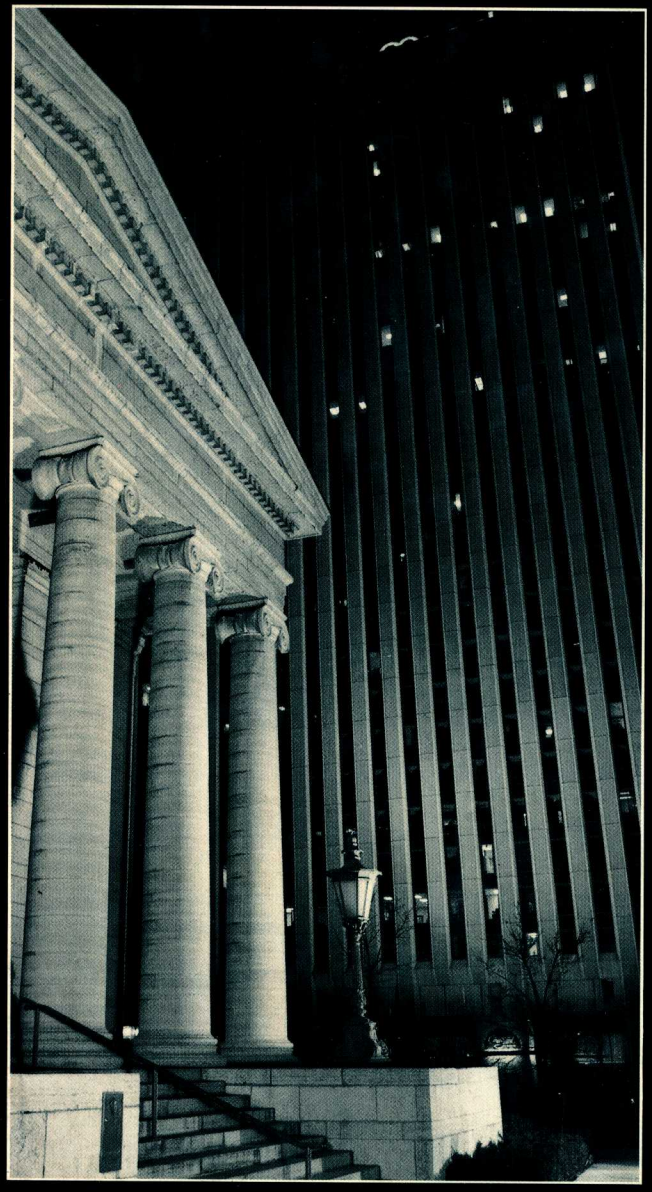
Anderson, Fox, Twomey UCC Comprehensive Volume

Business Law

Twelfth Edition



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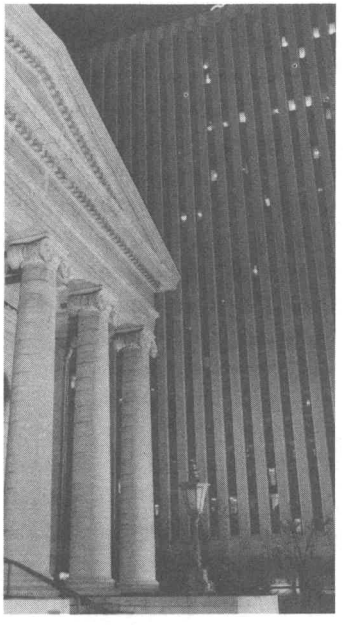

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Preface

This Twelfth Edition of BUSINESS LAW continues the outstanding features of previous editions: the brief summaries of actual cases incorporated into the text, ample citations, case problems, and carefully constructed hypothetical problems whose pedagogical worth has proved timeless. Yet no text, no matter how successful, can rest on past accomplishments.

It was with this fact in mind that we set about updating the text, improving the readability, and adding the many new features that we feel will make the Twelfth Edition a more useful tool for both instructors and students of business law.

