Review of Governmental Structure; Overview of Civil and Criminal Judicial Processes

Governmental Structure

Based on The Constitution. The Constitution consists of:

i. The Preamble
ii. Seven (7) Articles
iii. 27 Amendments
   a. The first 10 Amendments are known as the Bill of Rights

Three Branches of Government
All branches are coequal
a. Checks and balances
   i. Each branch acts in some way as a restraint on the other branches.
   ii. For our purposes, judicial oversight over the legislative branch is most significant.

Legislative Branch

i. Legislative Branch
   a. Article I
   b. Bicameral – Two Chambers
      1. House of Representatives
         i. 435 members
         ii. 6 non-voting members representing DC, Puerto Rico and the four other US territories
         iii. Divided among the 50 states in proportion to their total population
         iv. Elected every two years
         v. “Lower” house
      2. Senate
         i. 100 members
         ii. Two from every state

What does the Legislative Branch do?

1. Enact legislation (i.e. make new laws or change existing laws)
2. Also empowered to enact laws deemed "necessary and proper" for the execution of the powers given to any part of the government under the Constitution.
3. Establish annual budget for the government
4. Levies taxes and tariffs to provide funding for essential government services.
   a. Can authorize borrowing
   b. Can mandate spending on specific items, “earmarks”
   c. “Commerce Clause”
      i. Congress has the authority to regulate commerce with foreign Nations, and among the several States, and with the Indian Tribes."

5. Declare war
6. Confirm or reject many Presidential appointments (Senate only)
7. Ratify treaties (Senate only)
8. Substantial investigative powers.
   a. Hearings
   b. Impeach (House only)
   c. The Senate tries impeached parties

**Executive Branch**

ii. Executive Branch
   a. Article II
   b. The President
      1. Has three roles:
         i. Head of Government
         ii. Head of State
         iii. Commander in Chief

What does the Executive Branch do?

1. Executes and enforces laws passed by Congress
2. Appoints heads of federal agencies and the Cabinet
   a. The Cabinet consists of the heads of the 15 heads of the Executive departments
   b. The Cabinet and independent federal agencies are responsible for the day-to-day enforcement and administration of federal laws.
3. Vice President is also part of the Executive Branch
4. Executive branch can also generate laws, or rules, through various executive level administrative agencies.
   a. **These rules have the full force of law but only under the authority of laws enacted by Congress**
Judicial Branch

iii. Judicial Branch
   a. Article III
   b. Appointed by the President, confirmed by the Senate
   c. Congress has significant discretion to determine the shape and structure of the federal judiciary.
      1. Even the number of Supreme Court Justices is left to Congress
      2. At times there have been as few as six, while the current number (nine, with one Chief Justice and eight Associate Justices) has only been in place since 1869.
   d. The Constitution also grants Congress the power to establish courts inferior to the Supreme Court.
      1. To that end, Congress has established:
         i. 94 United States District Courts, which try most federal cases, and
         ii. 13 United States Courts of Appeals, which review appealed district court cases.
      2. The courts only try actual cases and controversies
         i. A party must show that it has been harmed in order to bring suit in court.

What does the Judicial Branch do?

1. Sole power to interpret the law
2. Sole power to determine the constitutionality of the law and to apply to individual cases
   a. The inferior courts are constrained by the decisions of the Supreme Court — once the Supreme Court interprets a law, inferior courts must apply the Supreme Court’s interpretation to the facts of a particular case.
   b. Stare decisis
      i. A legal principle by which by which judges are obliged to respect the precedent established by prior decisions (previously settled matters).

What is Federalism?

i. The relationship among the states and the relationship between the states and the federal government
ii. The federal government is a government of limited powers, which are prescribed by the U.S. Constitution.
   a. The states retain all powers not expressly left exclusively to the federal government.

iii. The American legal system is based around a system of federalism.
   a. This results in a dual court system:
      i. State
      ii. Federal
   b. State and Federal courts hear different kinds of cases.
      i. However, state courts can hear anything not expressly or implicitly reserved exclusively for federal courts.

iv. Typical Federal and State Court structure:
   a. Three-tier structure is most typical.
   b. Three-tier structure:
      i. Lower court – Fact-finding
      ii. Intermediate court – Appeals from lower court
      iii. High Court – Appeals from intermediate court

What is Common Law?

Common law is any of the following:
   i. Common law vs. Civil law
      a. The American system, a “common law” system relies heavily on court precedent in formal adjudications
         i. What is precedent?
            1. Precedent is a decided case that furnishes a basis for determining later cases involving similar facts or issues
      b. Civil law systems rely less on court precedent and more on codes, which explicitly provide rules of decision for many specific disputes.
   ii. Common law may also refer to "judge made" law, otherwise known as case law
      a. Note that this is different from “enacted” or “statutory law” (based on a statute).
      b. However, sometimes judge-made law is codified into a statute.

