

UVA LAW | Overview of the American Legal System and the Life of a Case (2019)

TOBY HEYTENS: So as you can see, my job is in the next 15 minutes or so to give you an introduction to the entire United States legal system. This will of necessity be an introduction. And actually there's something useful to say about that before we jump in. I am having the weird experience of realizing that my first day of law school, I was sitting where you are all sitting in this room. And I was someone who did not have lawyers in my family.

I have a cousin who's younger than me who is a lawyer now, but when I was in your position, I had no lawyers whatsoever in my family. And I knew some things, and some of what I'm about to talk with you about this morning 1L me would have known. But I can now say this with the safety of many years in the past, 1L me definitely would not have known some of this. So to the extent that I'm saying some things that you already know, super for you, great, good job. To the extent that I'm saying some things you don't know, that's fine.

In fact, my assumption is that at least some of these things, at least some, if not many of you will not know. And that's the whole reason for doing this, is to make sure that everybody knows these things. And this is not your one and only chance to hear these things. I think virtually everything I'm going to tell you today you will hear again in a class. So it's not like, oh my god, if I forget something he said, I'm doomed. The goal is to sort of start with the intro to make sure that everybody has the same basic information and then build out on that throughout the next week, month, semester, year, and three years.

OK, so we're going to talk about three basic topics today. We're going to talk about types of law. We're going to talk about types of courts. And we're going to talk about the life cycle of a case. So three things, types of law, types of courts, and the life cycle of a case.

So let's start with types of law. So on one hand, this seems maybe obvious, but one of the things that's going-- but this is something that may not emerge cleanly in any of your classes. It might emerge cleanly in more than one of them, is that there are different types of law. And the sort of fundamental principle here, sources, form-- sorry, sources, forms and hierarchy. So now we're going to talk about types of law, the sources of law, the forms of law, and the hierarchy of law.

So when we start with sources, on one hand, it seems maybe obvious, but this is the big picture. Like I have a lot of stuff here today, but I have like six things, that if you remember nothing else, you should remember those. And the one that I'm about to say is one of these because you can get really wrapped around the axle if you forget this one. Which is-- this is really slow.

Law requires a law giver, right. And so you're going to encounter a famous case called *Erie Railroad versus Tompkins* in civil procedure. This isn't necessarily how we used to think about it. We used to perhaps think that law was something that was sort of out there or was inherent, or was natural or could be deduced from first principles. But the modern United States legal system is based emphatically on the notion that the existence of law requires a law giver. Requires someone or something with the ability to create law.

There's a famous dissent by Justice Oliver Wendell Holmes where he says that the law is not a brooding omnipresence in the sky. If there is a law, there is behind that law a law giver. And in the United States there are fundamentally two and only two law givers. One is the federal government. And one is the state governments.

Fundamentally, anything that we're talking about in the United States as law is going to derive either from the federal government or the state government. Now some of you might be thinking, but what about local government? Great question, I'll answer the question that one of you asked. What about local government?

This is sort of a high level conceptual point, because of course cities and municipalities enact ordinances and laws, but at least the way our federal system currently works, their authority to do so ultimately comes from the states. To the extent that the city of Charlottesville enacts a law, it is because the state or the Commonwealth of Virginia has given the city of Charlottesville the ability to enact a law. So the ultimate source of that law is the state government or the federal government.

So that's a really important conception if we're talking about law, as opposed to ethics, as opposed to morality, as opposed to rules for how we should live our lives in general. If we're talking about something called law, it's coming from some law giver. And in the United States legal system, there are two and only two ultimate law givers.

OK, so now we're going to talk about forms. Law takes different forms. And one of the things that you're going to be doing throughout the first year curriculum is identifying or dealing with the different forms of law. Now different classes will focus maybe more on one of these forms and less on other. Some of these classes won't talk about some of these forms at all. But it's useful to sort of get on the board at least the list of the forms of this thing that we call law can take.

So obviously the first one is constitutions, right. Both the federal government and every state has a constitution, right. This is a written instrument that is the highest form of law within that particular jurisdiction, and the federal government and every state of the union has a constitution. So that's one form of law. You'll obviously be talking about this primarily in constitutional law when you take it in the spring, but it will pop up here and there throughout the classes that you take in the fall as well.

My class, my fall 1L class has been civil procedure. You'll be talking about the due process clause in civil procedure. It may-- it's going to show up perhaps occasionally in criminal law. Although mostly for the proposition that when it comes to the content of the criminal law, the US constitution imposes very few limits, but there are some outer limits. And so you'll encounter it in criminal law a little bit as well, probably less so in torts and in contracts.

