

# Chapter 1

## Introduction to the Court System

### CHAPTER OBJECTIVES

The student will be able to:

- Explain the differences between civil law and other types of law.
- Describe the burden of proof in a civil case.
- Explain the role of pleadings in civil cases.
- Explain the difference between a finding of liability and a finding of guilt.
- Describe the function of damages in civil cases.
- Define the role of the U.S. Constitution in the American legal system.
- Explain the difference between statutes and case law.

This chapter introduces the U.S. court system and details the important differences between various areas of law.

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### INTRODUCTION TO THE AMERICAN JUDICIAL SYSTEM

Before we can discuss the many fascinating aspects of civil litigation, we must begin with an examination of the American judicial system. The purpose of this chapter is to introduce you to the important distinctions between civil law and other types of law, as well the sources of judicial authority. Finally, we will examine the major features of both the federal and state court systems. As you will see, there are many different sources of legal authority, and each plays an important role in the overall pattern of civil litigation.

### CIVIL LAW

Civil law is a broad category encompassing an enormous variety of cases. Divorce actions, medical malpractice, child custody, and personal injury cases are all types of civil law. Because this is a book about civil litigation and procedure, we will touch on many of these disparate areas of law as we discuss the course of a civil case. Before we examine the details of civil litigation however, we must address a more fundamental question: What is civil law?

#### What Is Civil Law?

Civil law refers to the large body of cases brought by individuals against other individuals. When a person sues someone for defamation or a corporation seeks to enforce an employment contract



## SURF'S UP!

Individuals who are new to the practice of law are often surprised to learn of the technology gap between this profession and nearly every other. Law is a conservative profession and traditionally has been very slow to adopt new technologies. Devices that have found immediate acceptance in accounting and medicine have been slow to find their way into the legal field. Given the vast adoption of personal computers, it is surprising to learn that there is still a significant percentage of attorneys who have not used a laptop or desktop computer. Many still dictate memoranda and other items to secretaries, who transcribe them in much the same way that they did 30 years ago.

However, the predisposition against technology has finally begun to change. Younger lawyers who have used computers and other devices since childhood are at the forefront of this movement, but there are also other reasons for law as a profession to adopt computer software and other labor-saving devices. Throughout this book, we will examine the expanding role of technology in the practice of law and show how you, as a paralegal, can increase your marketability to a firm by demonstrating your understanding of and ability to use various technological innovations.

against an employee, these are both civil cases. What makes civil litigation so interesting is that there are an almost infinite variety of cases that fall under the general heading of civil law. Unlike criminal law or other specialized areas, legal professionals who work in civil litigation must be prepared for a wide assortment of cases. Fortunately, the rules that govern civil cases are uniform and relatively straightforward, even if they do apply to a myriad of case types.

### How Does Civil Law Differ from Other Areas of Law?

There are dozens of other branches of law. Administrative law deals with the rules and regulations that govern governmental agencies. Admiralty law governs the law of the sea. Bankruptcy law is concerned with discharging debts through court proceedings. Criminal law focuses on punishing lawbreakers. Domestic law involves divorces, alimony, and child custody issues. Civil law is different than these other areas of law in several important respects. For instance, civil cases differ from the previously mentioned types of cases in all of the following ways:

- Parties
- Pleadings
- Rules
- Burden of proof
- Outcome

#### *The Parties*

In civil suits, private parties sue other private parties. Unlike criminal cases, which are brought by the government against an individual, a civil case involves private issues and grievances. Although governmental agencies can bring civil suits against individuals, the point of the litigation is to enforce a right or sue for damages. There are some important terms regarding civil suits that all legal professionals should know. The person who brings a civil suit is referred to as the **plaintiff**. The person who is being sued is the **defendant**. These terms are almost exclusively reserved for civil cases. Other names are used to refer to the parties in non-civil cases. The person or business filing for bankruptcy, for instance, is referred to as a “petitioner.” In criminal cases, the government brings an action against an individual or corporation to enforce statutes. The government is not referred to as a plaintiff in such a case. Instead, the government is simply termed the “state,” “the people,” or “United States” (among other terms).

As you read pleadings in civil cases, you will see that the **style** or **caption** of the case always lists the names of the plaintiffs and defendants. Civil cases are captioned: *Plaintiff A v. Defendant B*. Because the government always brings criminal cases, the government is listed by name, not as a plaintiff. Criminal cases are captioned *Government (or State) v. Defendant*. By examining the caption or style of the case, you can easily decipher if it is a civil or criminal action. Bankruptcy cases are captioned *In re John Doe* (i.e., in the matter of John Doe).

#### **plaintiff**

The party initiating legal action.

#### **defendant**

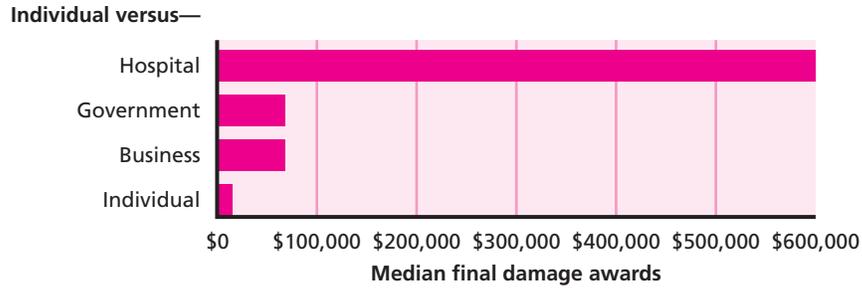
The party against whom a lawsuit is brought.

#### **style (caption)**

The heading or title used in all legal pleadings.

**FIGURE 1.1**  
**2001 Plaintiffs in**  
**75 Largest Counties**

Source: Bureau of Justice Statistics Bulletin, "Tort Trials and Verdicts in Large Counties, 2001." U.S. Department of Justice, November 2004.



A civil action is usually based on a private wrong suffered by an individual, corporation, or other entity. The plaintiff brings suit when he, she, or it has suffered a financial, emotional, or physical loss. The right to bring a civil suit is not limited to natural persons only. Corporations and businesses may also sue in their own right. There are even provisions that allow government agencies to bring civil suits. See Figure 1.1 for plaintiffs in the 75 largest counties. Civil actions encompass these and many other types of actions. We will address the many ramifications of these actions throughout this text.

**The Pleadings**

Civil actions are also unique in the type of pleadings that are used to initiate lawsuits. In a civil case, the plaintiff files a **complaint**, also known as a **petition**. See Figure 1.10 at the end of the chapter. This complaint sets out the plaintiff’s factual allegations against the defendant and asks a court to award monetary damages to the plaintiff as a result of the defendant’s actions. The defendant responds with an **answer**, also known as a reply. In the answer, the defendant denies the plaintiff’s factual allegations and also denies any responsibility for the plaintiff’s injuries. See Figure 1.2 for an example of the heading or caption of a civil case.

The style of any pleading reflects the identities and status of all parties to the suit. The plaintiff is identified by full legal name when he or she is a person and by full title when the plaintiff is a business or government entity. Similarly, the style must correctly identify the defendant. A style that lists the incorrect name of the defendant may be subject to dismissal for failing to correctly identify exactly who is the subject of the action. Beyond identifying the parties, the style also identifies the court in which the action is pending and provides information about the case file number, sometimes called the civil action number. This number is important because it is the docketing number assigned by the court system to that action. Case file numbers are unique to each case and must be included on all documents subsequently filed in the case. Many courts

**complaint**  
 Document that states the allegations and the legal basis of the plaintiff’s claims.

**petition**  
 A request made to a governmental entity; often used synonymously with “complaint,” though a petition is a more general term.

**answer**  
 The defendant’s response to the plaintiff’s complaint.

**FIGURE 1.2**  
**Civil Case Caption**

|                                 |   |                              |
|---------------------------------|---|------------------------------|
| <b>STATE OF EDWARDS</b>         |   |                              |
| <b>COUNTY OF PLACID</b>         |   |                              |
| SUPERIOR COURT OF PLACID COUNTY |   |                              |
|                                 |   | CIVIL ACTION FILE NO.: _____ |
| Elizabeth Louise,               | ) |                              |
|                                 | ) |                              |
| Plaintiff,                      | ) |                              |
|                                 | ) |                              |
| v.                              | ) | <b><u>COMPLAINT</u></b>      |
|                                 | ) |                              |
| Wilson Johnson,                 | ) |                              |
|                                 | ) |                              |
| Defendant.                      | ) |                              |
|                                 | ) |                              |
| _____                           | ) |                              |



## RESEARCH THIS!

Throughout this text, you will find a section in each chapter in which you will be asked to research specific legal topics raised in the chapter. The purpose of this feature is to emphasize specific material from the chapter and assist you in learning additional and important legal topics. For the purposes of this first assignment, research the sources available in your local law

library, online sites, or other sources to determine what research assistance you have access to. For instance, do you have access to a law library? Many public libraries contain a legal section. Does your local branch have legal texts? Try an online search through Google, Yahoo!, or another search engine, using the search string “online legal research.”