The Legal and Social Environment of Business. This is the title of a new Part 1 of the book. It brings together in one part various chapters relating to societal law that form the general background for individual business transactions. To borrow terms familiar to the economist, Part 1 relates to macro law while the balance of the book deals with micro law. It is important that the student see the background of macro law. It is also important the the student recognize that the "legal environment" is the sum total of the macro and micro areas.

More specifically, the new Part 1 deals with the regulatory environment in which business operates. The social forces behind the creation and evolution of the specific principles and substantive rules that govern disputes and transactions between individuals are explored. A comprehensive discussion of the federal and state court structure and the procedures involved in a lawsuit from commencement to execution of the judgment is included. In addition, the special character of, and increasing role played by the administrative agencies in the government regulation of business is thoroughly examined.

This allocation of the indicated material to Part 1 is in harmony with the increased concern for an environmental approach to the teaching of business law. At the same time, this emphasizing of the social background is not made at the expense of the treatment of the areas of "private law." There has been no lessening of attention to accuracy of content, simplicity of expression, and thoroughness of subject matter coverage.

UCC and UCCC. The rapid growth in the number of court decisions under the Uniform Commercial Code since the publication of the Eleventh Edition has necessitated an expanded presentation of the law in such areas as sales, commercial paper, and secured transactions. Also more evident in the opinions is the influence of the UCC on contracts in general.

The Uniform Consumer Credit Code has been adopted in several states. Regardless of the number of additional states that adopt the UCCC, this uniform act

is having a definite influence on state legislation concerning consumer credit practices. Chapter 13, Legality and Public Policy, and Chapter 7, Consumer Protection, incorporate provisions of the UCCC.

Bankruptcy. Chapter 35 of the Twelfth Edition states the bankruptcy law of today based on the Bankruptcy Reform Act of 1978. This is the law that our students will need for CPA exams and as people working and living in a business world.

Uniform Laws Appendix. This edition, like previous editions, contains the official text of the Uniform Commercial Code in an appendix. In this edition, the UCC has been updated to include the 1977 amendments respecting uncertificated securities.

Also new to this edition is the official text of the Uniform Partnership Act. The widespread adoption of this act has made it a prominent factor in the development of partnership law and its inclusion will be valuable to both students and instructors.

Tests. As with previous editions printed tests have been prepared to accompany the text. Improving on the previous format, the number of tests has been increased to twenty-three (a test for every two to three chapters), and the number and variety of questions within each test has been increased. The end result is a package that provides instructors with greater flexibility in designing and implementing a testing program.

Study Guide. Accompanying the Twelfth Edition is a completely revised study guide. This new study guide contains highlights of each chapter in the text, a new mix of questions and problems, and special exercises designed to demonstrate the real-life application of legal rules and principles.

The Authors. This Twelfth Edition continues the progression of Professor Ivan Fox of Pace University and Professor David P. Twomey of Boston College from the status of contributing authors to that of co-authors. Together, it is our hope that these books will attain more closely the goal of every teacher, author, and publisher: the producing of the best possible materials to meet the needs of our students, both as students today and for whatever may be their path in the years ahead.

R.A.A.

Contents

Part One

The Legal and Social Environment of Business

One

Law and Law Enforcement Agencies

CHAPTER OBJECTIVES

After studying this chapter you will be able to:

1 Give two examples of the evolutionary character of legal rights.
2 List the agencies or bodies that interpret and apply law.
3 Describe the basic structure of federal and state court systems.
4 Name the officers of a court.
5 List the steps that may be involved in a lawsuit.

Law has developed because people and society have wanted relationships between people, and between people and government, to conform to certain standards. The rules or laws adopted for this purpose have expressed the social, economic, and moral standards and aspirations of society.

A. NATURE OF LEGAL RIGHTS AND THE LAW

Law consists of the entire body of principles that govern conduct and can be enforced in the courts. If there were no society-made law, no doubt many persons would be guided by principles of moral or natural law. Most people would act in accordance with the dictates of conscience, the precepts of right living that are a part of religion, and the ethical concepts that are generally accepted in the community. Those who would choose to act otherwise, however, would constitute a serious problem for society. Moreover, there would be a great lack of uniformity if every person's decision would govern. In a society in which millions of commercial transactions take place every day, it is essential that uniform standards be set by someone

and that everyone follow the same standards. Otherwise confusion and disagreements would arise.

