judicial Circuits



Congress created district courts to serve as trial courts for federal cases. **ANALYZE THE DATA** Which federal judicial circuit hears cases from the state where you live?

(which hears administrative matters related to patents and trademarks). The Federal Circuit also hears appeals from the U.S. Tax Court and from the Court of Veterans Appeals. The Federal Circuit hears cases from all over the country, but only those that deal with specific types of issues. In creating this court, Congress believed that its judges would develop special expertise in these cases.

Overall, the federal courts handle about 1,000,000 cases per year and the state court systems handle about 30,000,000 cases per year. About 1,700 federal judges and about 30,000 state court judges decide these cases.

Tribal Courts

Many people, especially those who live in states with small Native American populations, do not realize that several hundred Indian tribal groups govern reservations in the United States today. Native American tribal groups are no longer independent sovereigns, as they were when Europeans first made contact with North America. As a result of their relationship with the federal government, the groups no longer possess complete authority over their reservations; they do, however, retain some of their original authority.

Sometimes the tribal powers that remain are called **inherent powers**. These powers include the power to regulate family relationships, tribal membership, and law and order on the reservation. Occasionally Congress grants power to a tribal group in a certain area, such as environmental regulation. This is called a **delegated power**. Most Native American groups have justice systems often called tribal court systems. Tribal courts hear a broad range of both criminal and civil cases involving both Native Americans and non-Native Americans.

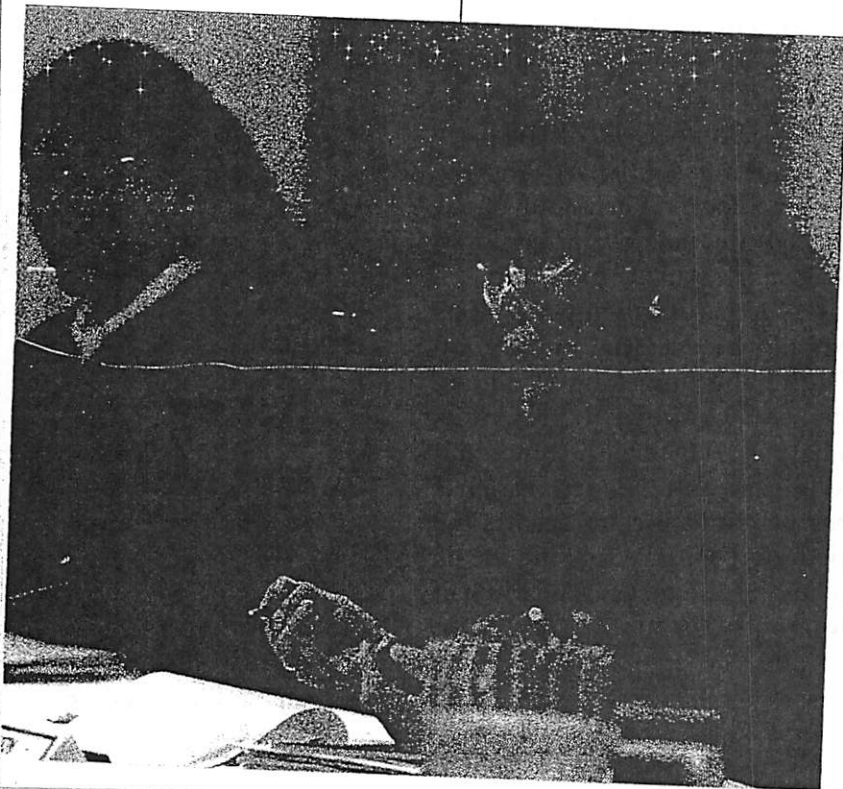
Some tribal justice systems—for example, those of the Pueblos in the southwestern United States—are traditional and show little influence of American culture. Many tribal justice systems, however, resemble Anglo-American court systems, primarily because of federal influence. Still, the work of tribal courts strongly reflects the culture of the people who work in them.

Some confusion and a great deal of controversy surround the power of tribal governments and tribal courts. Both federal law and tribal law determine the jurisdiction of tribal courts. In the criminal area, for example, federal law gives federal courts jurisdiction over many felonies

committed by Native Americans on the reservation. The criminal sentencing authority of tribal courts is limited to imprisonment for no longer than one year and a fine of no more than \$5,000. Therefore, some tribal groups have chosen to criminalize only minor offenses, while others also criminalize more serious offenses. The United States Supreme Court has ruled that inherent tribal authority over the reservation no longer includes the authority to prosecute non-Native Americans for crimes committed on the reservation.

The power of a tribal court to hear civil matters on the reservation appears to be very broad. In recent years, the United States Supreme

Navajo Supreme Court Associate Justices Lorene Ferguson and Marcella King-Ben question counsel during oral arguments. *Why are many tribal court systems similar to Anglo-American court systems?*



Court has issued several decisions supporting tribal court authority and recognizing tribal courts as essential to the preservation of contemporary tribal self-government.

The Supreme Court of the United States

The most important legal precedents are established by the U.S. Supreme Court, where nine justices hear each case and a majority rules. All courts in the United States must follow U.S. Supreme Court decisions. Many laws have been changed by the Supreme Court. For example, the Supreme Court has upheld all-male draft registration and ended racial segregation in public schools.

The Supreme Court does not accept all appeals that are brought to it. Each year, about 8,000 cases are appealed to the Court. The justices issue complete written opinions on about 80 cases each year.

