Webster's Legal Secretaries Handbook

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WEBSTER'S LEGAL SECRETARIES HANDBOOK

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PREFACE

The book that you are reading is a product of Merriam-Webster Inc., publisher of the Merriam-Webster dictionaries and reference books. *Webster's Legal Secretaries Handbook* is the result of Merriam's collaboration with 15 specialists in the fields of law, law office management, records administration, financial administration, business education, word processing, and law libraries—and, of course, in the legal secretarial field. The combined experience and technical expertise of these specialists have produced the 18 chapters in the book.

Direction and scope *Webster's Legal Secretaries Handbook* is directed to legal secretaries and legal assistants who are employed or expect to be employed in a law firm. The book concerns itself mainly with the *administrative* procedures and responsibilities that these people are expected to carry out. Other books exist for the purpose of explaining specific legal procedures in detail; this one goes into detail on the organization and administration of a law office. Some of the very important topics of interest to practicing legal secretaries and assistants are these: telephone techniques, reminder systems, records management, accounting systems, the use of printed forms, arranging out-of-town trips for the attorney, setting up meetings, and managing a small law library.

Office supervisors, transcribers, and typists employed by large law firms and the legal departments of corporations will also find the book useful. These readers will be particularly interested in the material devoted to the writing of effective English, the typing of correspondence, dictation/transcription systems and techniques, and office copying equipment.

In addition, the book is directed to those readers enrolled in legal secretarial programs and to those considering reentry into the profession. Chapter 2 introduces the reader to career opportunities in different types of law offices, then takes the reader through every major step in the preemployment process. The proper ways of presenting oneself to a prospective employer by telephone, by letter, by résumé, and in person are explained. *Webster's Legal Secretaries Handbook* is a useful reference source not only for students but also for instructors who are preparing course outlines and lectures in legal secretarial studies.

It is equally important to mention the material in this book that is of interest to lawyers themselves: the questions listed in Chapter 3 for offices considering the purchase of a private telephone system, and those in Chapter 16 that should be asked before purchasing a copier; the discussion of financial management in Chapter 7; the guidelines in Chapter 8 for improving one's dictation techniques; the overview of text-editing machines and their special uses in Chapter 15; and the detailed discussion of English grammar and usage in Chapter 9.

Textual organization Each chapter is introduced by its own table of contents listing in numerical order all of its major sections. In turn, the subsections of the chapters are introduced by highly visible boldface subheadings that alert the reader to the particular topics under discussion. When specific data are sought, one need only consult the detailed Index which will guide one quickly to the desired information. Furthermore, the text is copiously illustrated with diagrams, charts, tables, lists, and numerous facsimiles that offer abundant information in a concise, readable form.

Special features This book is committed to a realistic, detailed presentation of the administrative functions performed in a lawyer's office. It takes into account the realities that face its readers from day to day: scheduling clients, storing and retrieving records, transcription problems, arranging a suddenly scheduled meeting—to name only a few. The book provides tested, workable problem-solving tips and procedures tailored to the practice of a sole proprietor as well as the larger law firm.

Chapter 18, The Law Library, merits special attention. Authored by an experienced law librarian and law library journal editor, the chapter first provides a comprehensive yet manageable survey of the sources most commonly researched by lawyers and checked by secretaries to verity citations. It also offers useful guidance to the legal secretary who manages a small law library.

Chapter 15, Text-editing Systems in Law Offices, is another outstanding feature of the book. In it, a word-processing specialist with a background in law office management provides an up-to-date overview of the equipment that is available to law offices and discusses how this equipment is used in specific legal applications.

Accurate, coherent—even attractive—written communication continues to be vitally important to lawyers and their secretaries. The written word is the lawyer's chief product, and communications sent from the office go a long way toward determining the lawyer's professional image. For this reason, more than 160 pages have been devoted to legal writing, business writing, and correspondence styles. Chapter 9, for example, contains guides listing many rules for the use of capitalization, italics, numerals, and punctuation in both general and legal writing. Each rule is exemplified by at least one verbal illustration. Further chapters provide specific advice on the format, punctuation, and typewriting of correspondence, client documents, and court documents.

A lawyer's practice can run smoothly only insofar as the staff members understand, accept, and carry out all assigned tasks competently and with minimal supervision. *Webster's Legal Secretaries Handbook* has been written to help you accomplish this goal.