§ 1:1. Legal Rights. What are legal rights? And who has them? In answering these questions, we tend to make the mistake of thinking of the present as being characteristic of what was and what will be. But consider the evolution of the concept of the "rights of the human being" and the right of privacy.

(a) The "Rights of the Human Being" Concept. Our belief in the American way of life and in the concepts on which our society or government is based should not obscure the fact that at one time there was no American way of life. While many religious leaders, philosophers, and poets spoke of the rights and dignity of people, rulers laughed at such pretensions and held people tightly in a society based on status. A noble had the rights of a noble. A warrior had the rights of a warrior. A slave had very few rights at all. In each case, the law saw only status; rights attached not to the human being but to the status.

In the course of time, serfdom displaced slavery in much of the Western world. Eventually feudalism disappeared and, with the end of the Thirty Years War, the modern nation-state began to emerge. Surely one might say that in such a "new order," a human being had legal rights. The person had rights, but not as a human being—only as a subject. Even when the English colonists settled in America, they brought with them not the rights of human beings but the rights of British subjects. Even when the colonies were within one year of war, the Second Continental Congress presented to King George III the Olive Branch Petition which beseeched the king to recognize the colonists' rights as English subjects. For almost a year the destiny of the colonies hung in the balance with the colonists unable to decide between remaining loyal to the Crown, seeking to obtain recognition of their rights as English subjects (a "status" recognition), or doing something else.

Finally, the ill-advised policies of George III and the eloquence of Thomas Paine's Common Sense tipped the scales and the colonies spoke on July 4, 1776, not in terms of the rights of English subjects but in terms of the rights of people existing independently of any government. Had the American Revolution been lost, the Declaration of Independence would have gone rattling down the corridors of time with many other failures. But the American Revolution was won, and the new government that was established was based upon "human beings" as the building blocks rather than upon "subjects." Rights of human beings replaced the concept of rights of subjects. With this transition, the obligations of a monarch to faithful subjects were replaced by the rights of human beings existing without regard to will or authority of any kind. Since then, America has been going through additional stages of determining what is embraced by the concept of "rights of human beings."

(b) The Right of Privacy. Today everyone recognizes that there is a right of privacy. Before 1890, however, this right did not exist in American law. Certainly those who wrote the Declaration of Independence and the Bill of Rights were conscious of

rights. How can we explain that the law did not recognize a right of privacy until a full century later?

The answer is that at a particular time people worry about the problems which face them. Note the extent of the fears and concern of the framers of the Bill of Rights. The Fourth Amendment states, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized." The people of 1790 were afraid of a recurrence of the days of George III.

The framers of the Fourth Amendment declared what we today would regard as a segment of privacy—protection from police invasion of privacy. The people of 1790 just were not concerned with invasion of privacy by a private person. While a snooping person could be prosecuted to some extent under a Peeping Tom statute, this was a criminal liability. The victim could not sue for damages for the invasion of privacy.

If we are honest with history, all that we can say is that modern people think highly of privacy and want it to be protected. And, knowing that the law is responsive to the wishes of society, we can also say that the right is protected by government. But note that we should go no further than to say that it is a right which society wishes to protect at the present time. If circumstances arise in our national life of such a nature that the general welfare is opposed to the right of privacy we can expect that the "right" of privacy will be limited or modified. For example, although the right of privacy prevents a bank from giving out information about a customer's bank account, the federal government, acting under a 1969 statute, can require such information to see if income taxes are due or if money has been paid or received in criminal transactions.[1]

§ 1:2. What Is the Law? The expression, "a law," is ordinarily used in connection with a statute enacted by a state legislature or the Congress of the United States, such as an act of the federal Congress to provide old-age benefits. However, the statutes enacted by legislative bodies are not the only source of law.

Constitutional law includes the constitutions in force in the particular area or territory. In each state, two constitutions are in force, the state constitution and the national constitution.