More than half of the cases appealed to the Court each year come from inmates in prison. Very few of these petitions for certiorari—a request of a lower court to send up its records—are granted by the Supreme Court. In fact, nearly 99 percent of all such requests for petitions for certiorari are denied by the Court. With few exceptions (such as federal voting rights cases), the Supreme Court does not have to hear a case appealed to it. With so many cases to choose from, it is able to set its own agenda. Most often the Court decides to grant a petition for certiorari when there is a difference of opinion among lower courts on the issue presented. The Court also takes cases that it believes deal with critical national policy issues.

The party who appeals to the Supreme Court is generally the losing party in an appellate case that was argued in a federal circuit court of appeals or a state supreme court. This party's first step is to request in writing that the Court hear the case. The written legal briefs, or legal arguments, initially submitted to the Court emphasize *why* the case should be heard rather than how it should be decided. The party that has won the case in the lower court submits a brief arguing why the case should not be heard. If the party appealing gets four of the nine justices to agree to hear the case, then the petition for certiorari is granted. This is the one exception to majority rule at the Court.

If the Court decides to hear the case, the parties then write briefs arguing to the Court *how* the case should be decided, and an oral argument is scheduled at the Court. During this hour-long argument, which is open to the public, each side has 30 minutes to present its case to the justices. The justices, who have already read the briefs and studied the case, ask many questions of the lawyers. Once the case has been argued, the justices meet in a private conference to discuss the case, and the process of drafting an opinion begins. While the media tend to emphasize the disagreements among the justices, nearly half of the cases are decided by a unanimous vote of 9 to 0.

The federal government participates in a significant number of the cases before the Court. Sometimes the United States is a party to the case. More often, it is involved through the Office of the Solicitor General of the United States. The solicitor general's office represents the United States in court. When a party files a petition for certiorari and the solicitor general's office also asks the Court to take the case, the Court is much more likely to grant review. In these cases a lawyer from the solicitor general's office may also participate in the oral argument, presenting the federal government's views—and answering the justices' questions—during 10 of the 30 minutes allotted to the party whose side the United States supports.

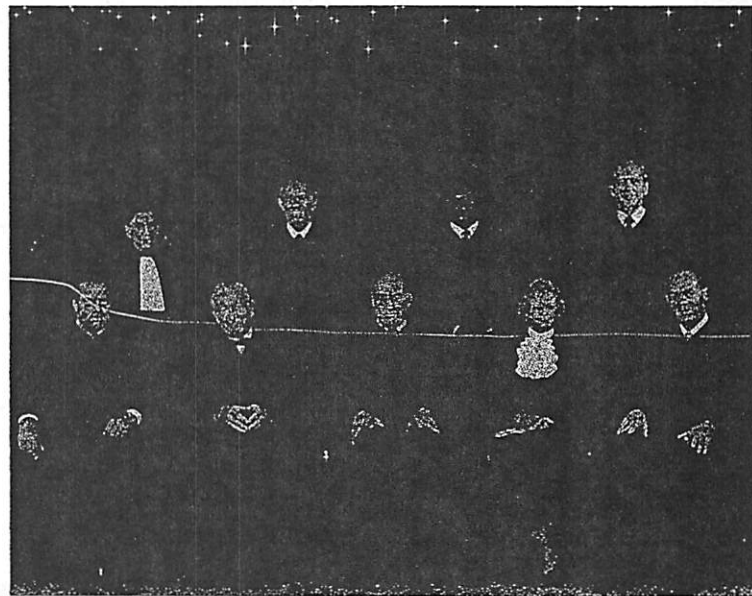
The Court's term begins on the first Monday of each October, and final decisions on cases argued during that term are handed down by the end of June of the following calendar year. In a typical year, about 75 percent of the cases the Court hears come from the federal courts, with the remaining cases coming from the state court system. In more than half of the cases argued before the Court, the lower court opinion is reversed.

The nine U.S. Supreme Court justices are nominated by the president and confirmed by the Senate. They have the authority to interpret the meaning of the U.S. Constitution and federal laws. All lower courts must follow these interpretations and other rules of law established by the Supreme Court. The Court's opinions are released in written form and later published in law books. They are also widely available on the Internet.

In recent years, many of society's most controversial issues have ended up before the Court. These include the death penalty, abortion, civil rights, and other issues. Because these issues are so significant, the views of persons nominated to become justices have become very important. This is especially true because justices are appointed for life.

Some individuals criticize the practice of appointing justices on the basis of their personal or political viewpoints. These critics say court appointees should be above politics because they sit for life and the Court makes its decisions in private. They say that other criteria should be used to select justices, such as demonstrated experience and expertise as a lawyer or a judge, as well as intelligence, integrity, and good moral character. Others say that the president should be able to appoint whomever he or she wishes. This includes people with political views similar to those of the president.

In 2003, the justices of the U.S. Supreme Court included (from left to right) Antonin Scalia, Ruth Bader Ginsburg, John Paul Stevens, David Souter, Chief Justice William Rehnquist, Clarence Thomas, Sandra Day O'Connor, Stephen Breyer, and Anthony Kennedy. *How does the Court determine which cases it will hear?*



LAW & DEMOCRACY

Independent Courts

A key element of a democracy is that courts must act impartially and make fair decisions without being influenced by outside forces.

In the state courts, many judges are elected through popular elections. These elections are either nonpartisan—without endorsement by either political parties—or partisan, with candidates endorsed by a political party.