So then there are treaties, right. So treaties are international agreements between sovereigns, between usually the United States and one or more other countries. Under our system though, treaties are a form of federal law. So the reason that treaties are legally operative within the United States legal system is because treaties sort of operationalize as federal law within the confines of the United States. Treaties are a federal only thing, right.

One of the very many things you'll talk about in constitutional law, one of the things that the federal constitution was designed to do was to prevent the states from conducting their own foreign policies. And so one of the things there is that only the federal government, of the two sovereigns, the federal and state, only the federal government can enter into treaties. State governments cannot enter into treaties.

The next category you'll see is legislation or statute. So here is confession number one. When I started law school, I almost certainly did not know what a statute was. A statute is just another word for legislation. It is a form of law enacted by the legislative body of the law giver.

So the things enacted by the United States Congress are statutes, the things enacted by the legislature of Virginia are statutes. Statutory law is just a form of law enacted by the legislative body of the relevant sovereign, we also call that legislation. Which is easier because it has the word legis in it, which reminds you what it is. And in our system, both the federal and state governments enact legislation.

You'll be encountering legislation in the first year curriculum probably mostly in criminal law. You may encounter it some in contracts depending on whether your contracts class talks about the Uniform Commercial Code, which most of them probably do. But that's statutory law. Now there's a subset of this.

Some of you have encountered regulations, right. Enacted by administrative agencies, or rules promulgated by court. So for example, every court or almost every court that I'm aware of has rules of court. That are the sort of rule. There are things like filing deadlines, and procedural things.

This is compressing a lot, but ultimately the authority for legislate-- excuse me, for regulations and for rules, almost always derives ultimately from legislation, that there is legislation. So when the Environmental Protection Agency issues a regulation, formally speaking, usually what happened is there is legislation that creates the EPA that gives the EPA certain powers and that includes the ability of EPA to promulgate the regulations. But the ultimate source of authority for that regulation is the statute that gives the EPA the authority to create that regulation, same thing with courts. That there are frequently either the Constitution or legislation confers upon courts to create rules governing their own procedure. But the ultimate source of authority for those rules is either the Constitution or legislation.

OK, now there's this last one, which was probably the most mysterious to me when I started law school. Again, fair

confession, when I started law school, if someone said to me common law, I would have had very little idea what that was. I would have probably thought it had something to do with England. And it does, I mean it's not completely wrong that it has nothing to do with England. But common law is just another way of expressing the process of law making by courts in the course of adjudicating cases. That when courts decide cases, they announce principles, both to decide that case and that will govern future cases.

So for example, if a court says, if one person sues another person for a car accident, and one person sort of rear ended the other. And the court said, you know, basically you shouldn't be trailing people so close that if they brake, you end up rear ending their car. And if you do, it's just categorically your fault legally, right.

If one person's car rear ends another person's car, the person who was in the trailing car is just automatically responsible. And the court says that, well that's a form of common law. And so not only will that rule decide that case, that rule will apply in future cases. And so when we say common law, really, all we mean is law that is created by judges as opposed to by legislators, and doing so in the course of deciding cases. That's just what we mean by common law.

You will encounter a lot of common law in torts because you'll learn that some types of law are almost entirely common law. Historically, the law of torts has been almost entirely judge-made common law. The law of contracts has been largely judge-made common law. In contrast, there is sort of no common law civil procedure, and as you'll learn in criminal law, there is basically no criminal-- there's no common law of crimes.

In fact, one of the US Supreme Court's sort of initial decisions was to say that there is no federal common law of crimes. If you are going to be prosecuted by the federal government for committing a crime, it has to be based in a statute. You can't-- there is no, as the court will say, there is no federal common law of crime. OK, so those are the forms. Constitutions, treaties, legislation, common law.

So now we're going to talk about the hierarchy. And there's obviously a lot that goes into the hierarchy. I'm going to give you some big picture principles about hierarchy here. These are not, you know, by any means exhaustive. You'll spend a lot of time in classes talking about them. But there's a few big picture things that will help you, some rules of the road that'll help you.

So the first rule, federal beats state. We have a federal system, that our federal system is very clear that in our federal system, federal law is supreme over state law. So as long as the federal law is valid, that's an important caveat. But as long as the federal law is a valid federal law, it automatically takes precedence over any other state law. And the place that we know that is the federal constitution has a provision called the supremacy clause that says that.