Statutory law includes statutes adopted by the lawmakers. Each state has its own legislature and the United States has the Congress, both of which enact laws. In addition, every city, county, or other subdivision has some power to adopt ordinances which, within their sphere of operation, have the same binding effect as legislative acts.

Of great importance are the *administrative regulations,* such as rules of the

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[1] United States v Bisceglia, 420 US 141 (1975). But see § 32:4(a) of this book.

Securities and Exchange Commission and the National Labor Relations Board. The regulations promulgated by national and state administrative agencies generally have the force of statute and are therefore part of "the law."

Law also includes principles that are expressed for the first time in court decisions. This is *case law.* For example, when a court decides a new question or problem, its decision becomes a *precedent* and stands as the law for that particular problem in the future. This rule that a court decision becomes a precedent to be followed in similar cases is the doctrine of *stare decisis.*

Law also includes treaties made by the United States, and proclamations and orders of the President of the United States or of other public officials.

§ 1:3. Uniform State Laws. To secure uniformity as far as possible, the National Conference of Commissioners on Uniform State Laws, composed of representatives from all the states, has drafted statutes on various subjects for adoption by the states. The best example of such laws is the Uniform Commercial Code (UCC).[2] The Code regulates the fields of sales of goods; commercial paper, such as checks; secured transactions in personal property; bulk transfers; and particular aspects of banking, letters of credit, warehouse receipts, bills of lading, and investment securities.

National uniformity has also been brought about in some areas of consumer protection by the adoption of the federal Consumer Credit Protection Act (CCPA), Title I of which is popularly known as the Truth in Lending Act.[3] A Uniform Consumer Credit Code (UCCC) has been proposed and is now before the states for adoption. To the extent that it is adopted, it will complement the Uniform Commercial Code.[4]

§ 1:4. Classifications of Law. Law is classified in many ways. For example, *substantive law,* which creates, defines, and regulates rights and liabilities, is contrasted with *procedural law,* which specifies the steps that must be followed in enforcing those rights and liabilities. Law may also be classified in terms of its origin, as coming from the Roman (or civil) law, the common law of England, or the law merchant. It may be classified

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[2] The Code has been adopted in every state except Louisiana. It has also been adopted in the Virgin Islands and for the District of Columbia. Louisiana has adopted Articles 1, 3, 4, 5, 7, and 8 of the Code. In 1972, a group of amendments to the Code was recommended. These have been adopted in Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oregon, Rhode Island, Texas, Utah, Virginia, West Virginia, and Wisconsin. The changes made by the 1972 amendments to the UCC are confined mainly to Article 9 on secured transactions. In 1977, Article 8 of the Code, relating to investment securities, was amended. This amended version has been adopted in Colorado, Connecticut, Minnesota, New York and West Virginia.

[3] 15 United States Code § 1601 et seq., and 18 USC § 891 et seq.

[4] As of January, 1983, the 1968 version of the Uniform Consumer Credit Code has been adopted in Colorado, Idaho, Indiana, Oklahoma, South Carolina, Utah, Wisconsin, and Wyoming. This earlier version, however, has been replaced by a 1974 version, which has been adopted in Iowa, Kansas, and Maine.

as to subject matter, such as the law of contracts, the law of real estate, and the law of wills.

B. AGENCIES FOR ENFORCEMENT OF LEGAL RIGHTS

Legal rights are meaningless unless they can be enforced. Government, therefore, provides a system by which the rights of the parties under the law can be determined and enforced. Generally the instrumentality of government by which this is accomplished is a court; the process involved is an action or a lawsuit. Administrative agencies have also been created to enforce law and to determine rights within certain areas. At the same time private agencies have developed as an out-of-court method of dispute determination.

§ 1:5. Courts. A *court* is a tribunal established by government to hear and decide matters properly brought before it, to give redress to the injured or enforce punishment against wrongdoers, and to prevent wrongs. A *court of record* is one in which the proceedings are preserved in an official record. In a *court not of record* the proceedings are not officially recorded.

Each court is empowered to decide certain types or classes of cases. This power is called *jurisdiction.* A court may have original or appellate jurisdiction, or both. A court with *original jurisdiction* has the authority to hear a controversy when it is first brought into court. A court having *appellate jurisdiction,* on the other hand, has authority to review the judgment of an inferior court.