What is Civil Litigation?

Civil litigation involves disputes between or among parties over virtually any matter that is not governed by an administrative body. Civil litigation is also to be distinguished from criminal litigation.

What is the process a civil litigation follows?
1) Must decide on jurisdiction and venue
   a. Jurisdiction refers to the type of court which will have jurisdiction to review the action at hand
      I. Translated it means does this court have the authority to hear this case?
   b. Venue refers to the place in which the case can be brought

2) Complaint is filed by plaintiff against defendant
   I. Plaintiff sometimes noted with a “P” or Π
   II. Defendant sometimes noted with a “D” or Δ
   b. Complaint commences lawsuit
   c. Identifies parties
   d. Establishes jurisdiction and venue
   e. Identifies causes of action
   f. Requests specific relief

3) Summons is drafted
   a. Order by the court clerk made upon the filing of the complaint
   b. Requires response by defendant

4) Service
   a. Complaint and summons must be delivered to other party or parties to lawsuit
   b. Serving party must provide a certificate of service in which the fact and manner of service are identified

5) Answer
   a. Filed by defendant in response to complaint
   b. Responds in order to each allegation in complaint
   c. Must include all affirmative defenses (statute of limitations, lack of personal jurisdiction, etc.)
   d. May include counterclaim and/or cross-claim
      I. Counterclaim is against an opposing party
         1. Typically defendant against plaintiff
      II. Cross-claim is a claim by one party against a co-party arising out of the same transaction or subject matter of the original action or any counterclaim thereto
         1. Typically defendant against defendant
   e. The defendant may file a motion to dismiss in lieu of a traditional answer

5a) Reply
   a. Required if the answer contains a counterclaim
   b. Reply may also be made with permission of the court

5b) Intervention
   a. Process by which interested person not named lawsuit seeks court order allowing his/her/its participation
b. Normally, intervenors may not introduce into the proceedings issues not raised by the principal parties

6) Discovery
   a. Fact-gathering process
   b. Engaged in by all parties

6a) Motion for Summary Judgment
   I. Once facts are known (i.e. through discovery process), either party can file a motion for summary judgment.
   II. Party moving for this judgment is arguing no reasonable jury could find for opposing (non-moving) party.
   III. If moving party wins complete motion for summary judgment, the case is over.

6b) Other pre-trial motions may be filed at this time
   a. Parties seeking relief file a motion
   b. Parties answering the motion file a response or an answer

6c) Settlement
   a. Parties may attempt to resolve dispute outside of court
   b. Discovery can help parties analyze the relative strength of their cases, which may ultimately assist in the development of a settlement
   c. According to a 2008 NY Times story, 80-92% of cases settle before going to trial.

If the suit is not dismissed, summary motion is not granted or the parties do not elect to settle, the case moves forward...

7) Voir Dire
   a. Questioning/selection of prospective jurors
   b. Counsel may challenge a juror “for cause” (e.g. juror knows a party) or under a “peremptory challenge” under which counsel need not specify the nature of the objection
      i. Cannot challenge on the basis of race or gender

8) Trial
   a. Once jurors are selected, case goes to trial
   b. At trial, evidence is presented to finder of fact
      I. Most of the time finder of fact is the jury, other times if parties agree it can be the judge

Structure of trial:
   i. Counsels will make opening and closing arguments
ii. Evidence presented first by plaintiff, then by defendant, with a rebuttal by plaintiff.

iii. Witnesses are called

At the end of the trial phase, one of the parties can move (i.e. file a motion) that judgment be granted as a matter of law (formerly Judgment Notwithstanding the Verdict):

i. What does it mean?
   a. There is no legally sufficient evidence for a reasonable jury to find for the non-moving party.
   b. Motion can also be made after the verdict is rendered.
   c. Very rarely granted.

9) Jury Charge
   a. Instructions by Court to guide jury deliberations
   b. Judge presents the law which the jury is to apply to the facts
   c. In advance of the jury charge, parties submit proposed instructions

10) Verdict

11) Appeals
   a. Aggrieved party may seek appeal to higher level court
      I. Appeals based on alleged error of law – appeals courts will not review factual issues
         1. However, an appellate court may reverse or remand (i.e. send back) incorrect district court or agency determinations of fact if they are so egregious as to amount to an abuse of discretion.
      II. Statutes and court rules govern the taking of appeals

What is the Criminal Judicial Process?