That says this Constitution, treaties-- I'm never going to be able to quote the supremacy clause, I don't know why I just started to try. You ever do that? You start talking, and then you realize I can't finish the sentence. So it basically says valid federal law always supersedes state law. And it's important to realize it's not just of the similar types, any valid federal law supersedes any state law.

So for example, federal legislation supersedes state constitutions. It's at every single level, if there is a federal law that applies to this situation and it is valid, it supersedes state law. Which means the action will be, when it comes to a conflict between federal and state law, the argument will be either, well the federal law doesn't actually apply here, so state law still governs right. If you're trying to argue that state law still governs notwithstanding the existence of federal law, you can't say state law beats federal law. So your two options are going to be to say one, I know it looks like the federal law applies here, but it doesn't.

The federal law doesn't apply here, and because the federal law doesn't apply here, we still apply state law. The other option is to argue that the federal law is invalid somehow. That it violates the Constitution, that it exceeds the authority of Congress or the president under the federal constitution. And because the federal law is invalid, the state law still functions as well. But federal over state.

The other one, again you'll encounter this in constitutional law. This is in some ways what *Marbury versus Madison* is about, which may be the first case you encounter in constitutional law. But the idea here is that the Constitution always beats statutes. That a statute that violates the Constitution, the Constitution wins. And that is uniformly true at the state level too, right. Because states have both constitutions and statutes, and the principle is constitutions beat statutes.

And then the third one is that constitutions and statutes both beat the common law, right. The idea here is that judge-made law is perhaps the backstop. It's the law that judges apply in the absence of a constitutional rule or a statutory rule. But it also means that it can be superseded by statute. So if judges announce a rule and it says, you know the rule that I just gave you about, if two cars get in an accident, the trailing car is always responsible.

There's nothing that says the legislature can't enact a statute, legislation that says that's not the rule anymore. We don't want that to be the rule. Maybe the rule is-- I mean, it would be hard to imagine that you would do the rule that says the car in front is always at fault because that would seem to be a really stupid rule. But you could say, you know, we think the courts were sort of onto something in the sense that perhaps most often it's the fault of the trailing car, but we think they went too far in saying it is always the fault of the trailing car and no other factors could ever be relevant.

So we say going forward it is a factor that it was the trailing car, but that does not in and of itself dictate the outcome that the court said that it did. So the common law is always sort of tentative and always preliminary, not

just because the courts could change their mind, but because the legislature could come in and change their mind and say, well, we don't want that to be the rule anymore. So the hierarchy, federal over state, constitutions over statutes, and constitutions and statutes over the common law.

OK, so that's just types of law. Big picture stuff, very, very big picture. We're going to be similarly big picture about types of courts. Now I want to preface this by saying this is a place in which the US legal system is deeply atypical, and one could even argue deeply strange.

There is stuff in this part that I definitely would not have known when I was sitting where you are. So, if you, again, same caveats, if you know everything I'm about to say, good for you. Gold star or something. And if you don't know some of it, that's fine. That's the whole reason we're here.

OK, so one of the distinctions you're going to encounter right out of the bat is the distinction between trial courts or appellate courts, or as we call it in some other legal systems, courts of first instance versus courts of second instance. So every-- not every, not actually quite true. Virtually every dispute that makes its way into court starts out in a trial court. Not all, but the vast majority. The vast majority of disputes that make their way to courts start out in a trial court.

A trial court is the court that you see on television and movies the vast majority of the time. Because it turns out appellate proceedings are really boring to dramatize, which is why you rarely see them. This is where you have juries, right. This is where you have opening statements, this is where you have closing arguments, this is where you have witnesses, this is where we introduce exhibits and evidence. The trial courts are the courts where all of that happens. And they make the first decision in the vast majority of cases.

And here's the thing to know, the vast majority of cases, trial courts not only make the first decision, they make the last decision. Because the vast majority of cases never get past a trial court. The reason I say that is that this is one of the ways in which the way that American legal education works is deeply misleading. Because what you're going to spend the next three years doing is reading and encountering mostly decisions of appellate courts, which could create the impression that appellate courts are the norm or the important courts. But in the vast majority of disputes, that's not true.

The vast, vast, vast majority of courts never get past the trial courts, and thus never get to the appellate courts. The appellate courts, we don't call witnesses. There is no jury. This is lawyers arguing to judges, and it's mostly written arguments.

Lawyers are filing briefs that are read by judges, sometimes there are oral arguments but they are usually 15 to 20 minutes long. So that is the first important distinction that we're going to see here. And there's a lot about the

relationship between trial and appellate courts that we won't go into here. But that's just one distinction, is this a trial court or is it an appellate court.