The jurisdiction of a court may be general as distinguished from limited or special. A court having *general jurisdiction* has power to hear and decide all controversies involving legal rights and duties. A court of *limited* or *special jurisdiction* has authority to hear and decide only those cases that fall within a particular class, such as cases in which the amounts are below a specified sum.

Courts are frequently classified in terms of the nature of their jurisdiction. A *criminal court* is one that is established for the trial of crimes, which are regarded as offenses against the public. A *civil court,* on the other hand, is authorized to hear and decide issues involving private rights and duties and also noncriminal public matters. In like manner, courts are classified as equity courts, juvenile courts, probate courts, and courts of domestic relations, upon the basis of their limited jurisdiction.

Each court has inherent power to establish rules necessary to preserve order in the court or to transact the business of the court. An infraction of these rules or the disobedience to any other lawful order, as well as a willful act contrary to the dignity of the court or tending to pervert or obstruct justice, may be punished as *contempt of court.*

§ 1:6. Administrative Agencies. The difficulties of courts' administering laws regulating business,

labor, agriculture, public utilities, and other phases of the economy led Congress and the state legislatures to establish commissions or agencies of experts to make the rules and to pass upon violations of the rules. Thus we find the Interstate Commerce Commission regulating interstate commerce and passing upon whether conduct of a carrier is a violation of its regulations. The Commission is thus a lawmaker, an executive that enforces the law, and a court which interprets and applies the law. This is also true of the Civil Aeronautics Board, the Federal Trade Commission, the Securities and Exchange Commission, the National Labor Relations Board, and many other federal and state administrative agencies.

§ 1:7. Private Agencies. Because of the rising costs, delays, and complexities of litigation, business people often seek to resolve disputes out of court.

(a) Arbitration. By the use of *arbitration* a dispute is brought before one or more arbitrators (disinterested persons selected by the parties to the dispute) who make a decision which the parties have agreed to accept as final. This procedure first reached an extensive use in the field of commercial contracts. Parties to a contract which is to be in effect for some time may specify in the contract that any dispute shall be submitted to arbitrators to be selected by the parties. Arbitration today is encouraged as a means of avoiding expensive litigation and easing the workload of courts. Arbitration enables the parties to present the facts before the arbitrators who are trained experts and are familiar with the practices that form the background of the dispute.

A Uniform Arbitration Act has been adopted in a number of states.[5] Under this Act and similar statutes, the parties to a contract may agree in advance that all disputes arising thereunder will be submitted to arbitration. In some instances the contract will name the arbitrators for the duration of the contract.

(b) Reference to Third Person. An out-of-court determination of disputes under construction contracts is often made under a term of the contract that any dispute shall be referred to the architect in charge of the construction and that the architect's decision shall be final.

Increasingly, other types of transactions provide for a third person or a committee to decide rights of persons. Thus, employees and an employer may have agreed as a term of the employment contract that claims of employees under retirement and pension plans shall be decided by a designated board or committee. The seller and buyer may have selected a third person to determine the price to be paid for goods. Ordinarily the parties agree that the decision of such a third person or board shall

[5] The 1955 version of the Uniform Arbitration Act has been adopted in Alaska, Arizona, Arkansas, Colorado, Delaware, Idaho, Illinois, Indiana, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oklahoma, Pennsylvania, South Carolina, South Dakota, Texas, and Wyoming; and the District of Columbia. The earlier 1925 version of the Act is in force in Utah and Wisconsin.

be final and that no appeal or review may be had in any court. In most cases, the referral situation involves the determination of a particular fact in contrast to arbitration which seeks to end a dispute.

(c) Association Tribunals. Many disputes never reach the law courts because both parties to the dispute belong to a group or association and the tribunal created by the group or association disposes of the matter. Thus, a dispute between members of a labor union, a stockbrokers' exchange, or a church, may be heard by some board or committee within the association or group. Courts will review the action of such tribunals to determine that a fair and proper procedure was followed but generally the courts will not go any further and will not examine the facts of the case to see if the association tribunal reached the same conclusion that the court would have reached.