Editorial Credits *Webster's Legal Secretaries Handbook,* like other Merriam-Webster publications, represents a collective effort. It would therefore be ungracious and unfair not to recognize those Merriam staff members who have contributed greatly to the value of the book. Former staff member Anne H. Soukhanov provided the initial outlines of the book and suggested its scope and direction. Dr. Frederick C. Mish, Editorial Director, reviewed the entire manuscript, offered sound advice, and gave valuable guidance throughout the project. John M. Morse, Assistant Editor, directed the book through the stages of typesetting and printing. Claire O. Cody, Secretary to the President, and Helene A. Gingold, Editorial Department Secretary, prepared the typewritten facsimiles. The manuscript was typed by Barbara Winkler, Georgette Boucher, and Joan Lancour under the direction of Gloria J. Afflitto.

The Editors

TABLE OF CONTENTS

PREPARATION OF LEGAL DOCUMENTS

SPECIALIZED INFORMATION

1

CHAPTER ONE

AMERICAN LAW AND THE JUDICIAL SYSTEM

CONTENTS

1.1

AN OVERVIEW OF AMERICAN LAW

The legal secretary is aware of the existence of law long before entering the law office. The contact has been made in many ways—driving an automobile at a prescribed speed limit, registering to vote in an election, taking out a marriage license, applying for a divorce, or purchasing food or clothing the production of which was regulated by one or more government agencies. In your position as legal secretary, it will be helpful if you are familiar with the origins of the law, the agencies that administer and interpret the law, and the individuals who interpret or administer the law. The legal documents prepared in your law office will have greater meaning if you can relate client to legal matter and legal matter to court or agency.

Although laws affect much of what we do and how we do it, rarely do we think of what law is. In simplest terms, laws are the rules and principles of conduct which are recognized, applied, and enforced by a court. A more formal definition of law, but one which nonetheless makes the same basic statement, is "that which must be obeyed and followed by citizens subject to sanctions or legal consequences." Matter of Koenig v. Flynn, 258 N.Y. 292, 301, 179 N.E. 705, 707 (1932).

Emphasizing the institutional aspects of law and the origin of laws, one can say that a law is a statute, bill, rule, or constitutional provision that, according to *Black's Law Dictionary*, includes the "body of principles, standards and rules promulgated by government," be it by executive decree, court decision, or legislative enactment.

If there is a single word which may be used to describe the philosophy of law and legal relations, it is *jurisprudence*. It differs from *justice*, which Black's defines as "the constant and perpetual disposition of legal matters to render every man his due." It is justice which is sought by the party bringing a dispute to a court and which is expected by all parties to the dispute. Jurisprudence, on the other hand, is a formal analytical science dealing with the principles on which legal rules are based.

CIVIL AND COMMON LAW SYSTEMS

The two primary sources of American law are the civil law system and the common law system. The civil law system may be traced back to the Roman law from which most European law systems originated. It was brought to the Western Hemisphere by the French, Spanish, and Portuguese. The civil law system as it exists in Europe is the result of Napoleon Bonaparte's efforts; he provided for the drafting of the Code Civil or Code Napoleon, which restated the earlier principles of Roman law in more modern terms.

The common law system which developed in England is based on precedent. It incorporates no formal code; instead, the courts build the law by attempting to follow earlier recorded decisions in deciding subsequent cases.

Louisiana in the United States and Quebec in Canada are examples of political entities which apply the Code Civil as it developed in North America. Other jurisdictions in the United States and Canada follow the common law system.

CLASSIFICATIONS OF LAW

Law may be classified in several ways: by type (written and common law), by source (constitutional, statutory, and case law), by the parties involved (public and private law), by substance (civil and criminal law), and by function (substantive and adjective law). Each of these classifications is discussed in the paragraphs that follow.

Written law The two principal types of law are written law and common law. Written law, which is also known as *statutory law*, is defined in *Ballentine's Law Dictionary* as "law which is written in statutes, ordinances, by-laws, treaties and written constitutions." Written law covers federal and state constitutions and statutes and ordinances adopted by counties, cities, townships, and villages. It is written in the attempt to anticipate problems and disputes and provide for their solutions. The written law is laid down by a legislative body without regard to a particular dispute between two parties.