One method of trying to ensure an independent judiciary is to appoint judges for a life term. This is done in the federal system and in a few states. Judges appointed for a life term can make decisions in cases without concern about how it might affect their reelection. Some believe that the need to raise funds for elections can result in a judge's not being impartial when deciding a particular case.

Another method of trying to preserve judges' independence is known as merit selection. In this approach, a judicial commission made up of lawyers, judges, and sometimes laypeople either decides who will be a judge or sends names of judicial candidates to the governor, who then chooses judges from that list.

Independent courts are an integral part of the U.S. system of government. Under the system of checks and balances, courts have the power of judicial review and can decide whether actions by a coequal branch violate the Constitution. For example, sometimes the U.S. Supreme Court has ruled that the president or Congress has violated the Constitution.

In many other countries, judges and courts are not independent. They are influenced or in some cases completely controlled by the legislature or the president of a country.

Problem 5.4

Do these actions violate judicial independence? Explain your reasons.

- Judge Eric Donovan's decision in an abortion case is criticized in a local newspaper editorial.
- Marsha Monroe is running for election to be a judge on her state's supreme court. She visits the offices of George Sanchez, the president of a large corporation, and asks for a donation of \$1,000 to help in her campaign.
- Some U.S. senators are unhappy about decisions of U.S. District Court Judge Marion Jones, who has ruled that the death penalty can never be used again in her jurisdiction because she believes that the U.S. Supreme Court decisions in this area are wrong. The senators call for Judge Jones to resign or be impeached by the Senate.
- Judge Max Kaufman presides over a case involving a corporation. A distant cousin of his is employed by that corporation and is a witness for the corporation at the trial. Judge Kaufman rules for the corporation in the case.
- Judge Maureen Kim is running for reelection and knows that crime is a big issue with the voters in her state. In the months just before the election, she hands down some unusually long sentences for drug offenses.
- Arnold Swartz is running for election as county judge. He campaigns that he will never make a ruling in a case that takes money away from the education of children in the county.

The Case of . . .

Gideon v. Wainwright

In 1963, a case called *Gideon v. Wainwright* came before the U.S. Supreme Court. In this case, a Florida man named Clarence Gideon was charged with unlawful breaking and entering into a poolroom. Gideon asked the trial court to provide him with a free lawyer because he was too poor to hire one himself. The state court refused to provide him with an attorney. It said that state law provided free attorneys only to defendants charged with capital offenses (those crimes that carry a penalty of death or life imprisonment).

The Fourteenth Amendment to the U.S. Constitution says that no state may deprive a person of life, liberty, or property without **due process of law**. Due process means fair treatment. Gideon argued that to try someone for a felony without providing him with a lawyer violated the person's right to due process of law. The Supreme Court agreed with Gideon.

Problem 5.5

- In the case of *Gideon v. Wainwright*, what was the precedent that the Supreme Court set? Who has to follow this precedent?
- Who would have had to follow the precedent if the case had been decided by a judge in a state appeals court?
- Does the *Gideon* case apply if you are charged with a misdemeanor? Does it apply if you are sued in a civil case?
- Do you know of other precedents established by the U.S. Supreme Court? What are they?

Landmark Supreme Court Cases



Visit the Landmark Supreme Court Cases Web site at landmarkcases.org for information and activities about *Gideon v. Wainwright*.

The Supreme Court has the power to reverse rules of law established in prior cases if the same issue comes before it again in a new case. This sometimes occurs when society's prevailing views change and the justices want the law to reflect these changes. It also occurs when one or more justices who voted a certain way in an earlier case leave the Court and new justices are appointed who disagree with the prior decision. If this happens, the justices may reverse the precedent by deciding a new case differently. This took place in the 1980s and early 1990s when Presidents Ronald Reagan and George Bush appointed a number of conservative justices. Many court decisions of the 1960s and 1970s—which were themselves often reversals of precedents from the 1930s and 1940s—had been viewed by some people as too liberal because they expanded the rights of individuals. The Court limited or reversed some of the earlier precedents involving the rights of accused criminals, and shifted some power back to the states. This occurred as the more conservative justices formed a new majority on the Court.

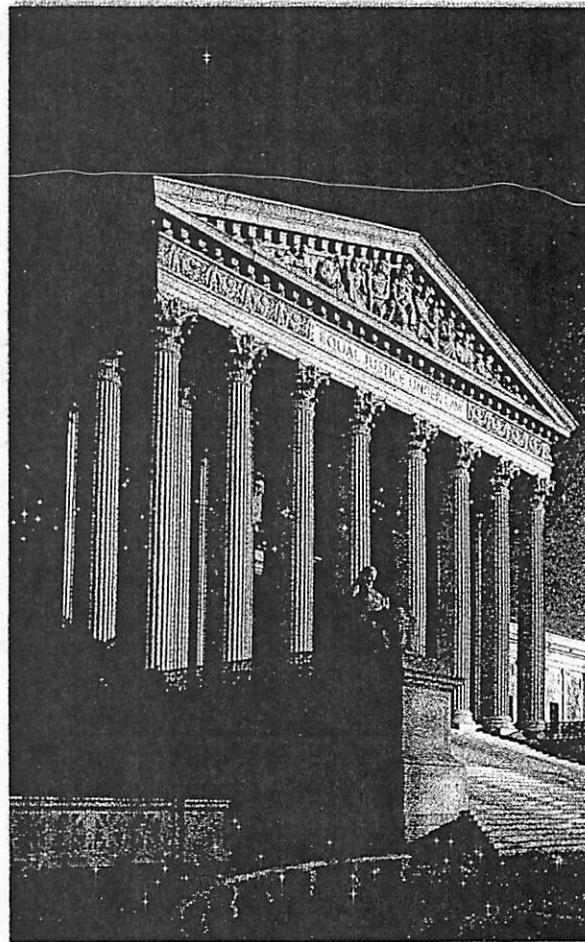
Law in Action

Who Should Be on the Supreme Court?