The other thing, this is the place that the US legal system is deeply, deeply atypical. Is that in the United States we have 51 separate judicial systems. And what do I mean by that? So every state has its own courts. All 50 US states have their own courts.

The court, so let's just take Virginia, Virginia has a system of state courts. And those courts are called circuit courts and district courts and the Court of Appeals and the Supreme Court of Virginia, right. And those are spread all throughout Virginia. And every other state has the same thing.

So that's basically what it looks like. What you always have, is you have a series of trial courts all over the state feeding usually to one or more state intermediate appellate courts, feeding to a state high court, which is usually, but not always called the State Supreme Court. The highest-- the highest court of every state is not called the Supreme Court, in Virginia it is, and it is in most states but not in all states, OK.

Those decisions of the state high court are in turn reviewed by the US Supreme Court, which is created by Article III of the federal constitution, right. OK, so this is a fairly normal system. You could imagine a judicial system that just looks like this, right. That you have political subdivisions, those political subdivisions have their own courts, they all feed to the single national court. This is extraordinarily dangerous-- I'm about to say something about another legal system that I know dangerously little about, but is broadly speaking, this is my understanding how Canada's courts basically work.

If I'm wrong about that, any Canadians in the room, sorry. But that's broadly how I understand how it works. So or for example, it's like this. You have every state has its own courts whose high court decisions are in turn reviewable by the US Supreme Court. This is how I basically think the Canadian judicial system works. But we do something a little bit different and a lot weirder.

So it's not only true that every state in the United States has its own courts, every state in the United States actually has two parallel sets of courts existing in the same state. Every state in the United States has both state and federal courts within the same state. So what you actually have is something like this. This is-- and this is true in every single state, right. In every single state you have a parallel network of state trial courts that feed to a state Supreme Court, that in turn feed to the US Supreme Court. And in the very same state you have federal trial courts, which are called district courts.

United States district courts are the federal trial courts, which are themselves reviewable by a federal court of appeals, which we call the United States Courts of Appeals. Which in turn feed to the US Supreme Court. But

notice these two systems don't converge until you get to the US Supreme Court, which means that neither-- on both sides of that, these courts are not in each other's chain of command, right. This creates a certain amount of inherent tension, so the federal courts of appeals and the state supreme courts are both subject to the US Supreme Court, but they're not reviewable by each other, which can create a fair amount of tension. We've actually had a surprising amount of that in Virginia in the last few years.

So the courts of appeals are also the courts that people sometimes call circuit courts, right. When you encounter, you know, the circuit court of appeals for the something-something, right. So their formal name is the United States-- so the court of appeals of this jurisdiction, its official name is the United States Court of Appeals for the Fourth Circuit. It doesn't actually have the words circuit anywhere in its official name, but when people talk about a federal circuit court, they're talking about a United States court of appeals.

I'm going to show you a map of the circuits and help you realize something that I didn't realize until I was years out of law school. So here we go. So they are numbered circuits. So this map makes a lot more sense if I give you two facts that help explain the bizarre numbering, right. Because on one hand it seems like it sort of makes sense, but then why is 11 in the bottom right and why is 10 in the middle?

OK, so I want you to go back to a simpler time. In a simpler time, there were only nine circuits. There were 1 through 9. And the way to understand the reason they look the way they do right now is that the former 5th circuit encompassed the former-- the current 11th. So the current 11th used to be part of the 5th, and the 10th used to be part of the 9th.

And that map all of a sudden makes a lot more sense if the 11th was part of the 5th, and if the 10th was part of the 9th, right. Because then you basically sort of start in the upper right hand corner and you'd work your way down the eastern seaboard, and you go one, two, three, four, five. And then you go six, and then you go seven, then you go eight, and then you go nine. So the geography would basically make sense.

The reason the numbering looks like this is there were two splits. I don't remember when the 10th circuit was carved out of the 9th, I think that was a fairly long time ago, which is why it's the 10th, not the 11th. The 11th wasn't carved out of the 5th until 1981. So then the question is, why is that the 11th and why is that the 5th? The reason for that I think I've been able to determine is that the main home courthouse of the 5th circuit is in Louisiana, it's in New Orleans.

And so my suspicion is that when they decided to split the 5th circuit into two circuits, they didn't want to move the home courthouse of the former 5th circuit out of the 5th circuit, or Texas just didn't want to be in the 11th Circuit. One of those two things. But these are the federal courts of appeals, they're broadly-- as you can see, we are in the 4th circuit here, which is Maryland, West Virginia, Virginia, North Carolina, and South Carolina.