Common law Common law is the law made by courts. It is also known as *case law* because it derives from judicial decisions of certain cases rather than from written statutes. Common law is more formally defined in *Black's Law Dictionary* as the law which "comprises the body of those principles and rules of action, relating to the government and security of persons and property, which derive their authority solely from usages and customs of immemorial antiquity, or from the judgments and decrees of the courts recognizing, affirming, and enforcing such usages and customs . . . ." This definition encompasses common law as it evolved in England and as it was passed on into American law. Prior to the development of written law, controversies were decided on the basis of established customs. If there were no established customs, judges decided a case on the basis of what they considered to be right and wrong. As these decisions began to be recorded, judges looked for guidance to the decision in a prior case that had similar facts. This is known as the *doctrine of precedents*. Another term for the concept of relying on precedent is *stare decisis*, which means "to stand by (previous) decisions." The doctrine of precedents is important because it provides for consistency in the application of common law and offers some assurance to a person seeking relief in the courts as to the rules of the game.

Equity law A review of the common law is not complete without examining *equity law*. Equity has been summarized in Gifis' *Law Dictionary* as law which

> developed as a separate body of law in England in reaction to the inability of the common law courts, in their strict adherence to rigid writs and forms of action, to entertain or provide a remedy for every injury. The King therefore established the high court of chancery, the purpose

of which was to do justice between parties in those cases where the common law would give no or inadequate redress. Equity law to a large extent was formulated in maxims, . . . meaning that equity will derive a means to achieve a lawful result when legal procedure is inadequate.

Although a few states still have separate courts of equity and courts of law, most jurisdictions have merged the two bodies of law. While the historical justifications for equity law are declining, equity techniques continue to provide unusual and personal remedies for legal disputes of a civil nature. Two of the most familiar equity decrees are the *injunction* and *specific performance*. An injunction restrains a party from doing something which would cause irreparable harm if not enjoined or temporarily halted. For example, an injunction may order a manufacturer to stop dumping certain chemicals into a river. Specific performance requires the performance of a duty agreed on in a contract or other agreement. Both decrees are laid down by a court.

Constitutional law A constitution is the basic framework for a legal system. It defines basic principles of law and delegates authority to various officials and agencies.

The United States Constitution is the supreme law of the United States. No other law or statute may impose upon its provisions. The Constitution provides in Article VI, Section 2 that it "shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." Nothing could be clearer than that.

The United States Constitution is divided into three parts. The first part, the original text of the Constitution, divides governmental power among the three branches of government (legislative, executive, and judicial) and between the federal and state governments. Powers not reserved by the United States Constitution reside with the states.

The second part of the Constitution is the Bill of Rights, which consists of the first ten amendments. The first nine amendments provide for and protect individual freedoms including freedom of religion, speech, press, assembly, and petition for redress of grievances. Other protections afforded are the ability to keep arms, the freedom from unreasonable search and seizure, and the right to speedy and public jury trial in criminal cases and jury trial in civil cases. These have been among the most widely debated concepts in constitutional law.

The third part of the Constitution—the amendments which have been added to the Constitution over the past 200 years—reflects the efforts to keep it current with respect to changing social and political needs. These amendments cover a wide range of subjects. The Thirteenth Amendment abolished slavery in 1865. The Fifteenth, Nineteenth, Twenty-fourth, and Twenty-sixth Amendments extended the right to vote. The Eighteenth Amendment prohibited the manufacture and sale of intoxicating beverages, and the Twenty-first Amendment repealed the Eighteenth Amendment.

Article V of the Constitution defines how amendments to the Constitution may be made: "The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments . . . or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which . . . shall be valid . . . when ratified by the Legislatures of three fourths of the several States, or by Conventions, in three fourths thereof . . . ."

States also have constitutions, which are often more detailed than the United States Constitution. Constitutions are further discussed on page 5.

Statutory law Statutes are enacted by legislatures to regulate areas within the legislature's jurisdiction.

The U.S. Congress (by authority of Article I, Section 8 of the U.S. Constitution) has reserved to itself the power to regulate certain activities including patents, trademarks, copyrights, federal taxation, customs matters, the postal system, admiralty

matters, bankruptcy, and diplomatic matters. It has the exclusive right to pass laws affecting these subjects. Congress also has power to pass legislation not specifically reserved to it by the Constitution, such as labor laws, pollution control laws, and laws in many other areas.

Laws passed by Congress must be signed into law by the President. These laws are published annually in the *Statutes at Large* and eventually compiled in the *United States Code* (U.S.C.), an official government publication, and the *United States Code Annotated* (U.S.C.A.), a commercial publication. To facilitate finding a statute, this Code is organized into 50 titles or subject areas. When a citation to one of these titles is made, the title number appears first. For example, 50 U.S.C. § 1511 cites to Title 50 (War and National Defense), Section 1511 of the *United States Code*.