## LEGAL RESEARCH MAXIM

Throughout this text, you will also be given specific research tips and maxims to assist you in researching issues raised in the chapter. For instance, in this first chapter, you should be aware that not all online research services are created equal. Some online sources only cover a few years’ worth of case decisions. For legal researchers, depth of coverage is always important, and you should seek out sites that provide decades of

case analysis, not simply the most recent cases from a state or federal court. For instance, this chapter mentions the famous *International Shoe* case. If you were doing online legal research on a site that only provided coverage for the past ten years or so, your research would never reveal this case. You would be hard pressed to call your research complete if you were unable to locate one of the most important cases on jurisdiction.

also require that in addition to identifying the parties, the court, and the case file number, the parties must also identify the document filed. In Figure 1.2, for example, the parties identify the pleading as a complaint.

It is important to note that the term “pleadings” has different meanings in different jurisdictions. For instance, in some areas, pleadings refers exclusively to the complaint and answer, whereas in others, it is a term that refers broadly to all documents filed in the civil action.

### The Rules

As we will see throughout this book, civil actions follow their own set of rules with regard to the filing of pleadings, the various stages of a civil action, and even the enforcement of the ultimate verdict. All states have enacted their own versions of the Rules of Civil Procedure. We will discuss individual states as well as the Federal Rules of Civil Procedure throughout this book. See Figure 1.3 for an example of the Rules of Civil Procedure.

### The Burden of Proof

Whenever a party brings an allegation in any type of case, that party must prove those allegations. The standard or **burden of proof** varies depending on the type of case involved. In civil cases, for example, the burden of proof is usually **preponderance of the evidence**. This standard requires the plaintiff to prove that the allegations in the complaint are more likely true than not. Many

### burden of proof

Standard for assessing the weight of the evidence.

### preponderance of the evidence

The weight or level of persuasion of evidence needed to find the defendant liable as alleged by the plaintiff in a civil matter.

### FIGURE 1.3

#### Federal Rules of Civil Procedure—Rule 8. General Rules of Pleading

Source: FED. R. CIV. P. 8.

(a) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the grounds upon which the court’s jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief the pleader seeks. Relief in the alternative or of several different types may be demanded.

commentators have described it as the plaintiff’s burden to tip the scales of proof in the plaintiff’s direction. Others have attempted to quantify it by saying that if the plaintiff can establish the facts to 51%, then the plaintiff has satisfied preponderance of the evidence. There are different burdens of proof in different types of actions. For instance, in criminal cases, the burden of proof is beyond a reasonable doubt. If preponderance of the evidence is considered to be a slight tipping of the scale in the plaintiff’s favor, proof beyond a reasonable doubt would require the government to swing the scale entirely to its side. Although preponderance of the evidence is the most commonly seen burden of proof, there are situations in which a civil litigant might have to prove his or her case by **clear and convincing evidence**. The standard of “clear and convincing evidence” is higher than preponderance of the evidence and less than proof beyond a reasonable doubt. It falls somewhere between these two burdens. Clear and convincing evidence requires the fact finder to determine with substantial certainty that the party’s allegations are true.

**clear and convincing evidence**

Having a high probability of truthfulness, a higher standard being preponderance of the evidence.

The question often arises: Why would civil cases usually require preponderance of the evidence but then, in rare instances, require a higher degree of proof? Clear and convincing evidence is reserved for instances in which the result for the parties will have a substantial impact on their lives. A court might require clear and convincing evidence in any of the following actions:

- Committing an individual to a mental institution.
- Deciding to withdraw life support from a patient in a persistent vegetative state.
- Parental rights.
- Disbarment of an attorney.
- Fraud.
- Allegation of improper actions in an election.

In each of these examples, the issues involved have such a significant potential impact on the parties that courts routinely require a higher standard of proof before allowing the action. Whether it involves removing life support from a patient or disbarring an attorney, these actions will have such drastic consequences that many states require the standard of clear and convincing evidence before a judge is authorized to make a ruling on them.

The burden of proof in a civil case, whether it is clear and convincing evidence or preponderance of the evidence, is never as high a standard as that required in criminal cases. Prosecutors in a criminal trial must prove that the defendant is guilty **beyond a reasonable doubt**. Although legal commentators and authorities have wrestled for centuries over the exact meaning of this term, most define it as substantial or overwhelming evidence that the defendant committed the crime with which he, she, or it is charged. Proof beyond a reasonable doubt means that the individual jurors in the case are convinced of the evidence against the defendant and have no major objections to the case presented. This higher standard is required in criminal cases for the very simple reason that it should be more difficult to imprison a person than it is to assess monetary damages against him or her.

**beyond a reasonable doubt**

The requirement for the level of proof in a criminal matter in order to convict or find the defendant guilty. It is a substantially higher and more-difficult-to-prove criminal matter standard.

**liability**

A jury’s determination that one party is responsible for injuries to another party; the basis for an award of damages.

**The Outcome**

In a civil trial, jurors are asked to determine which side has presented a more believable version of the facts. In a bench trial, the judge must make this determination. See Figure 1.4. Unlike criminal cases, in which jurors are called upon to determine guilt or innocence, the juries in civil cases face a determination of **liability**. Civil juries determine whether or not one party is

**FIGURE 1.4**  
Comparing Bench and Jury Trials in State Courts

Source: Federal Judicial Center, Integrated Data Base (Civil), fiscal years 2002–03.

| Type of Jurisdiction     | Tort Trials Terminated in U.S. District Courts |            |             |
|--------------------------|--|------------|-------------|
|                          | Number of Tort Trials                          | Jury Trial | Bench Trial |
| All tort trials          | 1,647  | 71.4%      | 28.6%       |
| Diversity of citizenship | 1,091  | 87.2       | 12.8        |
| Federal question         | 345  | 61.4       | 38.6        |
| U.S. defendant           | 205  | 4.9        | 95.1        |
| U.S. plaintiff           | 6  | **         | **          |

Note: Detail may not sum to total because of rounding.  
 \*\*Too few cases to obtain statistically reliable data.



### CYBER TRIP

Federal Courts  
<http://www.uscourts.gov/>  
 National Center for State Courts  
<http://www.ncsconline.org/>  
 U.S. Supreme Court  
<http://www.supremecourtus.gov/index.html>  
 Michigan Trial Courts  
<http://www.courts.michigan.gov/trialcourts/trial.htm>  
 Supreme Court of Ohio  
<http://www.sconet.state.oh.us>  
 Florida State Courts  
<http://www.flcourts.org/>



### PRACTICE TIP

One important aspect of working in the legal field is organizing all of the information that you will need on a daily basis. One way to do this is to create your own paralegal resource. You need a resource for a simple reason: time. When you work in the legal field, time is money. The more time you can save on a particular job, the sooner you can move on to the next. Creating a paralegal resource is one of the best ways to save time and effort. The couple of hours that you spend creating one will save you hundreds of hours over your career. In addition, having a resource that contains virtually everything you need, from telephone numbers to notes about how certain judges like their orders submitted, will make you look even better to your firm. In fact, having all of this information at your fingertips will make you seem almost superhuman.

Whether you create your resource in file folders, notebooks, or a computer, a good resource should have all of the following information:

- Telephone numbers, addresses, and email addresses.
- Calendar.

- Where to find certain courthouse records.
- Attorneys' and judges' "peculiarities."
- Forms, forms, and more forms.
- Brief and memo bank.
- Frequently asked questions.
- Computer passwords and log-in information.
- Vendor/supplier information.

If putting together your own paralegal resource sounds unusual, it isn't. Legal professionals have been creating their own handy references for decades. Many attorneys keep important data in manila file folders, word processing files, or digital devices. In the modern world, many paralegals keep all of this information in databases. Whatever method you currently use to hang on to important information, you will need to pull it all together and put it in one place. It might be a large file folder on your desk. It might just as easily be on your laptop, stored in a network folder, or backed up on a disk. However you decide to store it, you should organize your important information, put it in one place, and start using it to make your job easier.

