Chapter I.A

THE BASICS OF U.S.
JURISDICTION

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The U.S. judiciary is a product of American Federalism, a political philosophy premised on a profound distrust of centralized government. One of the fundamental tenets of federalism was that the states of the Union would retain their sovereignty, and consequently the majority of power, vis-à-vis the federal government. In this vein, the nation’s founding fathers specifically contemplated that the states would be self-regulating, subject to the supremacy of the federal government only in those areas where the federal government is permitted by the U.S. Constitution to regulate national affairs.¹ Over the past 200 years, the visage of federalism has changed, and the balance of power between the federal government and the states has undoubtedly shifted. Nevertheless, the American judicial system, perhaps more than the other two branches of government, continues to reflect this founding principle.

As such, the U.S. judiciary is characterized by a parallel court system comprised of state courts of general jurisdiction and federal courts of limited jurisdiction. Jurisdiction here refers to a court’s authority to hear and decide a particular type of case. In short, a court of general jurisdiction can hear any kind of case, and a court of limited jurisdiction can hear only those matters it is specifically authorized to entertain. Generally speaking, the U.S. Constitution and, to a large extent, the U.S. Congress control the limits of federal jurisdiction by expressly delineating the types of matters that federal courts are entitled to hear. State courts enjoy the largely exclusive power to handle everything else.

Although the jurisdiction of state courts and federal courts is distinct, it is often overlapping. For example, some cases otherwise falling within the jurisdiction of state courts can—in certain instances—be “removed” to federal court. Conversely, many cases arising under federal law may be heard by state courts.² This chapter provides an introductory discussion of the U.S. judiciary, with an emphasis on how the parallel state and federal judiciaries coexist and complement each other.

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¹ U.S. Const. amend. X (“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”); see also, e.g., United States v. Darby, 312 U.S. 100, 124 (1941) (“The [Tenth Amendment] states but a truism that all is retained which has not been surrendered. There is nothing in the history of its adoption to suggest that it was more than declaratory of the relationship between the national and state governments as it had been established by the Constitution before the amendment or that its purpose was other than to allay fears that the new national government might seek to exercise powers not granted, and that the states might not be able to exercise fully their reserved powers.”).

² For a detailed discussion of the subject matter jurisdiction of federal courts, see Chapter I.B, infra.
I. JURISDICTION OF STATE COURTS

There are fifty states in the Union, and each has its own independent judiciary created by the constitution and/or laws of the state.\(^3\) State courts are courts of "general jurisdiction," meaning they have the authority to entertain any case brought before them that has sufficient connection with the state. For example, a state court could hear a property claim relating to land in the state, a matrimonial claim between residents of the state, a contract claim between individuals or entities within the state, and a criminal claim relating to a breach of the laws or statutes of the state. In all but a few limited instances, state courts also have concurrent jurisdiction over claims arising under federal law and have the authority to construe, apply, and adjudicate claims arising under federal law, including the U.S. Constitution. The vast majority of civil lawsuits brought in the United States are brought before state courts rather than federal courts.\(^4\)

Most states have—to varying degrees—allocated jurisdiction over particular matters to specific courts. State courts of limited jurisdiction, also known as "inferior jurisdiction courts," include municipal courts, probate courts, juvenile courts, family courts, and small claims courts. These courts are generally presided over by a magistrate judge or justice of the peace who hears matters relating to a particular subject (e.g., probate) or matters relating to lesser sums of money or misdemeanor crimes that do not warrant a hearing before a court of "superior jurisdiction" (i.e., a superior court).

Superior courts (also referred to as district, common pleas,\(^5\) circuit or county courts, and—in the case of New York—the supreme court) have jurisdiction over any case that does not fall within the exclusive jurisdiction of another court (e.g., an inferior or federal court). In other words, there exists a presumption that state courts have subject matter jurisdiction. Matters heard by superior courts are generally civil matters where the amount in controversy meets a specified minimum threshold and trials for felony crimes.