Two Phases – Investigatory and Adjudicatory
   a. Investigatory phase
      i. The primary actors in this phase are police officers and those people the police officers suspect of criminal activity.
      ii. “Cops and (alleged) robbers”
   b. Adjudicatory phase
      i. Begins when the government commits itself to bringing a suspect to trial for his/her alleged conduct.
ii. In this stage, the primary actors are the prosecutors, defense lawyers and judges – who participate in the adversarial judicial system

iii. “Bail to (maybe) jail”

Investigatory phase

a. Begins when a police officer, on the basis of her own observations and/or those of an informant, comes to believe that criminal activity may be afoot or has already occurred.
   i. Search and seizure
      1. Police officers usually search and seize persons and property during the investigatory phase
      2. Searches and seizures occur in an almost infinite variety of ways
      3. 4th Amendment of the Constitution prohibits unreasonable searches and seizures.

ii. Interrogation
   1. Police also interrogate suspects and witnesses during criminal investigations
   2. May trigger constitutional questions

iii. Identification Procedures
   1. The police also conduct lineups, show witnesses photographs of potential suspects, take handwriting and voice exemplars and conduct other identification procedures.

iv. Arrest
   1. Assuming that a criminal investigation results in a police determination that there is probable cause to believe that the suspect committed a crime, she may be arrested.
   2. Upon arrest, the suspects is usually searched and taken to the police station or to a jail, where she is:
      a. Booked, i.e. her name is logged in an arrest book or on a computer
      b. Photographed
      c. Fingerprinted
      d. More fully searched
      e. Typically any personal belongings found on his/her person are inventoried and placed in custody for safekeeping

Adjudicatory Stage

v. Complaint
1. After a suspect is arrested and booked, a complaint is prepared by the police or a prosecutor and is filed with court
   a. A complaint is a written statement of the essential facts constituting the offense charged.

v.ii. Probable Cause Hearing

The police may not constitutionally arrest a person unless they have probable cause to believe:
   i. A crime has occurred AND
   ii. The suspect committed it.

The Supreme Court has held that whenever practicable, a probable cause determination should be made by a neutral and detached magistrate.

1. This hearing is not required if the police apply for an arrest warrant
2. However, when the police arrest a suspect without an arrest warrant – the vast majority of cases – a prior judicial determination of probable cause is lacking.
   a. Consequently, following a warrantless arrest, the Fourth amendment requires a prompt judicial determination of probably cause be made as a precondition to any extended restraint of the arrestee’s liberty.
   b. This typically occurs at the first appearance (see below)

vi. First appearance before the Magistrate
1. Arrested person must be taken “without unnecessary delay” (usually within 24 hours except on weekends) before a judicial hearing
   a. This hearing is known by a variety of names:
      i. Initial arraignment
      ii. Arraignment on a warrant
      iii. Arraignment on a complaint
      iv. First/Initial appearance
2. At the hearing the arrestee receives formal notice of the following:
   a. The charges against her
   b. Her constitutional rights in the impending prosecution
   c. Date is set for a preliminary hearing
   d. If the suspect is indigent and not presently represented by counsel, a lawyer may be appointed for him/her at this time.
   e. Whether the arrestee should be set free on her own recognizance, released on bail or detained pending further proceedings

vii. Preliminary Hearing
   1. In most jurisdictions, a preliminary hearing (or “preliminary examination”) is held within two weeks after the arrestee’s initial appearance before the magistrate
   2. The primary purpose of this hearing is to determine whether there is probable cause to believe that a criminal offense has occurred and that the arrestee committed it.
   3. There are two different approaches to the preliminary hearing
      i. Information vs. Indictment Jurisdictions

viii. Arraignment
   1. If an indictment or information is filed, the defendant is arraigned in open court.
   2. At the arraignment, the accused is provided with a copy of the indictment after which she enters a plea to the offenses charged in it:
      a. Options:
         i. Guilty
         ii. Not Guilty
         iii. Nolo Contendere (i.e. No Contest)
         iv. Not Guilty by Reason of Insanity (some states)

ix. Pretrial Motions
   1. Defendant may make defenses, objections and requests at this point.
   2. Depending upon motion (and whether motion is granted) could possibly result in dismissal of charges

x. Trial
   1. If defendant does not plead guilty and charges are not dismissed, a trial is held.
      a. Depending upon nature of charge, can be jury or non-jury, i.e. “bench” trial (only judge presiding).
2. Defendant has a number of rights
   a. Right to employ counsel at trial
   b. Defendant may call witnesses on her behalf
   c. Confront and cross-examine witnesses who testify against her
   d. Defendant is not required to testify against herself

xi. Sentencing
   1. If defendant is convicted after a trial or if defendant pleads guilty, the judge must impose a sentence.

xii. Appeal
   1. If defendant is acquitted by the jury or judge (in a bench trial), government is barred by Double Jeopardy clause from appealing the acquittal
   2. If defendant is convicted, she has no constitutional right to appeal her conviction
      a. However, all jurisdictions statutorily permit a convicted defendant to appeal a conviction after trial