### guilty

A verdict only available in criminal cases in which the jury determines that the defendant is responsible for committing a crime.

### damages

Money paid to compensate for loss or injury.

liable to the other party. A civil jury never determines, for instance, that a party is **guilty**. Instead, if the jury believes the plaintiff, the jury finds the defendant liable to the plaintiff. In contrast, if the jury determines that the defendant has the more likely version of the truth, the jury might easily find that the plaintiff is liable to the defendant or that the defendant is not liable to anyone.

Once a determination of liability has been made, the next step in a civil case is the determination of **damages**. Damages refer to monetary payments made by one party to another that attempt to compensate the party for his or her losses. In situations in which the jury believes that the defendant is not liable, the jury will order that no damages be awarded. However, if the jury sides with the plaintiff, the jury must make a determination about damages, specifically, how much money the defendant should pay to the plaintiff.

## SOURCES OF LEGAL AUTHORITY IN THE UNITED STATES

One of the first questions that any legal professional must answer is, "What is the law?" Is the law simply a body of statutes, or is it something more? As we will see throughout this book, there is no easy answer. For instance, one could easily argue that the source of all legal authority in the United States derives from the U.S. Constitution.

### U.S. Constitution

The United States Constitution took effect in 1789. It is one of the most influential documents in world history. The Constitution sets out the basic framework for the federal and state governments, creates three separate branches of government, and details the rights allotted to citizens. Constitutional law is a complex subject and not one that we will address in any depth here. All governmental authority flows from the provisions of the U.S. Constitution. In addition to the

**FIGURE 1.5**  
**U.S. Constitution,**  
**Article I, Section 3**

Clause 1: The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

Clause 3: No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

federal Constitution, each state also has its own constitution, setting out the rights, duties, and obligations of state governments. See Figure 1.5 for an excerpt of the Constitution that begins to outline guidelines for the U.S. Senate.

Although the Constitution provides the framework for the government, it does not provide much guidance on issues such as bringing civil actions, prosecuting crimes, or enforcing judgments. For answers to those questions, we must turn to other sources of the law, including statutes, case law, and common law.

### Statutes

#### statute

Written law enacted by the legislative branches of both federal and state governments.

**Statutes** consist of legislative bills that are voted on by the legislative branch of government and enacted by the executive branch. On the federal level, the U.S. Congress is the legislative branch, and it votes on bills before sending them to the president for signature. If the president signs the legislation, it becomes a binding law. On the state level, the legislature votes on bills and submits them to the governor for signature. In both instances, the laws that are created are referred to as statutes. But this is only one small part of the large body of what American legal scholars consider to be the *law*.

#### Administrative Rules and Regulations

Once a statute has been created, a governmental agency may create an administrative rule or regulation to put the statute into effect. For instance, the 16th Amendment gives the federal government the power to levy income taxes but provides no details about the process of actually carrying out tax collection (see Figure 1.6). Instead, the Treasury Department, acting through its Internal Revenue Service, creates administrative rules and regulations that govern



## COMMUNICATION TIP

If there is one skill that all legal professionals should have in abundance, it is the ability to communicate clearly and succinctly in writing. Written communication is still the cornerstone of the legal profession, even in this era of email, faxes, and the World Wide Web. We will examine written and other forms of communication throughout this text, but in this chapter, we focus on written communication.

Why are written communication skills so important? For most people, clear writing indicates clear thinking. The ability to communicate an idea or a position effectively in writing is the central core of what an attorney does. We all tend to think of attorneys as individuals who communicate through the spoken word—in closing arguments to juries, motions before a judge, or simply discussing legal implications with clients. But the reality of legal practice is

just the opposite of the popular impression. Attorneys spend large portions of every day reading and writing. They read case decisions, statutes, law reviews, and a wealth of other material, and they write letters to clients, briefs to appellate courts, complaints, answers, motions, and a myriad of other materials. If they cannot present themselves well in writing, their legal practice will suffer.

Attorneys expect the same high level of writing skills on the part of their staff. Paralegals and others who work closely with attorneys must have mastered the basics of written communication. That is one reason we devote an entire section to it in every chapter of this book. In future chapters, you can anticipate assignments ranging from questions surrounding basic grammar to the development of motions that would be submitted to a judge.

**FIGURE 1.6**  
**Amendment XVI**

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration.

how to, when to, and who should pay income taxes. These rules and regulations carry the same force as a statute.

### **Ordinances**

As we have seen, statutes are laws passed by a state or federal government. However, there is an entire class of laws passed by local governments, such as municipalities and towns, that regulate behavior at a local level. These are not referred to as statutes. Instead, they are called **ordinances**. An ordinance has limited application. The ordinance has a strict geographic limit, such as the town limits or the county boundary. Ordinances cannot conflict with statutes. If they do, the ordinance is ruled unconstitutional and the statute takes precedence.

#### **ordinance**

A law passed by a local government, such as a town council or city government.

### **Case Law**

In addition to statutory law, there is another, equally important source of law: **case law**. Case law is the huge body of published decisions by appellate courts. Laypersons do not realize the significance of case law. When an appellate court reaches a decision in a case on appeal, the reasons for the decision are encapsulated in a written opinion. In many instances, case law is synonymous with common law, discussed subsequently.

An opinion not only discusses the facts of the particular case on appeal but also the law that applies to the facts. For legal professionals, case law can be one of the most important sources of legal authority in the United States. The importance of case law can be demonstrated by reviewing a decision by the United States Supreme Court.

#### **Case Law and the United States Supreme Court**

Suppose that the U.S. Congress passes a bill stating that the punitive damages available to civil litigants are limited to a specific formula. The formula set out by the federal legislation is that punitive damages (monetary payments made above and beyond the monetary damages intended to compensate the plaintiff for his or her injuries) must be limited to twice the amount of proven actual damages. The statute is clear and unambiguous. The most that an injured plaintiff could receive in any case, no matter how egregiously the defendant acted, is a sum that is twice the plaintiff's actual damages. Therefore, if the plaintiff's proven damages are \$1,000, the most that the plaintiff could receive is \$2,000. However, if a litigant who falls under this statute appeals to the U.S. Supreme Court, that Court is free to rule that the Congress overstepped its bounds by limiting awards in this way. The Court's written opinion in that case would be vitally important case law for anyone else with a pending case involving punitive damages. That case law would be as important as any statute.

The significance of case law is that it both explains and expands on statutes and other sources of law. The true power of appellate courts is their ability to review decisions of lower courts. All courts have the responsibility to interpret the Constitution, statutes, ordinances, and even other case law, but the appellate courts can review the decisions of lower courts and modify those interpretations in accordance with their own views. The appellate court's interpretation of these issues is not only binding on the parties in a particular appeal but also on all others who have similar issues. Once an appellate court, such as the U.S. Supreme Court, adopts a new interpretation of a law or rules that a particular statute is unconstitutional, that interpretation becomes the law of the land and is just as binding as any statute.

There are quite literally hundreds of examples of the impact that appellate decisions have had on civil litigation. A court's ruling on evidence may affect whether a plaintiff is permitted to introduce evidence of the defendant's previous driving record in a personal injury case. Another court's ruling on collateral source payments might well allow the defendant to present evidence

#### **case law**

Published court opinions of federal and state appellate courts; judge-created law in deciding cases, set forth in court opinions.

to the jury that the plaintiff has already been compensated for some of his or her injuries through insurance.

One might be tempted to think that the only important source of case law in the United States is the U.S. Supreme Court. However, case law comes from every level of the court system. As we will see subsequently in this chapter, both state and federal courts generate case law—and do so at different levels, from trial courts to appellate courts to the U.S. Supreme Court.

## Common Law

The final category of sources of legal authority is **common law**, an ancient source of legal authority. Stretching back to our legal roots in England, common law was literally the law of the common people. In an age when most people were illiterate, judges were among the few professionals who could read and write. As a result, there were very few statutes created by the government. Instead of statutory law, judges were forced to create their own rules. A judge might decide, for instance, that if a man was attacked and it took longer than a year for him to die of his injuries, the person who attacked him could not be tried for murder. The so-called “Year and a Day” rule was a common law rule that governed English (and American) jurisdictions for years. The theory behind the law was simple: Given the standards of the medical profession in the Middle Ages, if a victim lingered for at least 12 months, it was quite likely that he died from something other than the injuries he sustained in his attack. As judges continued to reach decisions in cases, they amassed a huge body of legal principles and standards that came to be called “common law.”

### common law

Judge-made law, the ruling in a judicial opinion.