Generally, superior courts are trial courts or courts of "original jurisdiction." Original jurisdiction refers simply to a court’s authority to entertain a matter from its inception as contrasted with appellate jurisdiction, discussed below. In trial courts, evidence and testimony are presented to the finder of fact pursuant to the applicable rules of procedure of the state and/or the particular court. The finder of fact (i.e., the person or persons who make determinations of fact based on the evidence presented) is often a jury but can also be the judge presiding alone, a procedure referred to as a bench trial. The judge is always the arbiter of the law and makes findings of law based on the arguments presented. In the case of a bench trial, the judge is the arbiter of both fact and law.

Decisions of the superior courts are generally appealable to a state’s intermediate appellate court, often called the court of appeals.\(^6\) And decisions of a court of appeals are generally appealable to a state’s court of last resort (i.e., the highest court in the state), which is often called the supreme court. Appeal to state courts of last resort is typically not available “as of right” (meaning the court must...
hear the appeal) but only with permission of the court (or the court from which appeal is sought). Notably, there is no constitutional right to appellate review of state court decisions. In most states, however, a party is statutorily entitled to one appeal as of right.

Most appeals are handled at the intermediate level and are usually presided over by a panel of two or three judges. A state’s supreme court generally only agrees to review a case in circumstances involving highly controversial matters, unique points of law, and/or issues that have been decided differently by different appellate courts in the jurisdiction. A decision by a state supreme court is generally final and nonappealable. The state supreme court is the final arbiter of the laws and constitution of that state. The only avenue of appeal from a state court of last resort arises where the state court rules on an issue of federal law or where the court’s ruling on state law implicates a principle of federal constitutional law, in which case the decision may be appealed to the U.S. Supreme Court.

Generally, trial courts create and maintain a record of the evidence and argument presented. On appeal, the record is certified and transmitted to the relevant appellate body. Appellate courts have limited jurisdiction in the sense that they are generally only competent to make rulings on matters of law or in relation to serious procedural errors. In other words, appellate courts generally cannot consider evidence or testimony not already presented to the trial court. Moreover, appellate courts are generally restricted to hearing only matters that were originally presented to the trial court. In other words, an appellant is not permitted to advance a new theory on appeal.

Finally, state court judges—unlike federal judges—are not appointed for life but are either elected or appointed (or some combination of the two) for a set number of years.

II. JURISDICTION OF FEDERAL COURTS

Federal courts fall into one of two categories depending on their provenance. Article III courts are those federal courts expressly provided for by Article III of the U.S. Constitution (i.e., the Supreme Court) or created by Congress pursuant to Article III. Article III provides in relevant part that “[t]he judicial power of the United States, shall be vested in one supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish.” Beginning with the Judiciary Act of 1789 and continuing until 1982 when Congress added the Federal Circuit, Congress has created over 100 “inferior” federal courts.

7. See, e.g., N.Y. Code art. 56 (Appeals to the Court of Appeals) at C.P.L.R. §§ 5601 and 5602. (In short, appeals from final determinations of the appellate division are available as of right where two justices dissent on a question of law and/or where the decision implicates a significant constitutional issue. Generally, any final determination of the appellate division—if it is not appealable as of right—can be appealed if permission is granted by either the appellate court or the court of appeals pursuant to the rules that govern those courts. In practice, however, the court of appeals only grants permission where a significant legal issue is involved. Such circumstances include instances in which the court of appeals deems it necessary to address (1) a split in authority among the departments of the appellate division; (2) statutory construction in developing areas of regulation; (3) emerging areas of common law; (4) outdated precedents; and/or (5) errors of law committed by the Appellate Division.)


The federal court system has gone through several permutations over the past 200 years. At present, there are 94 U.S. district courts in the United States spread over 12 regional circuits. The district courts are the trial courts (i.e., courts of original jurisdiction) of the federal system. Every state has at least one district court. Larger states such as New York have multiple district courts covering various regions within the state (i.e., the Eastern District of New York, the Western District of New York, the Southern District of New York, and the Northern District of New York).