One of the nice things about work-- so the home city or courthouse of the 4th circuit is in Virginia, it's actually like two blocks from my office in Richmond. Which is a really nice perk, having the court-- one of the courts that you argue before at with some regularity be two blocks from your office. I highly recommend it if you can arrange it. So those are the circuits. OK, moving on.

If you remember nothing else, I have like three big things here when we're talking about types of courts. If you remember nothing else, and the reason these are if you remember nothing else, as a person who's taught classes involving these things for years, people often find these not intuitive. Many, many, many cases can be heard by more than one court.

You could imagine a legal system where a given dispute can be heard by one and only one court. So if you and I get in a car accident, you could imagine a legal system that says there is one and only one right place that that car accident gets litigated. Or if you and I have a breach in-- a breach of contract action, we could imagine a world where there is one and only one court. Or if I want to sue someone for violating my rights under the federal employment discrimination clause, a federal employment discrimination legislation, you could imagine a system that says there's one and only one place that suit can be brought.

That is not the system we have. I would actually say that most disputes can be heard in more than one court. So that's a really important thing to realize, you're going to spend a lot of time on this in a variety of classes, is talking about what court can hear what disputes. Because it's also true of state to state, state to federal, as in many disputes could be heard in the courts-- I'm not just talking about different courts within the same state. I mean many disputes could be heard in the courts of more than one state.

Let me give you a really easy example, probably. If two people from two different states enter into a contract and there's an allegation that one of them breaches, there's a very good chance that both of their home states could hear that lawsuit. It's also the case that many disputes can also be brought in state court or federal court. That's going to give you something that I'm going to do at the very end of this. But there are many disputes, you could also imagine a world in which state courts hear state law, and federal courts hear federal law. That is not the rule we have either.

In fact, presumptively state courts can and must hear federal law, and federal courts can and do hear issues of state law. But it's also the case that no court can hear everything. Every court has limits on the cases that they can hear. So one of the things you're going to spend a lot of time about in different classes is talking about what courts can and what courts can't hear a given dispute. So that's an important thing, every court-- most disputes can be heard in more than one court, but no court can hear every dispute, so we spend an awful lot of time trying to figure out what courts can hear what disputes.

But this is the other one that I think people often find very difficult. You could imagine a world in which state courts apply state law and federal courts apply federal law. That's not true either. State courts apply state and federal law, and federal courts apply state law and federal law. So in other words, just because-- and last thing, some state courts will apply the laws of other states. In other words, you could imagine a dispute that is brought in Virginia State Court, that is governed by North Carolina law. You could imagine a dispute that is brought in New York State Court that is governed by the laws of North Dakota.

Now we're not going to get into how and why that would happen, but it's important to recognize from the outset that it's not. Because it's really easy to assume that courts necessarily apply the law of their own jurisdiction, and that's not necessarily true. Which is why there's an entire class in law school called choice of law about how courts go about figuring out what law to apply. You'll also encounter this in civil procedure. So courts can hear-- most disputes can be heard in more than one court, no court can hear every dispute, and courts don't always apply their own law.

That's the big picture takeaway on the type of courts. The big picture takeaway is that the judicial system of the United States is complicated. It is probably unnecessarily complicated, but here we are. OK, so that's that.

So now what we're going to do is we're going to talk big picture, broadly speaking about the life of a case, with apologies in advance to your criminal law class. This is probably going to be more focused on the life cycle of a civil case, but I will try to remember to occasionally say things about criminal cases as well. So we're going to talk, again, very big picture about the life cycle of a case from beginning to end. You're going to spend a lot of time in civ pro about this, but it will also come up throughout your other classes as well.

So commencement, we have to begin the case. The process of initiating the case. Pretrial, we'll talk a lot more about what that means. Trial, appeal, that's how cases get from trial courts to appellate courts. And preclusion, which is just a term we'll talk about.

But preclusion basically means OK, so our case is over, what does that mean going forward? What are the consequences of that case going forward out into the world, right. OK, so real quick, commencement, this is sticky.

OK, so broadly speaking, we have to do two things to commence a case. And you're going to spend a lot of time in civ pro on this. Broadly speaking, you got to do two things. One, you have to file the case with the court. You have to do something to initiate litigation in the court. Now in civil cases this is called a complaint. The complaint is the document that you file with the court that initiates litigation.