## JURISDICTION

### jurisdiction

The power or authority of the court to hear a particular classification of case.

No discussion of judicial authority could be complete without an examination of the topic of jurisdiction. **Jurisdiction** refers to the power of a court to decide issues in the case and impose those decisions on the parties. There are many different types of jurisdiction, including the following two major types:

- Subject matter jurisdiction
- Personal jurisdiction

### Subject Matter Jurisdiction

When a court has **subject matter jurisdiction**, that court is permitted to entertain the issues raised in the suit and make binding rulings on those issues. There are many examples of courts that lack subject matter jurisdiction to consider specific types of cases. Small claims court, for instance, is often listed as a court of limited jurisdiction precisely because it is barred from criminal cases and may consider only litigation concerning civil cases for which a specific amount of money is contested. Many small claims courts are limited to a consideration of cases in which the contested amount is \$2,000 or less (though the amount varies considerably from state to state). In addition to small claims courts, many other courts have strict rules about subject matter jurisdiction. If a person or business wishes to file bankruptcy, that filing must occur in the federal bankruptcy courts, simply because these are the only courts authorized to hear these actions.

On the local level, some courts have broad subject matter jurisdiction; in states in which the most powerful local court is referred to as superior court (also known as district court or county Court in some states), this court may have the power to hear a broad range of actions, from felony crimes to divorce cases (see Figure 1.7). In fact, in many states, the superior court was the original court, and other local courts were created out of the vast powers of this court.

### subject matter jurisdiction

A court’s authority over the res, the subject of the case.

### FIGURE 1.7 Subject Matter Jurisdiction of Superior Court (Georgia)

Source: GA. Const. art. 6, §4, P.I.

The superior courts shall have jurisdiction in all cases, except as otherwise provided in this Constitution. They shall have exclusive jurisdiction over trials in felony cases, except in the case of juvenile offenders as provided by law; in cases respecting title to land; in divorce cases; and in equity cases. The superior courts shall have such appellate jurisdiction, either alone or by circuit or district, as may be provided by law.

**general jurisdiction**

The court is empowered to hear any civil or criminal case.

**limited jurisdiction**

The court is empowered to hear only specified types of cases.

**personal jurisdiction**

The court's power over the individuals involved in the case; when a court has personal jurisdiction, it can compel attendance at court hearings and enter judgments against the parties.

**forum**

The proper legal site or location.

**domicile**

The place where a person maintains a physical residence with the intent to permanently remain in that place; citizenship; the permanent home of the party.

**in rem jurisdiction**

A court's authority over claims affecting property.

**General and Limited Jurisdiction**

In addition to issues surrounding subject matter jurisdiction, there are other issues that litigants must address. These include the basic powers of the court. Courts of **general jurisdiction** are empowered to hear a broad range of cases, including civil, criminal, probate, divorce, and child custody issues, among many others. A court of general jurisdiction may consider any of these issues and make binding rulings on the issues presented to it. However, there are also many courts in the United States that are classified as courts of **limited jurisdiction**. A limited jurisdiction court may hear only specific types of cases. Small claims court is one example. This court is authorized to consider civil cases in which the parties contest a monetary amount below a specific amount (\$5,000 in many states). If the amount in controversy is higher than the threshold amount or if the case involves additional issues outside of the court's authority, the court must transfer the case to another court. On the federal level, the bankruptcy court is an example of a court with limited jurisdiction. It may entertain all issues associated with personal or business bankruptcies but is not empowered to consider other issues, such as criminal charges or wrongful death claims.

**Personal Jurisdiction**

In addition to subject matter jurisdiction, courts must also have power over the parties, or **personal jurisdiction**. A court may obtain such authority through a variety of means, such as the presence of the parties in the county or other means, which we will discuss in Chapter 5.

Personal jurisdiction is often described as the court's power to adjudicate the issues in a case and reach a decision that affects the parties' legal rights. These jurisdictional issues are concomitant; they must exist together. A court may have subject matter jurisdiction, but if it lacks personal jurisdiction, it is barred from considering the case. The opposite scenario is also true. When both types of jurisdiction exist in a case, the court may proceed to consider the issues. Both subject matter jurisdiction and personal jurisdiction must combine to provide the **forum** with the authority to consider the issues in the case. Here, the forum refers to the actual location where the case must be brought. A court with sufficient personal and subject matter jurisdiction becomes the forum where the action is brought and decided.

A court may acquire personal jurisdiction over a party by any of a number of methods, including:

- Physical presence in the forum.
- Domicile or residence in the forum.
- Property ownership in the forum.
- Consent.
- Minimum contacts.

**Physical Presence in the Forum**

When a party is present within the geographic limits of the court's power, the party may be served with a service of process, and by the party's mere presence, the court acquires personal jurisdiction in the case. Although there are many extrapolations of this rule, including a prohibition against the use of trickery or deceit to get the party into the forum, we limit our discussion to the fact that presence alone can equate to personal jurisdiction.

**Domicile or Residence in the Forum**

A court may also acquire personal jurisdiction over a party by the simple fact of the party maintaining a domicile in the county. In many cases, a **domicile** refers to a permanent residence in a particular area. For instance, when a person maintains several different homes in different areas, it may become necessary for the party urging the court to exercise personal jurisdiction to prove that the opposing party's main residence is in the forum.

**Property Ownership in the Forum**

There are provisions that allow certain types of cases to proceed simply because a party owns property in a particular forum. This is referred to as **in rem jurisdiction**. Although actions based on in rem jurisdiction are generally limited to litigation concerning real estate, such as boundary disputes, tax evaluations, and similar actions, the mere fact that real property is located within the forum may be enough to give the court personal jurisdiction over a party.

### *Consent*

A party may always consent to the court's jurisdiction. In its pleadings, for example, a party may decide to forgo a challenge to the court's jurisdiction, consent to personal jurisdiction, and then proceed to a defense of the allegations.

### *Minimum Contacts*

All states have provisions that allow a forum to acquire jurisdiction, especially in business cases, when a party has had sufficient minimum contact with the forum state to justify a finding that the party has submitted to the court's personal jurisdiction. This rule was first announced in the case of *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), in which the U.S. Supreme Court announced a complex test to determine if a specific party has availed itself of sufficient contacts with the forum to have essentially submitted itself to the court's authority. The bane of law students since it was decided, *International Shoe* remains a difficult case to decipher.

## FEDERAL AND STATE COURT SYSTEMS

Now that we have discussed the important role played by case law in providing a source of legal authority, we address the issue of how the court systems in the United States are organized. We begin our discussion with the federal court system and then proceed to the various state systems.

### **The Levels of the Federal Court System**

The federal court system is authorized under Article III of the U.S. Constitution, which provides not only the structure for the federal court system but also clearly establishes the judiciary as a separate and equal branch that moderates the power of the executive and legislative branches. Federal judges are appointed by the president and confirmed by the U.S. Senate. Once appointed, federal judges serve for life. They cannot be removed from their positions, unless they commit a crime or violate some other law. Federal judges are thus insulated from the day-to-day world of politics and are free to make unpopular decisions. Over the centuries, federal judges have made many controversial decisions, from forced desegregation to a woman's right to receive an abortion.

#### *Trial Courts: U.S. Federal District Courts*

If we think of the federal court system diagrammed as a pyramid, then the U.S. District Courts would be at the bottom of the pyramid. These are the trial courts for the federal system. These courts are empowered to hear both civil and criminal cases. There are a total of 94 federal judicial districts scattered across the United States and Puerto Rico.

Federal district courts empanel juries, consider evidence, hear witness testimony, and reach verdicts. As we will see in Chapter 5, federal courts have limited jurisdiction. They are able to hear only certain types of cases. When a final verdict is reached in a federal district court, the losing party usually has the right to appeal to the U.S. Circuit Court of Appeals.