Every circuit has one U.S. circuit court of appeals that hears appeals from decisions of the district courts located within its circuit. There is a thirteenth U.S. circuit court of appeals, the U.S. Court of Appeals for the Federal Circuit, which sits in Washington, D.C., and has nationwide jurisdiction over cases involving the federal intellectual property laws and claims against the United States. Circuit courts generally sit in panels of three judges, although they occasionally will rehear cases en banc, meaning all active members of the court will hear and vote on the case.

Decisions of the circuit courts (and, in very rare cases, the district courts and state supreme courts) are appealable to the U.S. Supreme Court by way of petition. A petition requesting the Supreme Court consider a matter is called a Petition for a Writ of Certiorari (or “cert.”). The Supreme Court “grants cert.” to a very small percentage of the cases it is petitioned to hear. Generally, the cases selected implicate important constitutional issues and/or involve issues that have been decided differently by different circuit courts (i.e., there is a “circuit split”). The Supreme Court is comprised of nine judges, called justices, and presided over by a chief justice.15

As appellate courts (like appellate courts at the state level), the circuit courts and the Supreme Court only review cases for mistakes of law and clearly erroneous factual findings made by the lower courts. The factual record generally is not open for reconsideration or addition. The exception to this is that the Supreme Court does have original jurisdiction, which is exercised rarely, over cases involving ambassadors and cases brought by one state against another.

Another “special” Article III court created by Congress is the U.S. Court of International Trade, which sits in New York and handles cases involving tariffs and international trade disputes.16

The second type of federal courts are Article I courts. Article I courts are courts created by Congress that have a very specific mandate. They are the bankruptcy courts, which handle cases under the Bankruptcy Code; the U.S. Court of Claims, which handles monetary claims against the government; the U.S. Court of Military Appeals, which handles appeals arising from cases tried under the Uniform Code of Military Justice; the U.S. Tax Court, which handles cases arising over alleged tax deficiencies; and the U.S. Court of Veterans Appeals, which handles cases involving veterans’ rights.

As set forth at the outset, federal courts are courts of limited jurisdiction. When a case is brought before a federal tribunal, the court must first determine that it has the authority to handle the type of case (i.e., that it has subject matter jurisdiction). By contrast, as discussed above, state courts are courts of general jurisdiction and therefore may hear virtually any type of case properly brought before them. In the case of Article I courts and the special Article III courts, their jurisdiction is limited to hearing cases regarding the subject matter for which they were created (e.g., bankruptcy, international trade, tax matters, and so on).

The jurisdiction of the other Article III courts (e.g., the U.S. district courts) is limited to the categories of cases as set out in Title 28 of the United States Code sections 1330 through 1332. The two main categories of cases over which the federal courts have jurisdiction are “federal question” and “diversity” cases. Section 1331 provides that “[t]he district courts shall have original jurisdiction of all civil actions arising

15. At the time of this writing, the Chief Justice of the Supreme Court is John G. Roberts, Jr., and the seven active Associate Justices are Anthony M. Kennedy; Clarence Thomas; Ruth Bader Ginsburg; Stephen G. Breyer; Samuel Anthony Alito; Sonia Sotomayor; and Elena Kagan. One seat on the Supreme Court, the one held by the late Justice Antonin Scalia, remains vacant.

16. For a comprehensive discussion of trade disputes and the manner in which they are handled in the U.S. courts, see Chapter VI.C, infra.
under the Constitution, laws, or treaties of the United States.” This jurisdiction is referred to as “federal question” jurisdiction, which was first granted to federal courts by Congress in 1875. Cases arising under federal question jurisdiction are generally cases that involve the breach of a federal statute or are related to the constitutionality of a given law or regulation. Such cases include disputes between states, claims relating to intellectual property, admiralty, antitrust, securities and banking regulation, civil rights, labor relations, environmental issues, and cases involving federal crimes.

