



The Legal and Ethical Environment of Business - Version 2.0

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Chapter 2

The Court System

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Part - 2.1

The Third Branch

Learning Objectives

- Understand the constitutional basis for the judicial branch
- Explore the differences among the three branches of government
- Learn about the chief justice's role in judicial administration
- Explore the concept of judicial review
- Become familiar with how the other two branches check and control the judiciary

Constitutional Basis of The Three Branches

Legislative branch

- Created by Article I of the Constitution at the federal level
 - This branch is responsible for drafting laws

Executive branch

- Created under Article II of the Constitution
 - This is another name for the office of the president and its related agencies

Judiciary

- Created by Article III of the Constitution and by various state constitutions and laws
 - This is the branch of government dedicated to the administration of justice

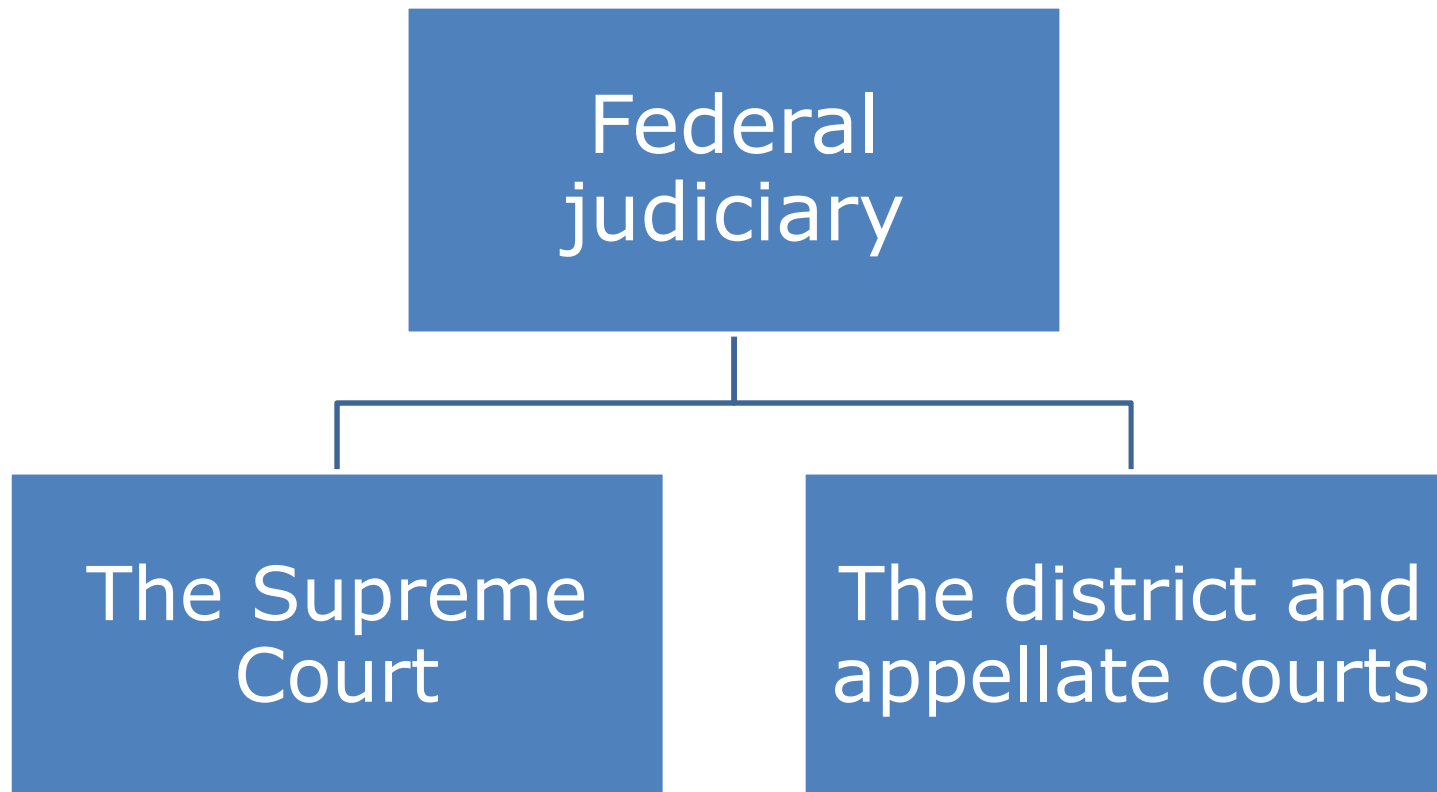
Nomination and Tenure of a Federal Judge