#### *Appellate Courts: U.S. Circuit Courts of Appeal*

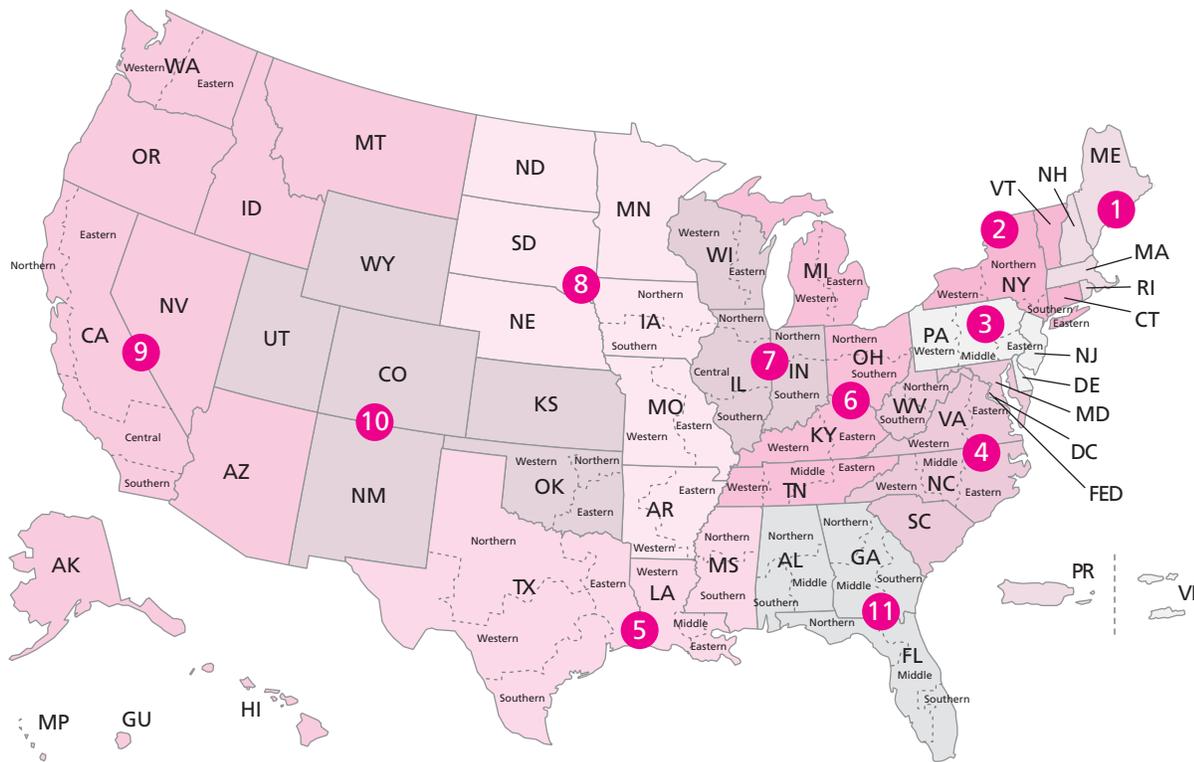
Because federal courts cover the entire nation, cases from federal district courts are appealed to specific appellate courts. There are 13 separate judicial circuits. As you can see in Figure 1.8, some judicial circuits cover large swaths of the United States, while some, like the 2nd Judicial District, cover a relatively small geographic area. Population determines the boundaries of judicial circuits. The eastern seaboard of the United States has a denser population, which accounts for the smaller size of the judicial circuits.

#### *United States Supreme Court*

The United States Supreme Court is one of the most famous courts in the world. In terms of authority and prestige, it is easily one of the most important. Decisions of the United States Supreme Court can affect everyone in the United States and even have ramifications for other countries. The U.S. Supreme Court is the nation's highest appellate court. Its decisions on federal appellate issues are final. Composed of nine justices, the U.S. Supreme Court begins its term on the first Monday of each October and continues through June or July of the next year. Authorized by Article III of the U.S. Constitution, the U.S. Supreme Court is the final authority on issues related to the interpretation of the Constitution. The Court also has the power to rule federal statutes

**FIGURE 1.8** Geographic Boundaries of United States Courts of Appeal

Source: [www.uscourts.gov](http://www.uscourts.gov).



unconstitutional and therefore unenforceable. Although many cases are submitted to the Supreme Court, the vast majority never make it past the hurdle of certiorari.

The United States Supreme Court, like many state supreme courts, is vested with the authority to decide which cases it will hear. If the Court believes that a specific case lacks merit or does not present any significant issue for the justices to review, the Court will deny **certiorari** or cert. A denial of cert means that the Court refuses to hear the appeal, whereas if the Court decides that the case should be heard, it will grant cert. The decision to grant cert does not mean that a party has won on appeal. Instead, it simply means that the Court has agreed to consider the appeal.

**certiorari**  
(Cert) (Latin) "To make sure." An appellate court's authority to decide which cases it will hear on appeal.

### The Levels of the State Court System

In many ways, the state court system is a mirror of the federal system. However, state courts are limited to the geographic limits of the state, and therefore, they have far less bureaucracy than the federal system. Just as we did with the federal system, we start our discussion at the bottom of the court pyramid with trial courts.

#### Trial Courts

Trial courts on the state level fulfill many of the same roles as federal district courts. These are the courts in which witnesses testify, juries consider verdicts, and judges make rulings on evidence. Because there is a great deal of variation among the states, there is no clear consensus when it comes to the names applied to trial courts. Some states might refer to their trial courts as superior court, whereas others refer to them as district or state courts. Many states have different levels of trial courts, with one level empowered to hear only specific types of cases and another empowered to hear others. In any event, just as we saw with federal district courts, losing parties in trial courts on the state level have the right to appeal to an appellate court.

#### Appellate Courts

All states have appellate courts. In many states, the layers are virtually identical to those found on the federal level, with a trial court, an intermediate court of appeals, and a state supreme court. However,



## SPOT THE ISSUE!

In this section, you will review a factual scenario and then discuss the legal implications of the material presented. You should work through the factual presentation and attempt to summarize as many different significant legal issues as possible. This is an excellent way to train yourself as a legal professional in civil practice.

Marie recently opened a craft store and ordered a large amount of merchandise from a single supplier, Crafts 'R Us. When she negotiated the order, which is for more than \$10,000, the supplier agreed to provide terms. Marie was authorized to receive the material after paying 10% of the total price, with the balance due within 90 days of the receipt of the material. Marie submitted a check to Crafts 'R Us for \$1,000, and the check was cashed. The supplier shipped only half of the total order and is now refusing to ship the rest until Marie pays the balance of \$9,000. Marie was counting on being able to sell some of the merchandise as a way to pay for the outstanding balance. Without the merchandise, she will be unable to generate enough income to pay for the rest of the order, and she has very little savings, certainly not enough to pay the balance of the order.

Marie has come to our firm. What legal issues are presented by her situation?



### PRACTICE TIP

There are some cases that are an exception to cert. Death penalty cases, for example, may be appealed directly to the State and U.S. Supreme Courts without first applying for cert.

it is important to note that not all states follow this arrangement. Some have only a single layer of appellate courts. In the states with two layers of appellate courts, most refer to the first layer as the state court of appeals, which is the court in which losing parties from the trial court level appeal their cases. These courts have appellate justices who are empowered to review the issues on appeal and issue written opinions about the merits of the case. In most states, the losing party in the state court of appeals has the option to appeal to the state's highest court: the state supreme court.

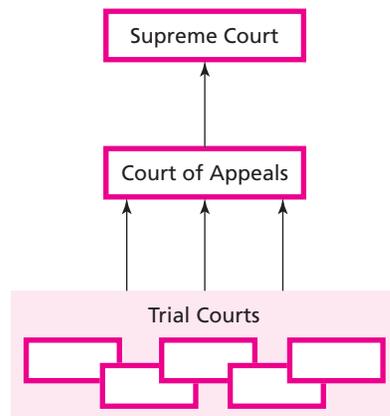
### State Supreme Courts

Just like the U.S. Supreme Court, all states have a court of final authority on appellate issues (see Figure 1.9). Although this court is usually referred to as the state supreme court, it may go by a different name in some states. In New York, for example, the state's highest court is referred to as superior court. State supreme courts share many similarities with the U.S. Supreme Court. For instance, these courts also have cert authority in most of their cases, which gives them the right to decide which cases they will hear and which they will not.

### Federal vs. State Law

The final point we must consider in this chapter regarding the legal system in the United States is the different layers of law that may affect the proceedings in any civil case. For instance, the United States is composed of states that have their own statutory and case law binding on cases brought in state courts, but each state is also a member of the union and therefore bound by federal law. These layers often lead to conflict, especially when an action may be filed as either a state or a federal action. Which court has precedence? Where should the plaintiff file a complaint?

**FIGURE 1.9**  
Diagram of Typical State Court System





## CASE IN POINT

Peters  
v.  
Alpharetta Spa,  
LLC, 915 So.2d 908,  
(La. App. 1 Cir. 2005),  
CARTER, C. J.

In this appeal, we review whether the trial court correctly found insufficient minimum contacts to support personal jurisdiction in Louisiana courts over the nonresident defendant. For the following reasons, we affirm.