Title 28 of the United States Code section 1332 provides for what is called “diversity jurisdiction.” In brief, diversity jurisdiction exists where all the parties to a particular case are from different states (or countries) and the amount in controversy exceeds $75,000. In other words, any claim that would otherwise fall within the exclusive jurisdiction of a state court may be brought in (or “removed to”) federal court if the parties are diverse and the claim is of a certain size. The historical rationale for diversity jurisdiction stems from the concern that a state court would be—or would appear to be—biased against an out-of-state party. Today, the issue of whether to bring a case where diversity jurisdiction is available in state or federal court is most often a tactical determination made by the practitioner.

III. CONCURRENT JURISDICTION

The circumstance of both a state and a federal court being seized of jurisdiction of a particular matter is referred to as “concurrent jurisdiction.” As noted above, state courts have authority to rule on matters of federal law, and federal courts, typically in diversity cases, frequently rule on issues of state law. As the Supreme Court recently reiterated, “In cases ‘arising under’ federal law [i.e., federal question cases], we note, there is a ‘deeply rooted presumption in favor of concurrent state court jurisdiction,’ rebuttable if ‘Congress affirmatively ousts the state courts of jurisdiction over a particular federal claim.’” One example of Congress “ousting” the state courts of jurisdiction over a particular subject matter is Title 28 of the United States Code section 1333, which provides that “[t]he district courts shall have original jurisdiction, exclusive of the courts of the States, of (1) Any civil case of admiralty or maritime jurisdiction” (emphasis added). Other areas where Congress has legislated the exclusivity of federal court jurisdiction include bankruptcy matters and proceedings; patent and copyright cases; actions against consuls and vice consuls; actions or proceedings for the recovery or enforcement of civil fines, penalties, or forfeitures incurred under federal statutes; seizures under the laws of the United States on land or on waters not within the admiralty or maritime jurisdiction; and crimes against the United States.

The presumption of concurrent state court jurisdiction can also be overcome “by an explicit statutory directive, by unmistakable implication from legislative history, or by clear incompatibility between state-court jurisdiction and federal interests.” When a state court does exercise its jurisdiction over a case arising under federal law, it subjects itself to the following two conditions “that secure state-court compliance with and national uniformity of federal law, namely, that (1) state courts must

18. 28 U.S.C. § 1332 provides in relevant part as follows:
   (a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between—
   (1) citizens of different States;
   (2) citizens of a State and citizens or subjects of a foreign state, except that the district courts shall not have original jurisdiction under this subsection of an action between citizens of a State and citizens or subjects of a foreign state who are lawfully admitted for permanent residence in the United States and are domiciled in the same State;
   (3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and
   (4) a foreign state, defined in section 1603 (a) of this title, as plaintiff and citizens of a State or of different States.
20. Id. (quoting Gulf Offshore Co. v. Mobil Oil Corp., 453 U.S. 473, 478, 101 S. Ct. 2870, 69 L. Ed. 2d 784 (1981)).
interpret and enforce faithfully the supreme laws of the land; and (2) the state courts’ decisions are subject to review by the United States Supreme Court. 21 In such circumstances, the Supreme Court limits its review solely to that part of the decision that implicates federal law and/or has a federal constitutional dimension. In other words, the Supreme Court may review a state court decision only insofar as it purports to handle a federal question. The Supreme Court may not review a state court’s interpretation of state law or any other decision (or part of a decision) that falls within the exclusive jurisdiction of state courts unless, as noted above, the state court’s application of state law implicates a principle of federal constitutional law.

IV. THE PRINCIPLE OF STARE DECISIS

With one limited exception, 22 the United States is a common law country, and court decisions make up a large part of American law. Stare decisis is the common law principle that a court should decide cases predictably and in accordance with similar, previously decided matters, or “precedent.” Stated simply, courts are bound to follow precedential decisions of appellate courts. Stare decisis is an abbreviation of the Latin phrase stare decisis et non quies movere, which—literally translated—means “to stand by decisions and not to disturb settled matters.” As a general rule, courts are bound only by their own past decisions (sometimes referred to as horizontal stare decisis) and the decisions of their directly superior courts (sometimes referred to as vertical stare decisis).

Such decisions are referred to as binding authority. Binding authority—as the name implies—must be followed and/or may only be deviated from if a case is “distinguishable” (i.e., has sufficiently different facts as to make the precedent inapplicable) or where there is very good reason to overturn the existing law.