The president of the United States 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 nomination 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.

Problem 5.6

- 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 U.S. Supreme Court.
- b. As legal counsel to the president, look at the following characteristics 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 a top law school

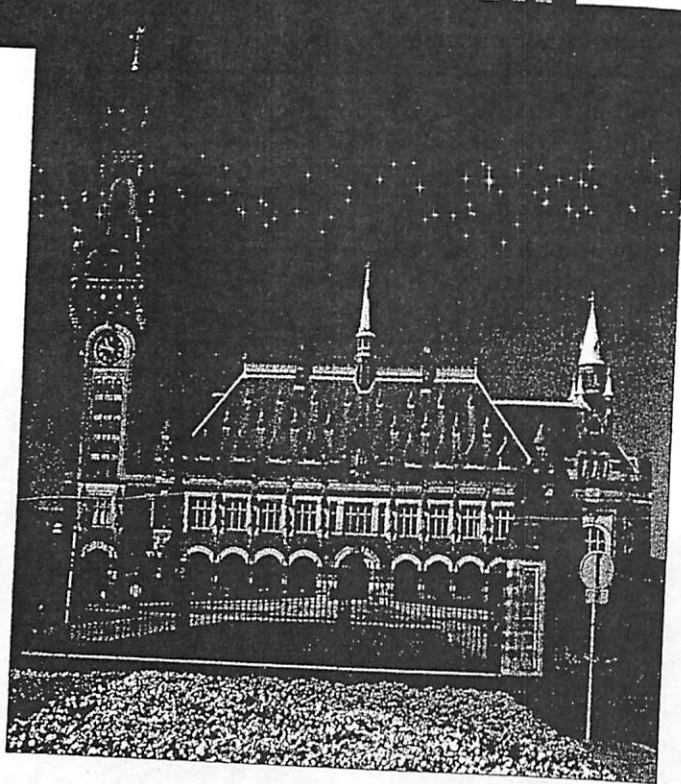
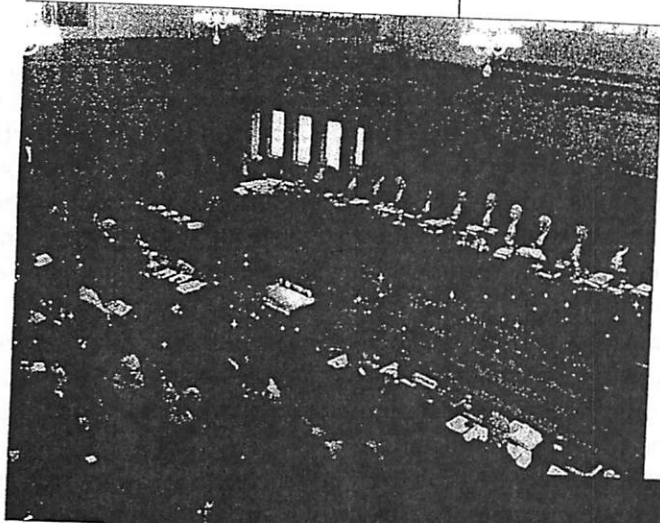


U.S. Supreme Court building

- 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 an abortion
- lives in California (assume there are no current justices from the West Coast)
- practicing Catholic (assume there are no Catholics at present on the Court)

International Courts

The International Court of Justice, also known as the World Court, is located in the Peace Palace in The Hague, the Netherlands. What kind of disputes does the International Court of Justice settle?



A number of international courts have been set up by the United Nations (UN) and other international organizations to apply and enforce international law. The first and most important one is the International Court of Justice, the principal judicial organ of the UN. It is located at The Hague in the Netherlands. This court may settle any dispute based on international law that a country submits to it. Some well-known cases submitted to this court in recent years included the case against Libya for support of the people who planted a bomb on an airplane that blew up over Lockerbie, Scotland killing hundreds of passengers and crew members. In another case Iran is suing the United States over oil drilling rights. As of 2002, this court had rendered decisions in over 75 cases and advisory opinions in over 30 situations. In the 1990s, the UN also set up special courts, called tribunals, to try people for acts of genocide in Bosnia and Rwanda.

The International Criminal Court, created by the UN in 1998, began operating in 2003. This court has jurisdiction to try individuals for crimes such as genocide, crimes against humanity, war crimes and crimes of aggression. Initially, more than 80 UN member countries ratified the treaty setting up the International Criminal Court, but the United States opposed ratification. Opposition in this country is based on the belief that this court might put American citizens, including U.S. military personnel, on trial for political reasons. For example, a member of the U.S. military might be tried because some countries oppose U.S. military policy in some part of the world.

Problem 5.7

- Why has the United States opposed having an International Criminal Court? Do you think the United States should be part of the new International Criminal Court? Give your reasons.
- Can you give an example of when a U.S. citizen can be tried by a criminal court in another country? Is this different than having an international court try U.S. citizens for crimes for which the new International Criminal Court can try them? Explain.