C. COURT ORGANIZATION

Courts in the United States are organized in two distinct systems: the federal courts and the state courts. Although created under separate governments, the methods of operation and organization of these two systems are similar.

§ 1:8. Personnel of Courts. Both the federal and state court systems require the assistance of many people. These include not only those in the direct employ of the court, but also those described as officers of the court and in many cases a jury as well.

(a) Officers of the Court. The *judge* is the primary officer of the court. A judge is either elected or appointed. *Attorneys* or counselors at law are also officers of the court. They are usually selected by the parties to the controversy—but in some cases by the judge—to present the issue of a case to the court.

The *clerk* of the court is appointed in some of the higher courts but is usually elected to office in the lower courts. The principal duties of the clerks are to enter cases upon the court calendar, to keep an accurate record of the proceedings, to attest the same, and, in some instances, to approve bail bonds and to compute the amount of costs involved.

The *sheriff* is the chief executive of a county. In addition to the duty of maintaining peace and order within the territorial limits of a county, the sheriff has many other duties in connection with the administration of justice in county courts of record: summoning witnesses, taking charge of the jury, preserving order in court, serving writs, carrying out judicial sales, and executing judgments. The *marshals* of the United States perform these duties in the federal courts. In county courts not of record, such as the courts of justices of the peace, these duties, when appropriate, are performed by a *constable.* Some of the duties of the sheriff are now performed by persons known as *court criers;* or by deputy sheriffs, known as *bailiffs.*

(b) The Jury. The *jury* is a body of citizens sworn by a court to try to determine by verdict the issues of fact submitted to them. A trial jury consists of not more than twelve persons. The first step in forming a jury is to make a *jury list.* This involves the preparation by the proper officers or board of a list of qualified persons from which a jury may be drawn.

A certain number of persons drawn from the jury list constitute the *jury panel.* A trial jury is selected from members of the panel.

§ 1:9. Federal Courts. The Supreme Court of the United States is the highest court in the federal system. The courts of appeals are intermediate courts. The district courts and special courts are the lower courts.

(a) Supreme Court of the United States. The Supreme Court is the only federal court expressly established by the Constitution. Congress is authorized by the Constitution to create other federal courts.

The Supreme Court has original jurisdiction in all cases affecting ambassadors, other public ministers, and consuls, and in those cases in which a state is a party. Except as regulated by Congress, it has appellate jurisdiction in all cases that may be brought into the federal courts in accordance with the terms of the Constitution. The Supreme Court also has appellate jurisdiction of certain cases that have been decided by the supreme courts of the states. Thousands of cases are filed with this court in a year.

(b) Courts of Appeals. The United States, including the District of Columbia, is divided into 12 judicial circuits. Each of the circuits has a court of appeals. These courts are courts of record.

A court of appeals has appellate jurisdiction only and is empowered to review the final decisions of the district courts, except in cases that may be taken directly to the Supreme Court. The decisions of the courts of appeals are final in most cases. An appeal may be taken on certain constitutional questions. Otherwise, review depends on the discretion of the Supreme Court and, in some cases, of the court of appeals.

(c) District Courts. The United States, including the District of Columbia, is divided into a number of judicial districts. Some states form a single district, whereas others are divided into two or more districts. District courts are also located in the territories.

The district courts have original jurisdiction in practically all cases that may be maintained in the federal courts. They are the trial courts for civil and criminal cases.

Civil cases that may be brought in these district courts are (a) civil suits brought by the United States; (b) actions brought by citizens of the same state claiming land under grants by different states; (c) proceedings under the bankruptcy, internal revenue, postal, copyright, and patent laws; (d) civil cases of admiralty and maritime

jurisdiction; (e) actions against national banking associations; (f) cases between citizens of different states or between citizens of one state and a foreign state involving $10,000 or more; and (g) cases that arise under the federal Constitution, or laws and treaties made thereunder.

(d) Other Federal Courts. In addition to the Supreme Court, the courts of appeals, and the district courts, the following tribunals have been created by Congress to determine other matters as indicated by their titles: Court of International Trade, Claims Court, Tax Court, Court of Military Appeals, and the territorial courts.