- Requirements to become a federal judge
 - Nomination by the president
 - Confirmation by the Senate
- Constitution guarantees that judges are relatively free from political interference by providing them with:
 - Lifetime tenure
 - Salary that cannot be reduced

Differences Among the Three Branches

- The three branches of government are different as:
 - The judiciary is the only unelected branch of government
 - They consume different resources in serving the public
 - The entire federal court system consumes less than two-tenths of 1 percent of the federal budget
 - The federal judiciary works in relative anonymity
 - The judiciary is designed to be the most remote branch from the people
 - Federal judges have life tenure and can be removed from office only through impeachment

Judicial Hierarchy



Judicial Administration

- **Administrative Office:** Responsible for rent, payroll, budget, and other administrative matters relating to the functioning of the federal judiciary
- **Federal Judicial Center:** Dedicated to conducting research on judicial administration and providing judicial education
- **United States Sentencing Commission (USSC):** Commission created by Congress to explore ways to establish uniformity in federal criminal sentencing

Role of Justices in Judicial Administration


- **Chief justice:** In the U.S. Supreme Court, the representative of the judicial branch to other branches and the administrative head of the judiciary
- **Associate justice:** In the U.S. Supreme Court, one of the eight regular members of the Court

Judicial Review

- Power of courts to declare legislative or executive acts unlawful
 - Power that rests with each of the more than eight hundred federal judges, from the trial courts through the appellate courts

Checking and Controlling the Judiciary

- The legislative and executive branches play a critical role in checking the judiciary
 - President can control the judiciary by making careful judicial selections
 - Power of the president to name federal judges is absolute
 - President is the primary means of enforcing judicial decisions
- Role of Congress in checking the judiciary
 - Confirms judicial selections
 - Controls the judiciary through its annual budgetary process
 - Determines organization of the courts and what kind of cases the courts can hear

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Part - 2.2

Activists and Strict Constructionists

Learning Objectives

- Explore the strict constructionist, or originalist, judicial philosophy
- Explore the judicial activist philosophy
- Learn about the modern origin of the divide between these two philosophies
- Examine the evolution of the right to privacy and how it affects judicial philosophy
- Explore the biographies of the current Supreme Court justices

Strict Constructionists Judicial Philosophy

- **Strict constructionists:** Politically conservative judges who adhere to the view that:
 - The Constitution should be interpreted in light of its original meaning when it was adopted
 - New rights should be granted by the legislative process rather than through judicial review
- **Originalists:** Jurists who subscribe to original meaning
 - **Original meaning:** The view that the Constitution should be interpreted in light of what the Founding Fathers meant when they wrote the document

Judicial Activists

- Judges who adhere to the view that the Constitution is a living document that should adapt and change with the times
 - Believe that the political process is flawed and that majority rule can lead to the baser instincts of humanity becoming the rule of law
 - Safeguard the voice of the minority and the oppressed
 - Preferring to look at the motivation, intent, and implications of the Constitution's safeguards rather than merely its words

Modern Origin

- Modern characterization of judges as politically motivated can be traced to the Great Depression
 - New Deal - Legislative package that increased the size and role of the government in private commercial activity
- Federal judges are appointed for lifetime
 - Turnover rate for federal judgeships is low