Lawyers

“Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser—in fees, expenses, and waste of time. As a peacemaker, the lawyer has a superior opportunity of being a good man. There will be business enough.”

— Abraham Lincoln



Street Law
online

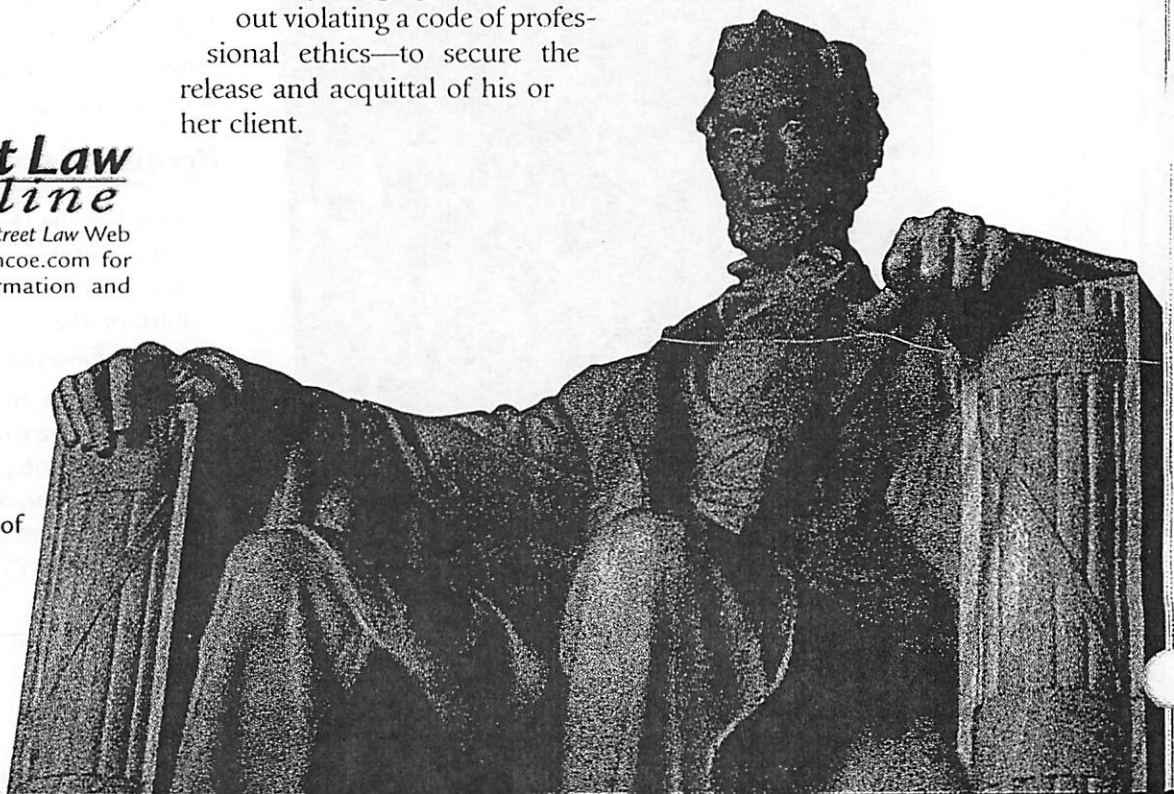
Visit the *Street Law* Web site at streetlaw.glencoe.com for chapter-based information and resources.

The 16th president of the United States, Abraham Lincoln was also a lawyer.

There are more than one million lawyers, also referred to as attorneys, in the United States. About 65 percent of them are in private practice. Around 15 percent are government lawyers who work for federal, state, or local agencies. Another 15 percent work for corporations, unions, or trade associations. A small number of lawyers work for public interest or legal aid organizations. An even smaller number are law professors, judges, or elected officials.

Contrary to popular belief, most lawyers rarely go to court. Most law practice involves giving advice, drafting legal opinions, negotiating settlements, or otherwise providing out-of-court legal assistance.

Some lawyers do, however, go to court. Such lawyers are called trial attorneys or litigators. In civil cases, lawyers act as advocates for their clients' positions. Likewise, in a criminal case, the lawyer for the defendant has a duty to do everything possible—without violating a code of professional ethics—to secure the release and acquittal of his or her client.



When Do You Need a Lawyer?

It is important to know when to see a lawyer. Many people think seeing an attorney only after they get into trouble, but perhaps the best time to consult an attorney is before the problem arises. Preventive advice is an important service that lawyers provide.

You should consider consulting an attorney about a number of common situations. These include:

- buying or selling a home or other real estate.
- organizing a business.
- changing your family status (for example, by divorce or adoption).
- making a will or planning an estate.
- signing a large or important contract.
- handling accidents involving personal injury or property damage.
- defending a criminal charge or bringing a civil suit.

How do you decide when you need a lawyer? If a question of law is involved, if a legal document needs to be drawn up or analyzed, or if you are involved in a court case, you will probably need legal help. However, if your problem is minor, you may be able to handle it on your own or with the help of someone other than a lawyer. For example, you can usually sue someone in a small claims court without a lawyer. Likewise, an argument with a spouse may be better handled through a marriage counselor or mediator. Relatives, friends, teachers, members of the clergy, doctors, or accountants may be more appropriate sources of advice in certain situations.