### FACTS

Mark H. Peters, M.D. (Dr. Peters) filed a lawsuit in Terrebonne Parish, Louisiana, seeking protection from “collection activity” on the part of defendant, Alpharetta Spa, L.L.C. (Alpharetta), a Georgia limited liability company in which Dr. Peters was a member prior to relocating to Terrebonne Parish. The lawsuit was filed in response to a demand letter that had been mailed by Alpharetta directed to Dr. Peters for an alleged deficiency/penalty pursuant to the terms of an Operating Agreement (the Agreement) between Dr. Peters and Alpharetta. Dr. Peters alleged that the Agreement was “not freely negotiated” and that he had grounds to dissolve the Agreement, thereby voiding any alleged deficiency/penalty amount that Alpharetta was seeking to collect from him.

Alpharetta maintains and operates a medical business used to enhance its members’ plastic surgery practice. Alpharetta operates exclusively in the state of Georgia. The Agreement between the parties was negotiated and executed in the state of Georgia. During the entire time that the Agreement was in effect between the parties, Dr. Peters was a resident of the state of Georgia. He later relocated to the state of Louisiana after the Agreement was terminated. Dr. Peters currently resides and practices medicine in Terrebonne Parish.

In response to Dr. Peters’ lawsuit, Alpharetta filed a declinatory exception raising the objections of lack of personal jurisdiction and improper venue. Alpharetta maintained that it had absolutely no contact with the state of Louisiana, and that therefore, no Louisiana court could exercise jurisdiction over it. Additionally, Alpharetta argued that the Agreement between the parties contained a valid and enforceable forum selection clause, designating the courts in the state of Georgia as the exclusive forum for “any dispute or matter arising under” the Agreement. After a hearing, the trial court sustained Alpharetta’s exception and dismissed Dr. Peters’ petition. Dr. Peters appeals, assigning one error: “the trial court erred in interpreting too narrowly the scope of Louisiana courts’ specific personal jurisdiction over a party that has committed a wrongful act against a Louisiana citizen in this State.” Essentially, Dr. Peters argues that the demand letter mailed by Alpharetta and received by him in the state of Louisiana constituted a “wrongful collection” activity, because it was an “improper and oppressive attempt to harass and collect” pursuant to an invalid contract, causing him an injury in this state.

### LAW AND ANALYSIS

We must decide whether a nonresident defendant’s mailing of a demand letter to a Louisiana domiciliary is sufficient contact with the state of Louisiana so as to exercise personal jurisdiction over the nonresident defendant. An appellate court conducts a *de novo* review of the legal issue of personal jurisdiction over a nonresident by a Louisiana court. However, the trial court’s factual findings underlying the decision are reviewed under the manifest error standard of review. In determining whether there is personal jurisdiction, we must look to the long-arm statute of Louisiana, which provides that “a court of this state may exercise personal jurisdiction over a nonresident on any basis consistent with the constitution of this state and of the Constitution of the United States.” LSA-R.S. 13:3201B. The limits of the Louisiana long-arm statute and of constitutional due process are coextensive; the sole inquiry into jurisdiction over a nonresident is whether it comports with constitutional due process requirements.

For the exercise of personal jurisdiction over a nonresident defendant to comport with constitutional due process requirements, the defendant must have purposefully established certain “minimum contacts” with the forum state such that he could reasonably anticipate being haled into court there, and the exercise of personal jurisdiction must be such that it “does not offend traditional notions of fair play and substantial justice.” *International Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 90 L.Ed. 95 (1945). Minimum contacts are established when the nonresident defendant “purposely avails itself of the privilege of conducting activities within the forum state.”

A court’s exercise of personal jurisdiction may be “specific” or “general.” A court may exercise specific jurisdiction over a defendant when the alleged cause of action arises out of, or is related to the defendant’s purposeful contacts with the forum state. A court may exercise general jurisdiction over a defendant when the defendant has engaged in “continuous and systematic contacts” with the forum, but the contacts are not necessarily related to the lawsuit.

The “purposeful availment” requirement ensures that the nonresident defendant will not be haled into a jurisdiction solely as a result of a random, fortuitous, or attenuated contact, or by the unilateral activity of another party or a third person. There has developed a two-part test in personal jurisdiction analysis. First, it must be shown that the defendant has established minimum contacts with the forum state—i.e., it has purposefully directed its activities at the residents of the forum state. Once that is shown, “a presumption arises that jurisdiction is reasonable and the burden of proof and persuasion shifts to the defendant opposing

jurisdiction to present ‘a compelling case that the presence of some other considerations would render jurisdiction unreasonable.’”

In this case, Dr. Peters does not argue that the trial court has general jurisdiction over Alpharetta. He does not allege any contacts by Alpharetta other than the demand letter sent to him in Louisiana. He does not allege that Alpharetta owns property in Louisiana, that any of its members reside in Louisiana, that any of its members ever traveled to Louisiana, or that it conducts any type of business in Louisiana. Alpharetta is a limited liability company with its principal place of business near Atlanta, Georgia. From the facts alleged, we do not find the level of “continuous and systematic contacts” necessary to justify the exercise of general jurisdiction. Thus, in order to justify the exercise of specific personal jurisdiction, we must consider only whether Alpharetta’s purposeful contact of sending a demand letter to Dr. Peters, who was domiciled in Louisiana, gave rise to or relates to Dr. Peters’ cause of action.

After a thorough review of the record, we find that Dr. Peters’ cause of action against Alpharetta did not arise out of any transaction of business conducted by Alpharetta in the state of Louisiana. Alpharetta is not in the collection business. Alpharetta’s medical business is, and always was, conducted solely in the state of Georgia. The demand letter was the result of Alpharetta’s attempt to enforce the terms of the Agreement between it and Dr. Peters. Accordingly, the demand letter did not give rise to Dr. Peters’ lawsuit. Rather, the basis of this cause of action was to determine the legal effect of the Agreement. Dr. Peters’ allegations revolve around the negotiations between the parties prior to the execution of the Agreement, as well as the actual terms and provisions of the Agreement. The Agreement was negotiated and executed in the state of Georgia. Dr. Peters relocated to Louisiana after the Agreement and the relationship he had with Alpharetta were terminated. Alpharetta sent the demand letter to Dr. Peters in Louisiana simply because that is where Dr. Peters resided at the time that Alpharetta sought to enforce a provision in the Agreement. It was merely fortuitous that Dr. Peters relocated to Louisiana. By mailing the letter to Dr. Peters in Louisiana, Alpharetta never anticipated being haled into a Louisiana court to resolve a dispute arising out of the Agreement. To the contrary, both parties specifically anticipated that any dispute or matter involving the Agreement would be litigated in the state of Georgia.

We conclude that Dr. Peters’ cause of action did not arise out of the mailing or receiving of the demand letter. It follows that Alpharetta cannot be said to have purposefully availed itself of the privilege of conducting activities within the state of Louisiana, such that it should have reasonably anticipated Louisiana litigation. Therefore, we find that the trial court correctly sustained Alpharetta’s declinatory exception raising the objection of lack of personal jurisdiction and properly dismissed Dr. Peters’ petition.

## CONCLUSION

For the reasons assigned, the trial court judgment dismissing Dr. Peters’ petition for lack of personal jurisdiction over the non-resident defendant/appellee, Alpharetta Spa, L.L.C., is affirmed. Costs of this appeal are assessed against plaintiff/appellant, Mark H. Peters, M.D.

## AFFIRMED.

**Source:** From Westlaw. Used with permission of Thomson/West.

## Case Questions:

1. According to the ruling in this case, how was Dr. Peters involved with Alpharetta Spa, LLC?
2. What business does Alpharetta Spa, LLC, conduct?
3. Where is Alpharetta Spa, LLC, located?
4. What is the “forum selection clause” contained in the agreement between the parties?
5. According to the court, does the demand letter create a sufficient basis for personal jurisdiction? Why or why not?
6. Did Alpharetta Spa, LLC, have sufficient minimum contacts with the state of Louisiana? Explain your answer.
7. What effect does the court ruling have on Dr. Peters’s action against Alpharetta Spa, LLC?

The general rules, first promulgated in Article VI of the U.S. Constitution, establish that when there is a conflict between state and federal laws, federal law will predominate. The Supremacy Clause controls conflicts between federal and state laws, giving preference to federal actions. Throughout the United States, the interplay of federal and state laws could be represented as two systems overlaid, with the federal system on top and the state system below.