Biographies of the Current Supreme Court Justices

- John Roberts
 - Nominated by George W. Bush in 2005
 - Young, smart, and a popular judge with solid republican credentials
 - Re-nominated and confirmed by the senate as chief justice
- Samuel Alito
 - Nominated by George W. Bush
 - Been on the Court only for only a few years
 - Demonstrated to be ideological than pragmatic in opinions

Biographies of the Current Supreme Court Justices

- Sonia Sotomayor and Elena Kagan
 - Nominated by Barack Obama in the year 2009 and 2010 respectively
 - Regarded as moving the court neither in terms of activism nor originalism in direction

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Part - 2.3

Trail and Appellate Courts

Learning Objectives

- Learn the differences between the state and federal constitutions
- Understand subject matter jurisdiction
- Explore the state and federal court systems
- Distinguish the work of trial and appellate courts

Differences Between State and Federal Constitutions

- Many American cities have both state and federal courthouse, hearing different types of cases involving:
 - Different laws
 - Different law enforcement agencies
 - Different judicial systems

Procedures

- **Civil procedure:** Rules governing litigation in civil cases
- **Criminal procedure:** Rules governing litigation in criminal cases
- United States has fifty-one separate legal systems
 - One federal and fifty in the states

Subject Matter Jurisdiction

- Rules of subject matter jurisdiction dictate whether a case is heard in federal or state court
 - **Subject matter jurisdiction:** Authority of a court to hear cases in a specific subject area or matter
- Lawsuits involving state laws are heard in state courts
- Child custody, adoption, property, and probate laws are state laws
 - **Probate:** Legal process of administering a deceased person's property

Subject Matter Jurisdiction

- Laws surrounding contracts are passed at the state level
- **Uniform Commercial Code (UCC):** Model statute that seeks to provide uniformity to contracts law among the different states
 - It is not a law until state legislatures adopt it as law
- Law of torts is state based
 - **Tort:** Any civil wrong, other than a breach of contract

Federal Court Subject Matter Jurisdiction

- Limited to cases involving:
 - **Federal question:** Any case involving a federal law or the federal Constitution gives rise to subject matter jurisdiction in federal courts
 - **Original jurisdiction:** Small category of cases that allows the U.S. Supreme Court to hear a case for a first time rather than on appeal
 - Example - Lawsuits between states