If you are not sure whether you need a lawyer, it may be advisable to see one to help you decide. Many **bar associations**—organizations that license lawyers—and other groups have services to help you decide if you need a lawyer. These are often provided free of charge or for a small fee.

*"The first
thing we do,
let's kill all the
lawyers."*

— William
Shakespeare

Opening a new business may require you to seek the advice of a lawyer. How would a lawyer's services help a new business owner?



Problem 6.1

For each of the following situations, discuss the reasons why you may or may not need an attorney.

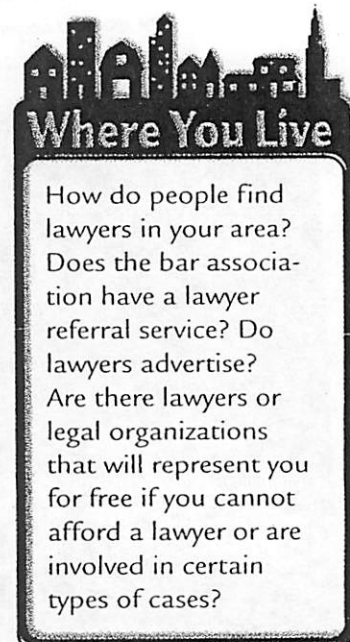
- a. You hit another car in a parking lot. Your insurance agent indicates that the company will pay for bodily injury and property damage.
 - b. You borrow a friend's car without his knowledge, and he reports it to the police as stolen.
 - c. You buy a new stereo for \$500. One month later, the receiver and speakers blow out. You return to the store, and the salesperson tells you he is sorry but his stereos have only a two-week guarantee.
 - d. You decide to trade in your old car and buy a new one.
 - e. Two friends are caught robbing the cashier at a local store, and they name you as one who helped plan the robbery.
 - f. The principal suspends you from school for two days because of an article you wrote for the student paper criticizing the school dress code.
 - g. You are turned down when you apply for a job. You think you were rejected because you are deaf.
 - h. You do not want your family to inherit the \$10,000 you have saved. Told you will die within a year, you want the money to be used for cancer research.
 - i. You and your spouse find you can no longer get along. You want a divorce.
 - j. You earn \$5,000 working in a restaurant during the year. You want to file your federal income tax return.
-

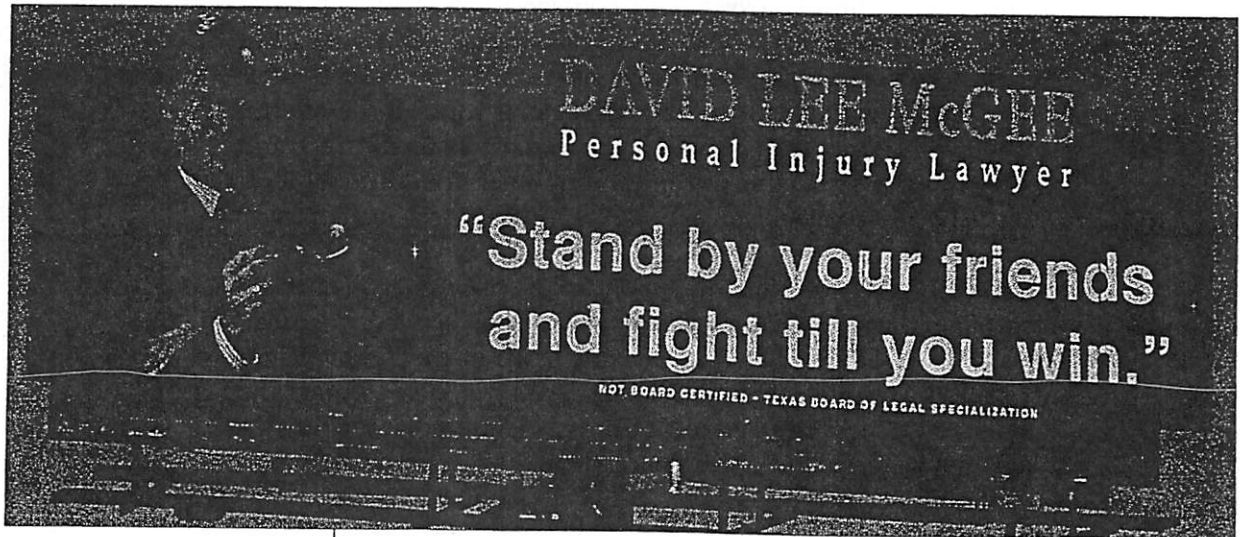
How Do You Find a Lawyer?

If you need a lawyer, how do you find one who is right for you and your particular problem? Perhaps the best way to find an experienced lawyer is through the recommendation of someone who had a similar legal problem that was resolved to his or her satisfaction. You might also ask your employer, members of the clergy, businesspeople, or other professionals for the name of a lawyer they know and trust.

You can always find a lawyer by looking under "Attorneys" or "Lawyers" in the Yellow Pages of your phone book. In addition, the *Martindale-Hubbell Law Directory*, available in your public library, lists most lawyers in the United States. It provides some general information about education, professional honors, and the types of cases each lawyer handles. Lawyers sometimes advertise their services. In many places, advertisements for lawyers appear in newspapers and magazines or on radio and television. In addition, a variety of Web sites also provide referrals to lawyers.