## Eye on Ethics: Introduction to Ethics for Paralegals

Throughout this text, we will address important ethical issues for paralegals. Although attorneys have codes of ethics that paralegals must be familiar with, paralegals have their own code of ethics as well. As we go through the material in this

book, we will tackle many ethical issues, from confidentiality to fee splitting. Does your state have a paralegal code of ethics? Locate a copy of it and print it. You will find that ethics is one of the most important aspects of day-to-day legal practice.

**FIGURE 1.10**  
**Complaint in a Car**  
**Wreck Case**

**STATE OF EDWARDS  
 COUNTY OF PLACID**

SUPERIOR COURT OF PLACID COUNTY CIVIL ACTION FILE NO.: \_\_\_\_\_

Elizabeth Louise, )  
 )  
 Plaintiff, )  
 )  
 v. ) **COMPLAINT**  
 )  
 )  
 Wilson Johnson, )  
 )  
 Defendant. )  
 )  
 \_\_\_\_\_ )

**COMPLAINT**

COMES NOW, the Plaintiff, Elizabeth Louise, and complaining of the Defendant alleges the following:

1. The Plaintiff is a citizen and resident of Placid County, State of Edwards.
2. The Defendant is, upon information and belief, a citizen and resident of Springfield County, Edwards.
3. On or about April 6, 2005, at approximately 12:45 A.M., the Plaintiff, Elizabeth Louise, was operating a 2004 Buick LeSabre automobile, owned by the Plaintiff and Plaintiff's husband, Von Louise, in an easterly direction on Home Street, within the City Limits of the Town of Harrisburg, County of Placid, State of Edwards.
4. At the time and location averred in paragraph number three, the Defendant was operating a 2001 Honda Civic automobile in an easterly direction on the same street as the Plaintiff.
5. It is further alleged upon information and belief that at all times relevant hereto, the Defendant owned the 2001 Honda Civic automobile being driven by the Defendant.
6. At the time and place stated above, the Plaintiff, Elizabeth Louise, had slowed and stopped her 2004 Buick LeSabre automobile in respect and in obedience to a traffic light emitting a signal compelling her to stop.
7. At the time and place stated above, the automobile operated by the Defendant did, without justification, and without warning, drive into and collide with the rear of the vehicle operated by the Plaintiff, while the Plaintiff's automobile was at a complete stop in obedience and in conformity with the traffic signal.
8. The Defendant was negligent in that he:
  - a. Failed to keep reasonable and proper control of his vehicle.
  - b. Failed to keep a proper lookout in his direction of travel and to operate his automobile in a safe manner.
  - c. Drove his vehicle carelessly and in willful and wanton disregard of the rights and safety of others including the Plaintiff, Elizabeth Louise.
9. That as a proximate cause of the Defendant's negligence, the Plaintiff, Elizabeth Louise, suffered severe and permanent injuries in excess of \$10,000.00.

WHEREFORE, the Plaintiff prays that the Court as follows:

1. That the Plaintiff, Elizabeth Louise, have and recover a judgment against the Defendant in an amount in excess of \$10,000.00 for personal injuries.
2. That the Plaintiff have and recover of the Defendant a sum to be determined at trial, but in any event, no less than \$10,000.00 for damage to personal property.
3. That prejudgment interest be awarded as provided by law.
4. That the costs of this action be taxed against the Defendant.
5. That all issues raised be tried before a jury.
6. For such other and further relief as the Court may deem just and proper.

This the \_\_\_\_ day of October, 2005.

Debra Blum  
 Attorney for Plaintiff  
 State Bar No. 00-0000



## A Day in the Life: Lisa Mazzonetto

Lisa Mazzonetto has worked for a small firm for several years. Although the firm handles a large percentage of divorce and child custody cases, it also takes on other cases, including contract disputes and other claims.

“The thing I like about [our practice] is that I get to go to court a lot,” she says. “There is a lot of client contact in being a paralegal at a family law practice. You manage a lot of cases, and you get a lot of phone calls from upset clients. There is also a lot of paperwork. The pleadings are extensive, and then you have equitable distribution of the marital estate. That involves a lot of affidavits. Then you’ve got discovery. I do my best to stay on top of it all.”

“I also spend a lot of time making sure that my attorney stays organized. I check the file to make sure that the most recent correspondence is there and any other communications. I also often summarize the opposing side’s stand on particular issues, to help [my attorney] stay on top of any new developments.”

“Clients are always nervous about going to trial. I help prepare them for trial. Based on the initial meeting, I’ll set up an outline of questions that we may ask. I like to go through the questions before they testify. It helps them get a little more comfortable with testifying. People get very nervous about taking the stand. I’ll take them to an empty courtroom a few days before the trial so that they can see what it’s like. The hardest part for clients when they testify is staying focused on the issues in the hearing. Some of them want to go off on tangents. I find that it helps them focus to have them work on the files with us.”

For Lisa Mazzonetto, a typical day involves a lot of client contact:

### CLIENTS

“I’ll have them go through their inventory lists and organize their files with me. I want them to be involved and not obsess about issues.”

“Unfortunately, we’re always dealing with domestic violence issues. A lot of our clients take out domestic violence orders to keep their husbands from hurting them.”

“Sometimes you get late-night phone calls from clients who have questions about their case or sometimes just want to vent.”

### PUBLIC RECORDS

“That also means that I’m pulling a lot of criminal files and digging up convictions on opposing parties. I hire a lot of private investigators. They not only investigate the other party, but they sometimes act as civil process servers.”

### PREPARING FOR TRIAL

“We have a lot of clients who are scared about testifying in court. We work with them a lot to get them comfortable on the stand. People get nervous, and it helps to show them the courtroom and have them work on the file with you. They can review the documents, look at the pleadings; it helps them stay focused.”

### SPEAKING WITH OTHER ATTORNEYS

“Sometimes, I’ll talk directly with opposing attorneys. They’ll want to know about specific issues or want to talk over some points. It’s not like the old days; there are a good amount of attorneys who will talk with a paralegal. Of course, there are some [who] won’t have anything to do with you.”



## Real Paralegal Life: Building a Skill Set

### VISITING THE COURTHOUSE

One of the most important skills you can acquire as a paralegal is the ability to navigate successfully among the various courts in your area. As you embark on your career as a paralegal, you should take time to visit the local courthouse.

The problem with going to the courthouse is that it is an intimidating place. That's why you should read through these ten tips to help you feel more assured when you visit the courthouse for the first time.

1. Realize that everybody had to walk through that door for the first time. Take a moment and realize that everyone in this place once felt anxious when they walked into the courthouse. Every one of them was intimidated by the courthouse, no matter how blasé they act now. This is as true for attorneys as it is for paralegals. Sometimes it's even worse for attorneys, because everyone expects them to know their way around.
2. Don't give in to nervousness. Part of the problem with the courthouse is that it was designed to be an intimidating place. As you pass through the front door, keep this in mind. The architecture was created with the goal of making the average citizen feel respectful and maybe even a little bit afraid. When you walk in, look like you've been there a hundred times before. Get that self-confident, slightly bored look on your face. Sometimes looking like you know what you're doing is half the battle.
3. Ask questions. When in doubt, ask questions. However, having said that, there is a trick to asking questions.

Many people think that the first rule in asking questions is knowing what to ask. They're wrong. The real first rule in asking questions is knowing the right person to ask. Look around the courthouse. Find someone who looks sympathetic. Skip the obviously busy people. They don't have the time or the inclination to answer questions. Smile. Always smile before you ask a person a question. They will almost always smile back. Get to the point. Don't beat around the bush; fire away. Don't be afraid that it is a stupid question; hit them with both barrels.

4. Get the lay of the land. If you're nervous about where to go or what to do, get there early and see what other people do. Find a place to sit where you can pretend to read the newspaper and see what other people are doing. Then do it yourself.
5. Project confidence. You are a legal professional here to do a job. You may not know exactly where everything is, but you can find it. But you shouldn't be cocky or arrogant. That won't get you anywhere.
6. Be polite. Say "please" and "thank you." You'd be surprised how rarely people in the courthouse hear those magic words. It doesn't help to go marching in and demand things. Being nice pays off. You really do catch more flies with honey than vinegar.
7. Look the part. You should dress professionally if you want to be treated like a professional. It also gives you just a little bit more confidence.
8. Don't think you can learn it all in one hour. You can't. It's impossible. If you could pick up everything that you needed to know about the courthouse in one trip, the courthouse wouldn't be such an intimidating place. Think of your trips to the courthouse as learning sessions. Each time you go, you learn more. There are lawyers who've practiced for 20 years who still learn something new about the courthouse that they didn't know before.
9. Clean up after yourself. Put the books and microfilm and other things back where you got them. If you can't remember where you got something, ask someone. You'll score big points with court personnel if you just put things back where they belong. If the courthouse has rules preventing you from pulling your own files, follow them.
10. Let the Internet work for you. Many courthouse offices now have official Web pages. You can find out a lot of information without having to leave your office. There is plenty of information on the Web these days, and the nice thing is that you can find it 24 hours a day, 7 days a week.