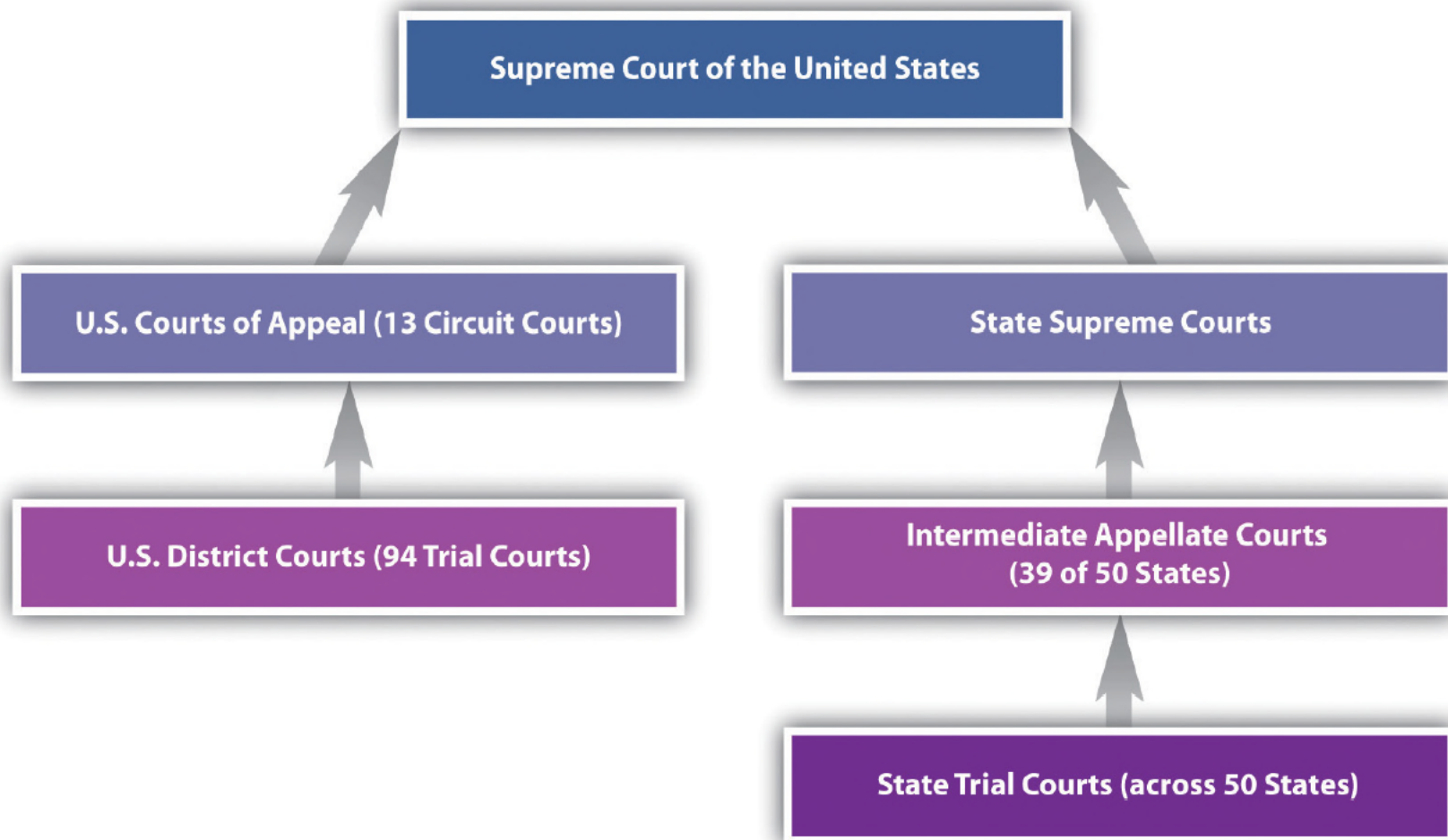
State and Federal Court Systems

- Federal court can hear a case involving a state law
 - **Diversity jurisdiction:** Power of federal courts to hear a case based on state law if all plaintiffs are from different states than all defendants and damages claimed exceed seventy-five thousand dollars
 - Allows a party, apprehensive about receiving a fair trial over opponents home court advantage to seek a neutral forum to hear its case through removal
 - **Removal:** Process of moving a case from state court to federal court under diversity jurisdiction

State and Federal Court Systems

- There is a hierarchy within both federal and state court systems
- The U.S. Supreme Court is the highest in the country and all courts are bound to follow as per stare decisis
 - **Stare decisis:** Literally, “let the decision stand”
 - Doctrine that requires lower courts to follow prior precedents in similar cases by higher courts whenever possible

Figure 2.7 - State and Federal Court Systems



Trial and Appellate Courts

- Under court administration system, there are ninety-four judicial courts in the country
- Single judicial districts or multiple judicial districts is based on the population of the state
- Districts are named for their geographical location

Work of Trial and Appellate Courts

- As a trial court, U.S. district courts hear civil and criminal trials
 - Trials may be bench trials or jury trials
 - **Bench trial:** A case heard only by a judge, wherein the judge acts as both trier of law and trier of fact
- Witnesses' testimonies are recorded into a trial record
 - **Trial record:** The transcript of all proceedings related to litigation at a trial court, along with accompanying paperwork such as memoranda and briefs

Work of Trial and Appellate Courts

- At the conclusion of a trial, if the losing side is unhappy with the outcome, it is entitled as a matter of right to appeal to the U.S Circuit Court of Appeals
 - There are thirteen circuit courts of appeals in the United States spread geographically through the states
- A party losing an appeal at the circuit court level can appeal to one more time to the U.S Supreme Court for review