Lawyers have not always been allowed to advertise. For many years, it was considered improper and was forbidden by bar associations and





Lawyers specializing in certain legal services, such as bankruptcy and personal injury, often advertise on large billboards. *What is the best way to find an experienced lawyer?*

courts. In 1977, the U.S. Supreme Court ruled that advertising by lawyers was protected by the First Amendment's freedom of speech clause. Those in favor of allowing lawyers to advertise think that it helps consumers decide which lawyer to hire. They add that statistics show advertising lowers legal fees through competition. Those against advertising by lawyers think that it encourages lawyers to be salespersons who are likely to make exaggerated claims. They think that lawyers should be hired based on competence and skill, qualities difficult to ascertain through advertising.

Many lawyers now advertise through various means, including telephone directories, newspapers, radio, television, and the Internet. Advertising has enabled large, lower-cost law firms, often called legal clinics, to develop—some of which have spread nationwide. However, many attorneys and others still consider advertising improper.

Problem 6.2

- a. A television advertisement shows a lawyer in a bathing suit coming out of a lake. He says, "If you're in over your head because of bad debts, let us bail you out. We're the best firm in the state." Should there be any restrictions on ads like this? If so, what? Should there be other restrictions on ads? If so, what should they be?
- b. A lawyer hears that many people have been injured as a result of accidents in a particular type of car. He runs a newspaper ad showing a car crash. The ad reads, "If this happens to you, I may be able to help you recover your losses." Should the lawyer be able to do this?
- c. Many people in an area have lost their jobs and are about to lose their homes because they cannot make their monthly mortgage payments. Jane, a lawyer, writes to all of these people saying she is willing to represent them to prevent the loss of their homes. Should she be allowed to do this?

Another way to find a lawyer is to contact a local lawyer referral service. Most communities have bar associations that maintain lists of lawyers who specialize in certain kinds of cases. Many lawyers offer an initial meeting with clients at a special rate. If you call the referral service, you will be told the amount of the initial consultation fee and will be given a lawyer's name and phone number. If additional legal service is needed, the fee is subject to agreement between the lawyer and the client.

If you are unable to afford the services of a lawyer, you may be eligible for free legal assistance at a legal aid, legal service, or public defender's office. These offices are usually listed in the Yellow Pages of the phone book under "Legal Services." You may also contact the Legal Services Corporation or a local bar association or law school for the address of the legal aid office nearest you.

Steps to Take

What to Ask Your Lawyer

Once you have found a lawyer who seems interested in your problem, you should get answers to the following questions:

- **What is the lawyer's fee?** Is the client required to pay a flat fee or by the hour? Is a retainer required? What about a contingency fee, in which the lawyer gets paid only if he or she wins your case?
- **Will there be a written fee agreement?** What will it say? How often will you be billed? Will the lawyer tell you when the fee is going to exceed a certain limit?
- **Has the lawyer ever handled cases like this before?** If so, with what results?



Working with a lawyer

- **Will the lawyer provide you with copies of all correspondence and documents prepared on your behalf?**
- **Will the lawyer keep you informed of any new developments in your case and talk to you in "plain English"?**

If you are not satisfied with the answers you get, do not hesitate to shop around.

The Case of . . .

The Car Crash

On April 1, Al and his friend Marie were driving along Sixth Street, returning home from a party. Al had stopped at a red light at the corner of Sixth Street and Florida Avenue when a 1999 Buick hit his car from behind.

Al's 2002 Volvo was smashed in as far as the back seat. Al suffered a severe neck injury, four broken ribs, and many cuts and bruises. As a result, he spent three weeks in the hospital. Al's passenger, Marie, was also severely injured. She suffered a fractured skull, facial and numerous other cuts, a broken right arm and hip, and internal bleeding. Marie, an accountant making \$45,000 a year, spent six weeks in the hospital and returned to work after twelve weeks.

Fred, the driver of the Buick, suffered minor cuts on his face and arm and was released

from the hospital after 24 hours. As a result of the accident, Fred was given a ticket for speeding and reckless driving.

Fred's insurance company has called Marie and offered her a \$4,500 settlement. Marie is uncertain whether she should accept and decides to consult an attorney. After checking with a lawyer referral service, she is referred to a local attorney.

Problem 6.3

Role-play the initial attorney-client interview between Marie and the attorney. Persons role-playing the attorney should attempt to ask all the questions an attorney should ask at this point. Persons role-playing the client should provide the attorney with all necessary information and ask all those questions that are relevant to Marie's case and that relate to whether she should retain the attorney.

"If you out-smart your lawyer, you've got the wrong lawyer."

—John T. Nolan,
Esquire

Whenever possible, it is wise to interview more than one lawyer before making a selection. Use these meetings to judge the differences between lawyers' fees, their experience in the type of case in which you are involved, and how you think you will be able to work with each one.

To avoid misunderstandings about legal fees, ask for an up-front estimate of the total charge. You should also find out who else will be working on the case, what each person charges per hour, and how often you will be billed. Lawyers often require a **retainer**—a down payment on the total fee. In addition, attorneys may charge clients for court costs, filing fees, or other expenses.

Attorneys sometimes take cases on a **contingency fee** basis instead of charging an hourly fee or a lump sum. A contingency fee is a percentage of whatever amount the client wins or settles for in the case. However, the client pays nothing except expenses if the case is lost. This fee arrangement is most common in personal injury cases in which money damages are being sought.

A typical contingency fee is one-third of the amount awarded to the client. However, it could be 40 percent or higher in some cases. If a client wins or settles for \$300,000 in an auto accident case, the lawyer hired on a one-third contingency fee basis would take \$100,000, and the client would receive \$200,000 minus court costs.