If you follow these tips, you should find that the courthouse isn't as intimidating as you first thought. You might even discover that after a few trips there, you'll start feeling like a veteran. Then you can take pity on someone who has just walked through the metal detector and seems anxious and lost.



## Career Prep

Contact a local law firm and interview a paralegal who works there. Ask some basic questions, such as why this person decided to become a paralegal. Then, proceed to other issues, such as the most common misconceptions about the practice of law and what things a new paralegal should know before going to work for a firm. Ask this person what he or she finds appealing about the legal practice. What are some of the things about law that the paralegal likes least, and why? What are some important skills that a paralegal can bring to a practice specializing in civil actions?

## Summary

Civil law is a distinct specialty within a much broader field of legal areas. Unlike criminal law, civil law is concerned with a finding of liability and assessing damages against a party. Civil litigants must prove their cases to a preponderance of the evidence.

The authority for the American legal system derives from the U.S. Constitution. This document creates the framework of the federal and state systems and also provides basic rights for citizens. However, the legal system is also built on other forms of legal authority, such as statutes. Statutes are created by legislatures and enacted by the executive branch. Case law, in contrast, consists of the large body of written judicial opinions in cases on appeal. Common law is another form of legal authority. Common law stretches back for centuries and was originally an embodiment of judicial principles that would be applied in routine cases.

The federal court system is organized into three levels. At the bottom are the trial courts, called federal district courts. Appeals from these courts go to the U.S. Circuit Courts of Appeal. There are 13 courts of appeal scattered across the nation. A litigant may appeal from the Circuit Court of Appeals to the United States Supreme Court, which is the final authority on appeal.

## Key Terms

|                                  |                                |
|----------------------------------|--------------------------------|
| Plaintiff, 2                     | Statute, 7                     |
| Defendant, 2                     | Ordinance, 8                   |
| Caption, 2                       | Case law, 8                    |
| Style, 2                         | Common law, 9                  |
| Complaint, 3                     | Jurisdiction, 9                |
| Petition, 3                      | Subject matter jurisdiction, 9 |
| Answer, 3                        | General jurisdiction, 10       |
| Burden of proof, 4               | Limited jurisdiction, 10       |
| Preponderance of the evidence, 4 | Personal jurisdiction, 10      |
| Clear and convincing evidence, 5 | Forum, 10                      |
| Beyond a reasonable doubt, 5     | Domicile, 10                   |
| Liability, 5                     | In rem jurisdiction, 10        |
| Guilty, 6                        | Certiorari, 12                 |
| Damages, 6                       |                                |

## Review Questions

1. Compare and contrast the different burdens of proof in civil and criminal cases.
2. What is the relationship of the United States Constitution to statutes and case law?
3. What is common law?
4. What is case law?
5. How do statutes compare to ordinances?
6. What is the top court in the United States federal court system?
7. What responsibilities does the top court in the federal system have?
8. Name the trial courts in the federal court system.
9. What duties do federal trial courts have?

10. How many circuit courts of appeal are there in the United States?
11. Create a diagram showing the organization of your state-level court system. How are these courts organized? How do appellate courts factor into your diagram?
12. Describe how civil litigation is different from criminal law.
13. What is jurisdiction?
14. Compare and contrast personal and subject matter jurisdiction.
15. What is certiorari?
16. Why are ethical issues so important for paralegals?
17. Create a chart showing the differences between civil and criminal cases.
18. How are the monetary damages paid to a party in a civil case different than the fine that a criminal defendant must pay as part of his or her sentence? How are they alike?
19. Explain why it is important to understand the organization and function of a courthouse.
20. What is the significance of the *Peters v. Alpharetta Spa, LLC*, case in regard to a discussion of personal jurisdiction?

## Discussion Question

1. We have seen that there are several layers of courts on both the state and federal levels. When the country was originally created, there were very few courts. What does the breadth and complexity of the American court system say about our nation? Are we a nation of laws or a nation of lawyers?

## Exercises: Skill Builders

For the purposes of this assignment, review the following factual scenario and then determine, on the basis of material in this chapter, whether this is a civil case or a criminal case.

Juan is driving home one day, and while he is proceeding through a green light, a driver from the intersecting lane of traffic runs the red light and plows into Juan's car. Juan is severely injured. When police and emergency workers arrive on the scene, the other driver appears to be driving under the influence of alcohol. Is this potentially a civil case or a criminal case?



## Portfolio Assignment

Each chapter of this book contains a portfolio assignment. The reason for these assignments is to help you start building a complete portfolio of information and samples of your work that will help you not only get a job but also perform your day-to-day duties.

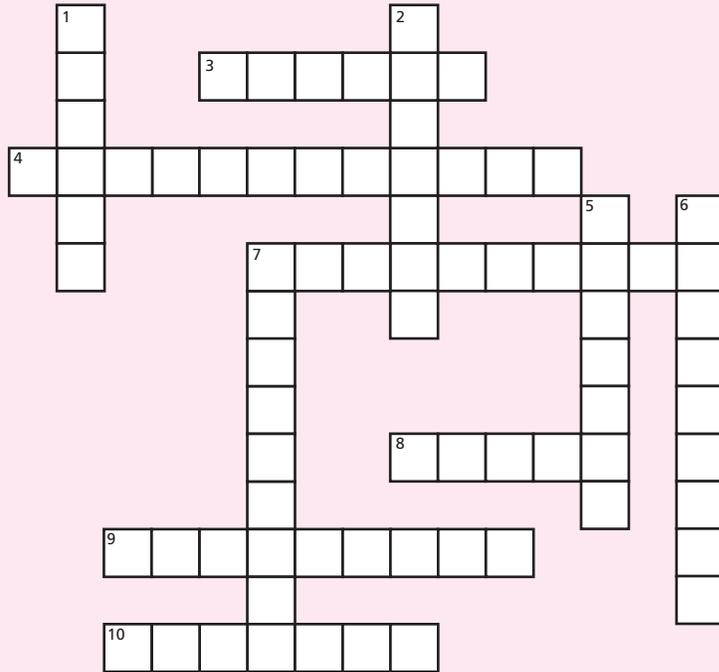
**Portfolio Assignment 1-1:** Prepare a complete list of all of the courts in your area, including federal, state, traffic, small claims, and any other courts with which you might come into contact. List the judges who work in those courts, the names of support personnel, and addresses, including Web sites, if any. Put this information into a file in your portfolio labeled "Important Contacts."

**Portfolio Assignment 1-2:** Locate your state's statutes that govern the jurisdiction of the various courts. Pinpoint the jurisdictional requirements of each. Which courts have subject matter jurisdiction to hear cases such as divorce, child custody, felony charges, adoption, name changes, cases involving \$1,000 or less in controverted amounts, and actions involving claims for \$20,000 or more?

**Portfolio Assignment 1-3:** In a double-spaced, three-page paper, describe the organization of federal and state courts in your state. For this assignment, you must research the structure and function of both state and federal courts in your state and provide an explanation of the function of the courts. You should also discuss how these various courts interact with one another.



## Vocabulary Builders



### ACROSS

- 3** A verdict only available in criminal cases where the jury determines that the defendant is responsible for committing a crime.
- 4** The power of a court to make rulings.
- 7** The power of an appellate court to decide which cases it will hear.
- 8** Also known as caption; the heading or title used in all legal pleadings.
- 9** A law passed by a local government, such as a town council or city government.
- 10** Also known as style; the heading or title used in all legal pleadings.

### DOWN

- 1** The location of the court; a court that possesses both personal and subject matter jurisdiction over the case.
- 2** A law that is voted on by the legislature branch of and enacted by the executive branch.
- 5** Monetary payments assessed against a party who has been deemed liable to another party in a civil case.
- 6** A jury's determination that one party is responsible for injuries to another party; the basis for an award of damages.
- 7** Also known as a petition, it is the pleading filed by the plaintiff and served on the defendant that sets out the plaintiff's factual allegations that show the defendant is responsible for the plaintiff's injuries.