Work of Trial and Appellate Courts

- A trial court of general jurisdiction accepts most types of civil and criminal cases
 - **General jurisdiction:** Power of a court to hear a broad array of civil and criminal matters without limitation
- Other courts of limited jurisdiction at the state level are traffic court, juvenile court, family court or small claims court
 - **Limited jurisdiction:** Type of jurisdiction in which a court is restricted to hearing cases in a specific subject matter or threshold damages amount

Work of Trial and Appellate Courts

- The trial record is forwarded to the appellate court for review whenever an appeal is filed
 - Trial court's duty is to figure out the facts of the case
- Fact finding is important in judicial process and great deal of deference is given to the judgment of the fact finder
 - **Trier of fact:** Fact-finding entity, such as a jury

Work of Trial and Appellate Courts

- On appeal, the appellate judge cannot substitute his or her interpretation of the facts for that of the trier of fact
 - Even if the appellate judge believes the trier of fact was wrong
 - The issues on appeal are limited to questions of law
 - **Questions of law:** Strictly legal issues, such as which evidence to admit, that are resolved by the judge during a trial

Remand

- Deference to the trier of fact means that appeals are rarely won:
 - Even if a litigant is successful in persuading a court of appeals that legal error has taken place, it doesn't automatically win the case
 - Best remedy a litigant can hope is, for the court of appeals to issue a remand
 - **Remand:** Process of sending a case from an appellate court back to the trial court for further action in accordance with the appellate court's instructions

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Part - 2.4

The Certiorari Process

Learning Objectives

- Understand the Supreme Court's jurisdiction, including what kinds of cases are selected for review
- Explore what happens when lower courts of appeal disagree with each other
- Learn about the Supreme Court's process in hearing and deciding a case