The attorney-client relationship is often based on oral agreements. However, bar associations frequently recommend and sometimes require written fee agreements—which can cover flat fee or contingency fee agreements—signed by both the attorney and the client. This can help prevent disagreements later.

Another thing to consider before choosing a lawyer is whether your problem is one that may be of interest to the American Civil Liberties Union (ACLU), Institute for Justice (IJ), Environmental Defense Fund (EDF), National Association for the Advancement of Colored People Legal Defense Fund (LDF), American Conservative Union (ACU), or some other public interest group. These organizations are usually listed in the phone book and may provide free representation.

Working With Your Lawyer

Trust is the foundation of the attorney-client relationship—you must be able to trust your attorney. In order to help you, your attorney needs to know everything about your problem. To encourage clients to speak freely to their lawyers, the law grants an attorney-client **privilege**. This means that whatever you tell your attorney about your case is private and confidential. Such information cannot be disclosed to anyone without your permission.

“The ethical practices of lawyers are probably no worse than those of other professions. Lawyers bring some of the trouble on by claiming . . . that they are interested only in justice, not power or wealth. They also suffer guilt by association. Their clients are often people in trouble. Saints need no lawyers: gangsters do.”

— Lawrence M. Friedman,
American Law



Trust is an important factor between an attorney and his or her client. *What is the attorney-client privilege? Why is it important?*

FIGURE 6.1 Code of Professional Responsibility

The Code of Professional Responsibility consists of the following nine canons, or principles, which are broken down into ethical considerations and disciplinary rules.

- Canon 1.** A lawyer should assist in maintaining the integrity and competence of the legal profession.
- Canon 2.** A lawyer should assist the legal profession in fulfilling its duty to make legal counsel available.
- Canon 3.** A lawyer should assist in preventing the unauthorized practice of law.
- Canon 4.** A lawyer should preserve the confidences and secrets of a client.

Canon 5. A lawyer should exercise independent professional judgment on behalf of a client.

Canon 6. A lawyer should represent a client completely.

Canon 7. A lawyer should represent a client zealously within the bounds of the law.

Canon 8. A lawyer should assist in improving the legal system.

Canon 9. A lawyer should avoid the appearance of professional impropriety.

Source: Adapted from the American Bar Association

Problem 6.4

The following situations present ethical dilemmas faced by attorneys. Read the Code of Professional Responsibility, examine each case, and then decide whether the attorney acted ethically or unethically. Explain your answers.

- a. Marta, an attorney for the family of a man killed in an auto accident, visits a bar and runs into a juror in the case. She has a drink with the juror.
- b. Nicholas, a criminal defense attorney, puts his client on the stand to testify to her innocence, even though Nicholas knows she is lying.
- c. Gene, a corporate lawyer, is asked by a wealthy client to recommend her son for admission to the state bar. Gene says yes.
- d. Rosa represents a man injured by a defective lawn mower. The manufacturer's insurance company offers a \$100,000 settlement. She accepts the settlement without consulting her client.
- e. Nang, an attorney, has a trial next week before Judge DeSilva. Nang sees the judge in a grocery store and asks her if the trial can be postponed one week.

Working with an attorney also means making decisions. A good attorney will give you advice, but you must make the final decision. For example, you must decide whether to sue or not to sue, or to accept or reject a settlement. The attorney's job is to help you understand what is going on so that you can make informed decisions. You, in turn, should ask the questions needed to clarify things. However, you may discharge your lawyer if you are not satisfied. Once the case is in court, a judge will permit this change only for a very good reason.

Lawyers must follow certain standards of conduct. These standards are set out in a Code of Professional Responsibility (listed in Figure 6.1) and are enforced by state bar associations. In almost every

state, a lawyer must pass an examination to become a member of the state bar. Lawyers who violate standards of conduct may be reprimanded, suspended, or **disbarred**. Once disbarred, a lawyer no longer has a license to practice law.

In recent years, there has been a great deal of concern about the conduct of lawyers. A client who has serious complaints that cannot be worked out with his or her attorney can report the problem to the local or state bar association. Like other professionals, lawyers can be sued by clients for serious errors that result in injury or loss. This type of case is known as a **legal malpractice** case. Additional information on malpractice can be found in Unit 3.

To handle attorney-client disputes, some bar associations have arbitration systems in which panels of lawyers—and sometimes nonlawyers—hold hearings and issue opinions. Some disputes deal with the amount charged for the lawyer's services. Panels may order the attorney to return a client's money if they decide the fee was improper.



For Your Information . . .

Becoming a Lawyer

More than 120,000 students are enrolled in over 200 law schools that operate in the United States. Law students typically attend class for three years, although students who attend classes at night may attend for four years. More than half of all law students enrolled today are female. As recently as 1980, only 30 percent of law students were women. Candidates must first complete a four-year college program, demonstrate good grades, and take the Law School Admission Test (LSAT).

To obtain a license to practice law, almost all law

school graduates must apply to take a state bar examination. The rules for eligibility to take the bar and to qualify for bar admission are set by each state. However, to receive a license to practice law, one must be a graduate of a law school that meets certain standards and must achieve a passing score on the bar examination. In addition, the state's board of bar examiners checks the character and fitness of each applicant for a law license. Each year more than 50,000 people are admitted to practice law in the United States. Salaries and working conditions for lawyers vary widely.