§ 1:10. State Courts. The system of courts in the various states is organized along lines similar to the federal court system, although differing in details, such as the number of courts, their names, and jurisdiction.

(a) State Supreme Court. The highest court in most states is known as the Supreme Court. In a few states it may have a different name, such as "Court of Appeals" in New York. The jurisdiction of a supreme court is ordinarily appellate, although in a few instances it is original. In some states the supreme court is required to render an opinion on certain questions that may be referred to it by the legislature or by the chief executive of the state. The decision of a state supreme court is final in all cases not involving the federal Constitution, laws, and treaties.

(b) Intermediate Courts. In some states, intermediate courts have original jurisdiction in a few cases but, in the main, they have appellate jurisdiction of cases removed for review from the county or district courts. They are known as superior, circuit, or district appellate courts. As a general rule, their decisions may be reviewed by the highest state court.

(c) County and District Courts. These courts of record have appellate jurisdiction of cases tried in the justice of the peace and police courts, as well as general original jurisdiction of criminal and civil cases. They also have jurisdiction of wills and guardianship matters, except when, as in some states, the jurisdiction of such cases has been given to special orphans', surrogate, or probate courts.

(d) Other State Courts. In addition to the foregoing, the following, which are ordinarily not courts of record, have jurisdiction as indicated by their titles: city or municipal courts, police courts, traffic courts, small claims courts, and justice of the peace courts.

D. COURT PROCEDURE

Detailed laws specify how, when, and where a legal dispute can be brought to court. These rules of procedure are necessary in order to achieve an orderly, fair

determination of litigation and in order to obtain, as far as humanly possible, the same decisions on the same facts. It is important to remember, however, that there is no uniform judicial procedure. While there are definite similarities, the law of each state may differ from that of the others. For the most part the uniform laws that have been adopted do not regulate matters of procedure.

§ 1:11. Steps in a Lawsuit. The following are the steps in a lawsuit. Not every step is taken in every suit. The facts of a case may be such that the case ends before every possible step is taken. The parties may not want to fight it out to the very end or to raise every possible point.

(a) Commencement of Action. An action is begun by filing a complaint with the clerk of the appropriate court. The complaint generally consists of a description of the acts complained of by the plaintiff and a request for some sort of reparation or relief.

(b) Service of Process. The defendant must be served with *process* (a writ, notice, or summons; or the complaint itself) to give notice that the action is pending and to subject the defendant to the power of the court.

(c) Pleadings. After process has been served on the defendant and the plaintiff has filed a complaint, the defendant must make some reply after receiving the complaint, generally within 15 or 20 days. If the defendant fails to do so, the plaintiff ordinarily wins the case by default.

Before answering the plaintiff's complaint, the defendant may make certain preliminary objections, such as that the action was brought in the wrong court or that service was not properly made. If the objection is sustained, the case may be ended, depending upon the nature of the objection, or the plaintiff may be allowed to correct the mistake if that is possible. The defendant may also raise the objection, sometimes called a *motion to dismiss* or *demurrer,* that even if the plaintiff's complaint is accepted as true, the plaintiff is still not entitled to any relief.

If the defendant makes an objection but the objection is overruled or dismissed, the defendant must file an *answer,* which either admits or denies some or all of the facts asserted by the plaintiff. For example, if the plaintiff declared that the defendant made a contract on a certain date, the defendant may either admit making the contract or deny having done so. An admission of having made the contract does not end the case, for the defendant may then be able to plead defenses, for example, that at a later date the plaintiff and defendant had agreed to set the contract aside.

Without regard to whether the defendant pleads such new matter, the defendant may generally assert a *counterclaim* or *cross complaint* against the plaintiff. Thus, the defendant may contend the plaintiff owes money or is liable for damages and that this liability should be offset against any claim which the plaintiff may have.

After the defendant files an answer, the plaintiff may generally file preliminary objections to the answer. Just as the defendant could raise objections, the plaintiff may, in certain instances, argue that a counterclaim raised by the defendant could