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Chapter 2

The Legal System in the United States

The requirement of proof beyond a reasonable doubt has this vital role in our criminal procedure for cogent reasons. The accused, during a criminal prosecution, has at stake interests of immense importance, both because of the possibility that he may lose his liberty upon conviction and because of the certainty that he would be stigmatized by the conviction.



Source: Image courtesy of Tara Storm.

- *In re: Winship*, cited in Section 2 "Burden of Proof in a Criminal Prosecution"

2.1 Federalism

LEARNING OBJECTIVES

1. Define federalism.
2. Ascertain the sections of the Constitution that give Congress regulatory authority.
3. Ascertain the basis for Congress's authority to enact criminal laws.
4. Compare federal regulatory authority with state regulatory authority.
5. Compare federal criminal laws with state criminal laws.
6. Define federal supremacy.

The United States' system of government is called **federalism**¹. Federalism, as set forth in the US Constitution, divides governmental power between the *federal government* and each of the *states*. This prevents a concentrated source of governmental power in one individual or small group of individuals. Because of federalism, the United States has one federal legal system, and each state has its own state legal system. Thus in the United States, a plethora of legal systems all operate harmoniously at the same time.

The Scope of Federal Law

The government's power to regulate comes from the US Constitution. The *federal government* derives its authority to create law from Article I, § 8, which discusses federal Congress's *exclusive* or **delegated powers**. These include the power to regulate currency and coin, establish a post office, promote science and art by regulating the rights to discoveries and writings, declare war and raise armies, conduct foreign affairs, regulate interstate and foreign commerce, and make laws necessary and proper to execute other powers expressly granted in the Constitution. Courts have interpreted the last two powers mentioned in the **commerce clause**² and the **necessary and proper clause**³ to be the *broadest* sources of federal regulatory authority.

To simplify and summarize precedent defining federal regulatory authority, federal laws are meant to regulate in two areas. First, federal laws regulate issues that concern the *country*, rather than just one city, county, or state. The federal government regulates in the area of foreign affairs, for example, because this affects the United States of America, not just one particular region. Second, federal laws regulate commerce, which is economic activity, that *crosses from state to state*.

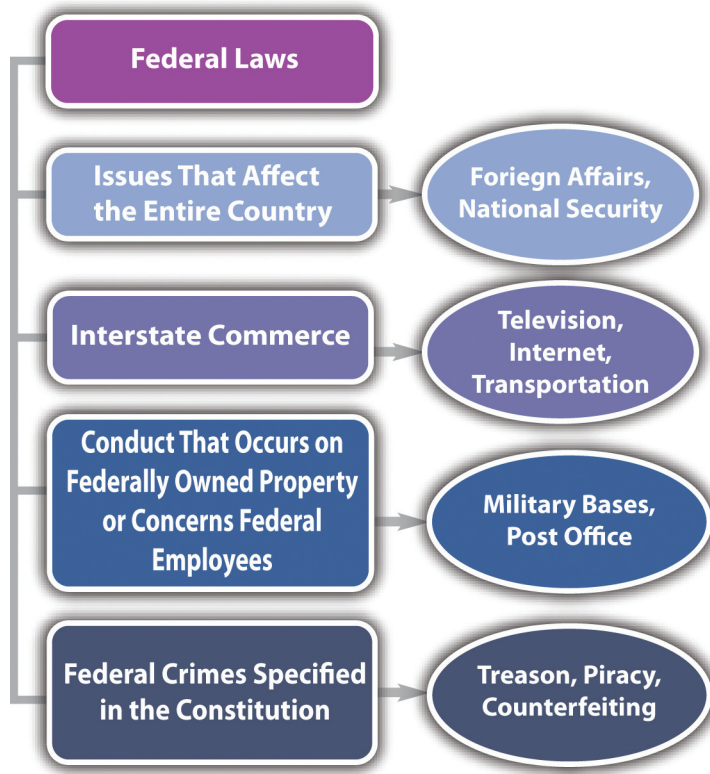
1. A system of government in which power is divided between a national, federal government and several state governments.
2. A clause in the Constitution that allows Congress to regulate commerce (economic activity) that crosses state lines.
3. A clause in the Constitution that allows Congress to make laws necessary to carry out all powers listed in the Constitution.