In criminal law, this is usually something called an indictment, or an information, and you'll get into what the difference an indictment and information is. But what these all have in common, this is the document that initiates the case. And one of the things that you're going to spend time on in various classes is the contents of the document that initiates the case. What has to be in it, what can't be in it, what is the role of the document that initiates the case, right.

The other thing we have to do is that, broadly speaking, every dispute has a defendant, right. There's the-- the prosecution, the plaintiff, the this, that. But one thing that virtually every piece of litigation has in common is that has at least one person who we call the defendant. And since the defendant is the person who is at the risk of having something bad happen to them, right, going to jail, paying money, being ordered to do or not do something. One of the things that you'll see, one of the sort of ultimate bases-- one of the ultimate fundamentals of due process is that if the legal system is contemplating doing something bad to someone, restricting their liberty or rights in some way, we probably should tell them, right.

We should probably tell them that we're contemplating doing something bad to them. And so one of things you'll encounter in various classes is the rules governing, notifying the defendant, and making the defendant aware of the things that-- so literally notifying them in the sense of someone is suing you. But also going one step further off it and saying someone is suing you, they're suing you for x, they're asking for y, and if you don't do anything the consequences will be z, right. The process for notifying the defendant, what type of notice, what form of notice, and what timing of that notice. OK, that's commencement.

So then we're going to move on. The case has been commenced, we've started the case. And you might think, OK, let's go to trial. No, no, no, no, no, we never ever go just right to trial. I mean maybe for like a traffic ticket or something. But for any dispute of any legal consequence, we do not go straight to trial. We do a lot of things before we go to trial. And in fact, here's one of those things you're going to learn.

If you haven't encountered this already, here's the secret. The vast, vast, vast majority of cases never go to trial. The vast, vast, vast majority of cases, both criminal and civil, end in this period that we call pretrial. And they end for one of two reasons, they end-- well, one of three reasons actually. They end because one of the parties gives up, they end because the parties settle, or they end because the court issues a ruling that ends the litigation before trial.

One of those three things-- I guess the four available options on the board, one party gives up, the parties settle, the court does something that ends the case before trial, or the case goes to trial. Of those four things, the last one is by far the least common. The least common. And if you add the first three up, they collectively happen far, far, far more often than the fourth one.

So why do cases sort of disappear during the pretrial phase? Well there's a couple of things that are happening. So one thing that happens often are initial motions by one of the parties. And you're going to spend a lot of time in civil procedure in particular talking about those motions.

So one of the things, just to link together what we were saying before with what we're saying now, this is the stage of the trial where one of the parties can say, turns out we're in the wrong court. We can't be here, this court can't hear this dispute, we should have to go somewhere else, right. So this is one of the things that happens during the pretrial litigation phase. One of the parties argues we are in the wrong court, this court cannot hear this dispute.

Another possibility is that you can say there's just something wrong with this case, right. That some number of cases get thrown out because the court looks at that initial document, the indictment or the complaint, and the other party says, look, I'm looking at their allegations and their allegations just aren't enough to state a claim against me and the lawsuit should be thrown out right now. You'll spend a lot of time in civil procedure talking about that, but broadly speaking, broadly speaking, there are two bases under which lawsuits can get thrown out on this ground.

One of them is the thing you're accusing me of doing is not illegal. The thing you're accusing me of doing does not entitle you to any sort of relief. So one way that would go, is let's assume for the sake of argument that everything you've just accused me of doing is 100% true. That I did everything you just accused me of doing. I am not guilty of a crime, or I am not liable to you because the thing you have accused me of doing is not unlawful.

So we should stop this case right now, because if this case goes to trial, you're just going to try to prove the things you've accused me of. And for purposes of my motion, I am willing to assume that you can prove that I did everything you're accusing me of, and I should still win, right. So the lawsuits get terminated on that ground. The other way they get terminated sometimes is that your allegations are insufficient.

You haven't adequately explained the thing that you're accusing me of doing, and you should either have to give more explanation or your lawsuit should be thrown out. But that's the category and this is the place where that gets made. But the other thing that happens is something called discovery, which is essentially a process by which the parties exchange information and often hurdle insults and accusations.

But essentially there is this incredibly elaborate process of pretrial discovery. In civil cases, there is a less elaborate but still sometimes substantial context. In criminal cases where the parties exchange information, they say what evidence do you have of this, and they take each other's depositions, they exchange documents. They have-- there's process where they can pose questions to each other and the other side has to answer and this is sort of the discovery process. This in civil litigation can go on for a very long time, a very, very long time sometimes.