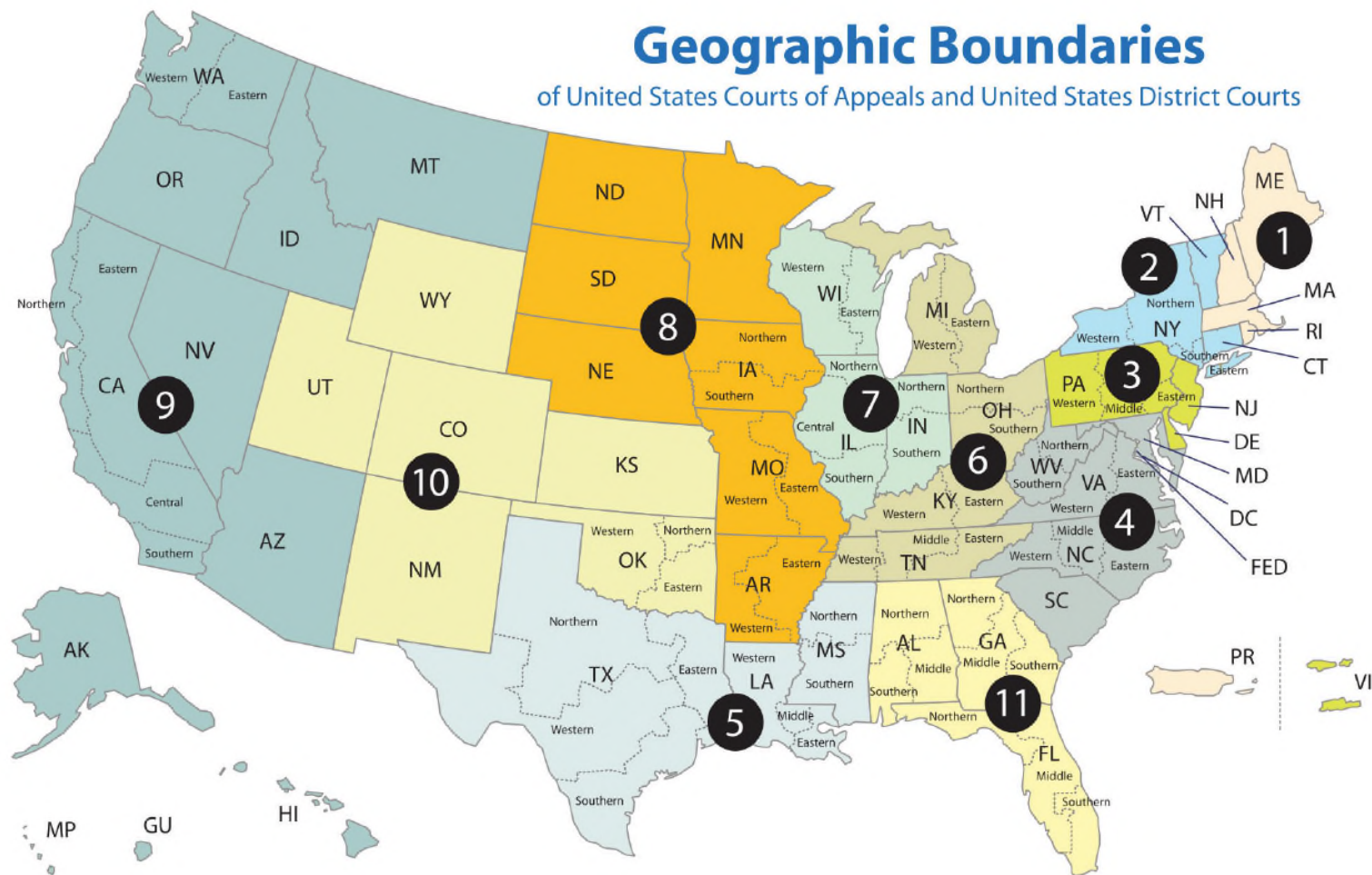
Supreme Court's Jurisdiction

- Jurisdiction of the Supreme Court is discretionary
- For justices to hear a case, the losing party must file:
 - **Writ of certiorari**: Petition filed with a supreme court arguing why the case should be heard
 - **Term**: When used by the Supreme Court, a period of time when the Court is in session, from October until June
 - **In forma pauperis**: Leave by a court to indigent litigants to proceed without paying any fees

Supreme Court's Jurisdiction

- Cases fall into one of three categories
 - Cases of tremendous national importance
 - Case where justices believe that lower courts have misapplied or misinterpreted a prior Supreme Court precedent
 - **Circuit split:** Split among the federal circuit courts of appeals on the meaning of a federal law

Figure 2.10 - Geography of U.S. Federal Courts



The Certiorari Process

- When a petition for writ of certiorari is filed with the Supreme Court, the party that won the case in the appeal files an opposition
- **Rule of four:** Supreme Court rule that only four justices need to agree for a case to be heard
- In a term each Supreme Court justice is permitted to hire up to four law clerks for assistance
 - Cert pool - Many justices rely on their clerks to read the thousands of filed petitions and to make recommendations on whether or not to grant the case

The Certiorari Process

- If a petition is granted, the parties are then instructed to file written briefs with the Court
 - Laying out arguments of why their side should win
- At this point, the Court allows nonparties to file an amicus brief
 - **Amicus brief:** Filed by nonlitigants, with permission of the court, to inform and persuade a court
 - Otherwise known as friend-of-the-court brief

Supreme Court's Process in Hearing

- After the justices have read the briefs in the case, they hear oral arguments from both sides
- After the oral arguments, the justices meet in conference to decide the outcome of the case
- Justices work alone in their conferences
- Task of drafting legal opinions is initiated after deciding which side should win

Types of Opinion

- Opinions are the only way that justices communicate with the public and the legal community
 - **Majority opinion:** Opinion of the court, written by a single judge and joined by other judges who voted the same way
 - **Dissenting opinion:** Opinion of a judge who disagrees with the outcome and reasoning employed by the court majority
 - **Concurring opinion:** Opinion written by a judge who agrees with the majority's outcome but disagrees with their reasoning

Supreme Court's Process in Deciding a Case

- After all the opinions are drafted, the Court hands down the decision to the public
- Except in rare instances, all cases are heard and decided in the same term
 - As the Court maintains no backlog