Titles of United States Code and United States Code Annotated

1. General Provisions
2. The Congress
3. The President
4. Flag and Seal, Seat of Government, and the States
5. Government Organization and Employees
6. Surety Bonds
7. Agriculture
8. Aliens and Nationality
9. Arbitration
10. Armed Forces
11. Bankruptcy
12. Banks and Banking
13. Census
14. Coast Guard
15. Commerce and Trade
16. Conservation
17. Copyrights
18. Crimes and Criminal Procedure
19. Customs Duties
20. Education
21. Food and Drugs
22. Foreign Relations and Intercourse
23. Highways
24. Hospitals and Asylums
25. Indians
26. Internal Revenue Code
27. Intoxicating Liquors
28. Judiciary and Judicial Procedure
29. Labor
30. Mineral Lands and Mining
31. Money and Finance
32. National Guard
33. Navigation and Navigable Waters
34. Navy (Eliminated by the enactment of Title 10)
35. Patents
36. Patriotic Societies and Observances
37. Pay and Allowances of the Uniformed Services
38. Veterans' Benefits
39. Postal Service
40. Public Buildings, Property, and Works
41. Public Contracts
42. The Public Health and Welfare
43. Public Lands
44. Public Printing and Documents
45. Railroads
46. Shipping
47. Telegraphs, Telephones, and Radiotelegraphs
48. Territories and Insular Possessions
49. Transportation
50. War and National Defense

Each year the legislative body in each state passes many laws which are then approved by the governor. The exact titles of the session laws—that is, the collections of statutes passed in each session of the legislature—vary, as do the titles given to the compilations of laws. Statutory compilations, which are collections of all the laws in force in a particular state, are ordinarily known as codes, revisions, or annotations. In Michigan, for example, they are known as *Michigan Compiled Laws Annotated* (Mich. Comp. Laws Ann.). In Minnesota, they are called *Minnesota Statutes Annotated* (Minn. Stat. Ann.), while in North Dakota they are called the *North Dakota Century Code* (N.D. Cent. Code).

All of the statutes for a particular state are published in annotated form by a private law-book publisher. The annotations will include legislative history, prior laws on the subject, applicable case law, references to law review articles, and other pertinent information. Statutory compilations are kept up to date by cumulative supplements.

Case law Constitutional law, statutory law, and case law are the three primary sources of American law. Case law has been defined as the "aggregate of reported cases as forming a body of jurisprudence, or the law of a particular subject as evidenced or formed by the adjudged cases, in distinction to statutes and other sources of law" (*Black's Law Dictionary*). This means that as a court decides and reports its decision concerning a particular suit, this reported case becomes part of the body of law and is consulted in later cases involving similar problems.

Case law consists of reported decisions of both federal and state courts. These decisions may be divided into three primary categories: (1) interpretation of the United States Constitution and the various state constitutions, (2) interpretation of federal and state statutes, and (3) decisions based on British and American precedents involving matters in which no apparent constitution or statutory enactment applies.

Relationship of constitutions, statutes, and the courts A doctrine known as the federal supremacy doctrine declares any federal law or constitutional provision to be dominant when a state and a federal interest are at odds. Federal laws must comply only with the federal constitution, but the laws of any state must comply with provisions of both the state constitution and the U.S. Constitution. In a clash between a federal and a state law, the federal law would prevail.

Ordinarily when a state legislature has spoken clearly on a subject through the passage of a law signed by the governor, the courts will not overrule the legislature. However, if a state legislature were to pass a law in violation of the state constitution—for example, a law requiring that all textbooks be submitted to a review board—the appellate court in the state could declare the law unconstitutional.

Except in the matter of constitutionality of laws or statutes, the legislative body has the last word. Courts will, however, interpret statutes and supply legal principles when no rule exists. Once the court decides what the legislature intended, the court's ruling has as much validity and importance as the statute itself, and it becomes part of the case law on the subject.

Public and private law Another classification of laws evolving from both constitutional and statutory sources is based on the scope of the laws, i.e., on the parties to whom they apply. This classification includes public and private law. "Statutes may be called public because the rights conferred are of general application, while laws known as private affect few or selected individuals or localities." Garner v. Teamsters, Chauffeurs and Helpers Local Union No. 776, 346 U.S. 485, 494 (1953).