And then what often culminates is one of the things discovery does, is it often culminates in a procedure called summary judgment. Where one of the parties says OK, well we've exchanged all the information, and based on the information we've all exchanged it is apparent that-- this is a motion you make to the judge. And what you say is we've exchanged all of our information and based on all of the information that we have exchanged, it is apparent that I am going to win this case. That there can be only one reasonable explanation and it is so clear that I am the only one who can win this case, we don't need to have a trial. We don't need to bother a jury, we don't need to call witnesses, because the others-- this is usually the defendant, and you'll talk and *civ pro* about why it's usually the defendant, but procedurally speaking, the party that moves for summary judgment is almost always the defendant.

And the short explanation of that is because the defendant doesn't have the burden of proof at trial, it's much easier for the defendant to get summary judgment than the plaintiff. And so what the defendant will usually say, again, it isn't always the defendant but for purposes of explaining a little more about this, let's just posit it's the defendant. The defendant will basically say I've seen all the plaintiff's evidence, I've asked them-- you know, so they allege something against me in the complaint. I've asked them for all the factual information they have that would support the conclusion that they alleged in the complaint, and either they have no evidence at all.

They've admitted they have no evidence that goes to one element of their case, or the evidence that they have is inadmissible, or the evidence they have is so weak that it could not possibly support a decision in their favor by a fact finder. And so we shouldn't go any further, you should just end this right now and I should win. And then of course there's actually one more thing that I didn't put up on here is again another possibility. Because when I mentioned before, one of the things that can happen at every single stage here is that one of the parties can give up, or the parties can settle.

That is true throughout this entire pretrial phase. Throughout this pretrial phase, one of the parties can give up, that's usually going to be the plaintiff, or the parties can settle. And what happens at almost every single stage of this litigation is once you move one step further, it's another opportunity to settle.

So one of the reasons that very, very few civil cases in particular go to trial is that I think the parties frequently recognize that one of-- assuming they go all the way through discovery, one of two things is likely to happen. The trial judge is going to grant summary judgment to the defendant, or the case is going to settle.

In a lot of cases the plaintiffs-- and everyone who's involved in the system knows this is true by the way, right. Everybody knows that frequently if the plaintiff can get past summary judgment, the defendant is going to settle. Where they're going-- they're certainly going to make an offer, or almost certainly going to make an offer. And so

in order to get to trial, you know, one, the trial court has to not grant some sort of motion dismissing the case. Two, the plaintiff has to continue. And three, the parties have to not settle.

The only way a case goes to trial is if you get through this entire process, which again can be quite lengthy and quite expensive, without the parties settling, without the plaintiff giving up, or without the trial judge entering a decision. So if we get past that, and I want to be clear again, this is a distinct, distinct, distinct minority of cases, then the cases go to trial. And of course we have very different rules for criminal, and notice when I say the parties can settle, in criminal law we just call that a plea bargain, right.

A plea bargain is just the criminal equivalent of a settlement, right. Is where the parties agree, and usually what happens is the prosecution dismisses one-- usually the prosecutor can charge the defendant with multiple offenses and so the prosecutor agrees to dismiss some of the charges, but not all of the charges, or the prosecution agrees to recommend a lower sentence. A sentence that's lower than the maximum that the defendant could get. But right, a plea bargain is just the criminal law equivalent of a settlement in a civil case.

And if the same thing happens there, if there's a plea bargain, there's not going to be a trial because the whole point of a plea bargain is not to go to trial. OK, so then there's the trial. Again, very few cases go to trial. Very, very few cases.

But this is what you would learn if you take trial advocacy, to the extent you take evidence, which many of you will. You'll learn about the rules of evidence that primarily govern a trial. OK, so after that, there's the process for appeal. And really two things happen, now notice, if someone settles, you can't appeal.

Settlement-- appeal only happens if either the trial judge decides the case or it goes to trial. You're going to learn two categories of things. One is about when you can appeal, right. And the short answer, there's a lawyer joke if you haven't heard yet. You're going to hear a lot of lawyer jokes being in law school. One of them is a case in which a lawyer calls their client to say the court has reached a decision in our case, and the client says how did it come out? And the lawyer said justice was served, and the client says appeal immediately. Cynical lawyer jokes, a lot of fun.

But the short answer is despite the fact that your client might say appeal, appeal, appeal, one of the things you're going to learn in law school is there's actually pretty strict rules about when you can appeal. You can't appeal every time you lose whatever. So there are restrictions on when and how you can appeal. And there are also issues of what are called standards of review, which is appellate courts.