By contrast, persuasive authority is not binding and holds only as much weight as a given court is willing to accord it. The most commonly cited forms of persuasive authority include decisions from similarly situated (or “sister”) courts, decisions from foreign courts, and excerpts from encyclopedias, treatises, or other academic works. For example, a decision of the Eastern District Court of New York might be cited as persuasive authority before the District Court of New Jersey. Decisions of the United Kingdom’s House of Lords (now the Supreme Court of the United Kingdom) are occasionally cited as persuasive authority before U.S. courts, particularly in historical cases or cases where an international authority could be seen as being helpful.

Given the United States’ parallel judicial system, there is an interesting interplay between the precedential authority of decisions of state and federal courts. The U.S. Supreme Court is the highest court in the land, and therefore its decisions constitute binding authority on matters of federal law. Consistent with the system of dual sovereignty, however, federal courts are not considered “superior” to state courts, and decisions of lower federal courts on either federal or state law are not binding on state courts. By contrast, federal courts are bound by decisions of a state’s highest court on questions of state law, which is a state court’s exclusive province of authority. 23

Indeed, even in cases where a federal court is seized of jurisdiction of a matter, if an unsettled question of state law arises, the federal court may employ a process known as certification, where it

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21. 32A Am. Jur. 2d Federal Courts § 911 (citing McKesson Corp. v. Division of Alcoholic Beverages and Tobacco, Dept. of Business Regulation of Florida, 496 U.S. 18, 110 S. Ct. 2238, 110 L. Ed. 2d 17 (1990)).
22. The law of the state of Louisiana is unique in that it is derived from the French and Spanish civil codes rather than English common law.
23. See Erie Railroad Co. v. Tompkins, 304 U.S. 64, 58 S. Ct. 817 (1938) (holding that decisions of a state’s highest court on matters of state law are binding on federal courts pursuant to the Rules of Decision Act); and 28 U.S.C. § 1652 (“The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply.”).
formally submits the question for final (and therefore binding) determination by the relevant state supreme court.24

Certification of questions of law by a federal court to a state court is governed by state constitution, statute, or court rule. Most states have adopted some form of the Uniform Certification of Questions of Law Act,25 which provides generally as follows:

The [STATE] supreme court may answer questions of law certified to it by the supreme court of the United States, a court of appeals of the United States, a United States district court or the highest appellate court or the intermediate appellate court of any other state, when requested by the certifying court if there are involved in any proceeding before it questions of law of this state which may be determinative of the cause then pending in the certifying court and as to which it appears to the certifying court there is no controlling precedent in the decisions of the supreme court and the court of appeals of this state.26

As set out above, a federal court will generally only certify a question for state court determination if the following factors are met: (1) the question of law is unsettled and/or there is a lack of definitive state court authority on point; (2) the issue is one of importance to state policy; and (3) a determination of the issue by the state court is likely to be determinative in the litigation.27 Certification is not obligatory, however, and a federal court may refuse to certify a question in circumstances in which it believes it is able to make a “confident guess” as to how the state’s highest court would rule.28 Finally, it is the state court’s prerogative whether to accept the question certified.

Where a state court refuses to entertain a certified question, however, (or, more generally, where certification has not been sought), a federal court may abstain from ruling on a matter it determines is (or should be) first addressed by the state court.29 As discussed more fully in Chapter I.B, there are several so-called abstention doctrines that may apply depending on the type of issues litigated and the procedural posture of the case. For example, a federal court may abstain where the issue is the constitutionality of a state law if the state court has not had the opportunity to rule on the matter previously;30 where an individual is seeking redress for a civil rights violation if the state has not completed its prosecution of the matter;31 where the state court has greater expertise in a particular matter and/or the case implicates significant public policy issues best addressed by the state;32 or simply where parallel litigation would be duplicative and wasteful.33

29. 36 C.J.S. Federal Courts § 84 (citing Cuesnongle v. Ramos, 835 F.2d 1486 (1st Cir. 1987)).