Private law governs the relationship between private citizens. Disputes may involve property, contracts, negligence, wills, and any number of other matters. Occasionally, as in marriage and divorce, the state may be involved indirectly but, as it is not itself a litigant, the matter remains one of private law.

Public law is a branch of law concerned with regulating the relations of individuals among themselves and with the government as well as the organization and conduct of government itself. It "concerns the interests of the public at large . . . [it] may be a general, local, or special law." Haas v. Hancock County, 183 Miss. 365, 370, 184 So. 812, 813 (1938). Public law disputes involve the state or its agencies in a direct manner. Usually the state is a litigant; it is often the plaintiff, the party bringing the suit to court. Examples of public law are municipal law, township law, criminal law, admiralty law, securities law, social security law, and aviation law.

When individual laws are referred to, however, there is a different kind of distinction between public and private laws. Specifically, a private law is a law which affects only selected individuals or localities, while a public law affects the welfare of the whole governed unit. A private law provides a kind of exception to the public rule.

Administrative law Administrative law has become a major part of public law. Administrative law comprises the rules and regulations framed and enforced by an administrative agency created by Congress or a state legislature to carry out a specific statute. Administrative bodies, while primarily executive in nature, may also have powers to exercise legislative or judicial authority. For example, the Civil Aeronautics Board not only issues regulations for air transportation but also adjudicates some disputes between airlines and their customers. Among the areas of concern covered by federal administrative agencies are taxation and revenue collections, civil rights, the environment, banks and banking, labor relations, veterans, railroads, and securities. Some of the federal administrative agencies with which law firms come into contact are the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Environmental Protection Agency, the Federal Deposit Insurance Corporation, the National Labor Relations Board, the Occupational Safety and Health Review Commission, the Internal Revenue Service, and the Federal Trade Commission.

The best single source of information in the field of federal administrative procedure is the *United States Government Manual*. The official handbook of the federal government, this manual provides comprehensive information on the agencies of the legislative, judicial, and executive branches of government as well as quasi-official agencies; international organizations in which the United States participates; and boards, committees, and commissions. The manual is published annually by the Office of the Federal Register, National Archives and Records Service, General Services Administration, and is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

State and local governments also have administrative agencies. They may be a part of an executive department of the state government or they may be independent entities. These agencies tend to function in areas not preempted by federal agencies, but they may also be found in fields subject to both federal and state regulation. State administrative agencies often have jurisdiction over these areas: unemployment and workers' compensation, taxation, education, motor vehicles, and health and safety. States generally publish a "blue book," a directory similar to the *United States Government Manual*, and it is helpful to have one of these available in the office. Examples of local administrative agencies include zoning boards and sewer commissions.

Administrative law is becoming an important legal specialty. As government agencies proliferate and their rules and regulations increase, it is a rare business client who is not affected by one or more agencies. It is important for the law office to keep abreast of developments taking place in administrative law.

International and maritime law Other, less well-known types of public law are international law and maritime law.

International law is defined in Ballentine's as the "rules and principles which govern the relations and dealings of nations with each other." International law would thus include international conventions, both general and particular, which are expressly recognized by the world states.

Maritime law is defined in Black's as "that system of law which particularly relates to marine commerce and navigation, to business transacted at sea, . . . to ships and shipping, . . . [and] to the transportation of persons and property by sea . . . ." The Constitution of the United States has been judicially interpreted as having transferred maritime jurisprudence from the sovereignty of the states to that of the nation. Thus, any action brought under this body of public law will involve the federal government either indirectly or directly as a party.

Civil and criminal law Cases that come before a court may generally be divided into two categories: civil and criminal. Black's defines civil law as "laws concerned with

civil or private rights and remedies, as contrasted with criminal laws." Civil law is in essence the law of private rights. In civil law there is a conflict of interest between individuals or groups at least one of whom has a complaint against another. The complaint may be caused by the failure of a party to carry out an agreement or by a different kind of injury, called a tort, that does not involve a contractual relationship. When a civil case is brought, a private party seeks resolution of a personal rather than a public dispute. The civil law has several subcategories including real estate, domestic relations, partnership, tax, contracts, wills and trusts, probate, employment, personal injury, water, oil and gas, school, municipal, securities, commercial, banking, and labor.