I mean, it's sort of weird if we think about it, right. Because we empower someone, the trial court, to make the decision. And then we empower appellate courts to check their work. And so one question is how closely should

they check their work? Standards of review are really just about how closely you should check the work and what work you should check. And the thing you're going to learn there is that appellate courts don't simply do everything the trial judge did over.

And so there are places where appellate courts are deferential to trial courts, and places where they're less deferential. And those rules about when the appellate court is more deferential or less deferential just are called standards of review. The standard of review is basically how deferential, if at all, should the appellate court be to the trial court.

OK, now the case is finally over. This is not really about the life cycle of this particular case exactly. But preclusion is just a fancy way of expressing the basic idea. Think about why we bring lawsuits in the first place. The reason we bring lawsuits in the first place is because someone thinks there's something wrong with the world. And they want a court to do something about it, right. That's basically why we bring a lawsuit, a criminal, or civil case.

And the whole point of bringing the lawsuit is to resolve this disagreement, right. So I hit someone with my car and they think I should have to pay them, and not surprisingly, I don't think I should have to pay them. So we disagree about whether I should have to pay them for me hitting them with my car. And we could just sort of come to blows or trade insults indefinitely, but we go to a court in the hope of resolving our disagreement about whether I should have to pay them for hitting them with my car, and if so, how much.

And so we go through all this rigmarole of filing a lawsuit and litigating it, well what happens if one party is unhappy with the outcome and wants to start the dispute up again? Right, and you might think, well doesn't that violate the entire point of going to court to resolve our disputes. The first principle of what courts are supposed to do is to resolve the disputes, and resolving the dispute means that the dispute once resolved is over. And preclusion doctrines deal with essentially the effect of the dispute in the past on any further attempts to litigate the dispute, or aspects of the dispute, or things that are similar to the dispute.

So preclusion doctrine essentially is dealing with this intuition that once a dispute is resolved, we don't reopen it, right. This is something you encounter in your daily lives all the time. You're like haven't we settled that, haven't we resolved that, didn't we decide that. And preclusion doctrines are how you decide what it is that we have decided, and what it is that you can bring up in the future and can't. And I'm just going to mention two subsets of preclusion.

They're called claim preclusion and issue preclusion. You will encounter these both in civ pro. I'm just going to give you my like 30,000 foot overview of helping keep in mind the distinction, because I found the distinction between these two things incredibly hard. And I'm going to give you examples from your own life, perhaps from your parents. So claim preclusion, claim preclusion-- actually I'm going to start with issue, issue is easier.

Issue preclusion is the legal equivalent of why are you bringing this up again, we already decided that, right. Like can I have-- imagine you are six and you really wanted a pony. Can I have a pony, and your parent says no. Can I have a pony, they say no, then we have a whole talk and they say you can't buy a pony, and then the next day, you say I want a pony and they say we've literally talked about whether or not you get a pony. And we have repeatedly decided that you don't get a pony, and we're going to stop talking about whether you get a pony now, right.

That's issue preclusion. Issue preclusion is we already talked about this and we already made a decision, and we're not going to re-litigate the decision that we've already made. That's issue preclusion. This issue-- now that I think about it, this issue has already been resolved and we're not reopening it. Claim preclusion is its cousin, but its distinct.

Claim preclusion is the why am I hearing about this for the first time now, right. Claim preclusion is, you know, you had an argument with your sibling and you sent it to the judge, your parent. And your parent said who was right, and then you come back the next day and you say, you know, there was something I didn't mention when we were talking about like whether I should get my own bedroom or not, right. I had another thought that I want to mention, and the parent responds why am I hearing about this for the first time now, we literally had the discussion yesterday about who got what bedroom.

We heard-- I heard you out, you both could say everything you wanted to say, and I issued a decision, and now you are trying to bring up something that you haven't brought up before. Why am I hearing about this for the first time now? So notice, this is not re-litigating something, this is saying you waited too long to bring this up. You should have brought this up earlier when we were discussing the general topic and I'm not entertaining this discussion at this point. So that's the basic distinction there.

So the big takeaways here, again, this was a, I know, a quick, quick little intro to a whole lot of stuff that you will spend, again, the next week, month, semester, year, three years, or the rest of your careers dealing with. But I hope at least some of it was helpful. We talked about the types of law, the types of courts, and the life cycle of a case. Enjoy this, this should be a really fun, cool experience for you all. And I will confess to being somewhat jealous that I don't get to do it again myself. So thank you for having me.

[APPLAUSE]