Crimes are torts against society, and criminal law is "that law which for the purpose of preventing harm to society, (a) declares what conduct is criminal, and (b) prescribes the punishment to be imposed for such conduct" *(Black's Law Dictionary)*. In criminal law matters, the action is always brought in the name of the federal government, the state, or a political subdivision because the case is based on the alleged violation of the rights of *all* the people. The remedy sought in a criminal case is intended to punish the offender. The major categories of criminal law are homicide, burglary, larceny, fraud, rape, and assault.

Substantive and adjective law Substantive law consists of the principal rules which a court will apply in considering the rights and obligations set forth in federal and state statutes, whereas adjective or procedural law states the procedural rules by which a person can secure his or her substantive rights. Black's defines adjective law as "the aggregate of rules of procedure or practice . . .; it means the rules according to which the substantive law is administered." Adjective law deals with *pleadings*, which are papers that pass between the parties; *practice*, which refers to the guides to the conduct of litigation; and *evidence*, the distillation of traditional doctrine governing the admissibility of evidence to achieve fairness while avoiding unnecessary expense or delay.

Although adjective law does not state the law, it quite often outlines the law in a statement accompanying the statement of the procedures which must be followed in applying the substantive law. The adjective law enables the attorney to decide whether a case should go to federal or state court. Adjective law will tell the attorney when a lawsuit must be started, what pleadings are required of all parties, and what kind of evidence can be presented at trial. It can be as important as the substantive law in determining the outcome of a case. A knowledge of adjective law is generally more useful to a legal secretary than a knowledge of substantive law. It is necessary that the legal secretary be aware of the procedures and pleadings involved in a civil case in order that deadlines be met and papers properly served and filed.

1.2

THE AMERICAN JUDICIAL SYSTEM

Article III, Section 1 of the United States Constitution creates the federal judicial system. It says: "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." Sections 2 and 3 spell out the extent of the judicial power afforded the Supreme Court and the inferior federal courts. In turn, the constitutions of the various states have created state judicial systems, many of them similar to the United States

judicial system but each one separate. The complexity of a state judicial system is normally in direct proportion to the population of the governmental unit. The judiciaries of many states with small populations are much less complex than the judiciaries of some large cities in the more populous states. Furthermore, some of the municipal judicial systems are nearly as autonomous within the state system as the state system is within the federal system.

THE COURTS

The term *court* has several meanings. One meaning encompasses all the persons who are assembled for the administration of justice. These include judge or judges, clerk, marshal, bailiff, court reporter or public stenographer, jurors, and attorneys. Or court may refer to the hall, chamber, or place where court is being held. Frequently the judge or judges themselves are referred to as "the Court." The courthouse includes the offices occupied by many of the persons associated with the administration of justice.

The two principal functions of courts are settling controversies between parties and deciding the rules of law applicable in a particular case. In general, the judicial process as carried out by the courts consists of interpreting the laws and applying them justly to all cases arising in litigation. Most courts do not give advisory opinions. Exceptions exist, however, where the constitutions of some states permit the supreme courts of those states to render advisory opinions to the legislature or governor concerning the constitutionality of a statute. A detailed discussion of civil and criminal trial procedures appears in section 13.1 of Chapter 13.

JURISDICTION

Jurisdiction may be explained as the authority of a court to hear a controversy or dispute. Affirmative answers to the following questions will determine that a court has jurisdiction over a particular case:

1. Has the court been vested by law with authority to decide this kind of case?
2. Does the court have authority over the parties in the case?
3. Has adequate notice been given to the parties, so that the court can make a valid judgment affecting them?
4. Has the court acquired jurisdiction over any property involved in the case?

Another way of testing the jurisdiction of the court over a matter is to determine whether it has *in personam* jurisdiction over the litigants (who may live in different geographical areas) or *in rem* jurisdiction over the subject matter (usually physical property such as real estate) in a controversy.

Original and appellate jurisdiction Jurisdiction is either original or appellate. A court of original jurisdiction has the authority to receive the case when begun, to try the case, and to render a decision based on the law and facts presented. Appellate jurisdiction is set by statute or constitution. It is the authority to review, decide, or revise the action of a lower court.

The American judicial system at the state level and at the federal level is pyramidal and hierarchical. The courts at the top of the pyramid are supreme courts. Supreme courts are normally appellate courts, although they may have original jurisdiction in some matters. Below the supreme appellate courts are the courts of general jurisdiction. These courts have appellate jurisdiction and supervisory control over inferior courts except as laws provide otherwise, but they are also courts of original jurisdiction in certain areas prescribed by constitution or statute. Inferior courts are courts of limited jurisdiction whose decisions are subject to review and correction by higher courts.