Some common examples are television broadcasts, the Internet, and any form of transportation such as the airlines.

Federal Criminal Laws

The original intent was for the federal government to be a *limited* government, with the bulk of regulatory authority residing in the *states*. The only *crimes* Congress is specifically authorized to punish are piracies and felonies on the high seas, counterfeiting, and treason; however, case precedent has expanded the federal government's power to enact criminal laws based on the commerce clause and the necessary and proper clause. *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819), accessed August 28, 2010, http://www.law.cornell.edu/supct/html/historics/USSC_CR_0017_0316_ZS.html. Still, there must be *some* connection to an issue of national character and interstate commerce, or the federal government will overstep its authority. In general, federal criminal laws target conduct that occurs on federal property or conduct involving federal employees, currency, coin, treason, national security, rights secured by the Constitution, or commerce that crosses state lines. Currently, over five hundred crimes are listed in Part I, Title 18 of the United States Code, which codifies criminal laws for the federal government.

Figure 2.1 Diagram of Federal Laws



The Scope of State Law

The US Constitution designates the states as the *primary regulatory authority*. This is clarified in the Tenth Amendment, which reads, “The powers not delegated to the United States by the Constitution, nor prohibited to it by the States, are reserved to the States respectively, or the people.” State laws are also supposed to regulate in two areas. First, state laws regulate issues of a *local* character or concern. A state may regulate, for example, its water ownership and use because water can be scarce and is not generally provided to other states. Second, state laws regulate issues or things that remain within a state’s border. A state generally regulates, for example, the operation of a small business whose products are only sold locally and not shipped out of the state.

Federal laws are *the same* in every state, but state laws *differ* from state to state. Something that is legal in one state may be illegal in another state. This inconsistency makes our system of federalism complicated for students (and lawyers). However, with a country as large and varied as the United States, it is sensible to allow each state to choose for itself which laws will be most suitable.

State Criminal Laws

The power to enact criminal laws belongs almost *exclusively* to the states. This is because of the Tenth Amendment, which vests in states a **police power**⁴ to provide for the health, safety, and welfare of state citizens. Approximately 90 percent of all criminal laws are state, rather than federal. Often, federal crimes are also state crimes and can be prosecuted and punished by both the state and federal government without violating the principle of double jeopardy.

Example of the Diversity of State Laws

In Nevada, prostitution is legal under certain circumstances. N.R.S. § 201.354, accessed September 24, 2010, <http://www.leg.state.nv.us/nrs/NRS-201.html#NRS201Sec354>. An individual who engages in prostitution inside a licensed “house of prostitution” in Nevada is not exposed to criminal liability. However, if the *same individual* engages in prostitution in a *different state*, he or she may be subject to a criminal prosecution. Prostitution will be discussed in detail in Chapter 12 "Crimes against the Public".

4. The states’ power to regulate for citizens’ health, safety, and welfare, as set forth in the Tenth Amendment to the Constitution.

Figure 2.2 Crack the Code

Crack the Code

Compare the following state laws:

Ohio Rev. Code Ann. § 2907.04(A):
2907.04 Unlawful sexual conduct with minor.
(A) No person who is eighteen years of age or older shall engage in sexual conduct with another, who is not the spouse of the offender, when the offender knows the other person is thirteen years of age or older but **less than sixteen years** of age, or the offender is reckless in that regard.

N.Y. Penal Law § 130.05(3)(a)
§ 130.05 Sex offenses; lack of consent...
3. A person is deemed incapable of consent when he or she is:
(a) **less than seventeen years old.**

Note the diversity of state laws.
In Ohio, the age of consent is 16;
in New York, it is 17...

Federal Supremacy

Our legal system is divided up to conform to the principle of federalism, so a potential exists for conflict between federal law and state law. A federal law may make something *illegal*; a state law may insist that it is *legal*. Whenever a conflict occurs between federal and state law, courts must follow the federal law. This is called **federal supremacy**⁵. As the Supremacy Clause of Article VI of the federal Constitution states, “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”

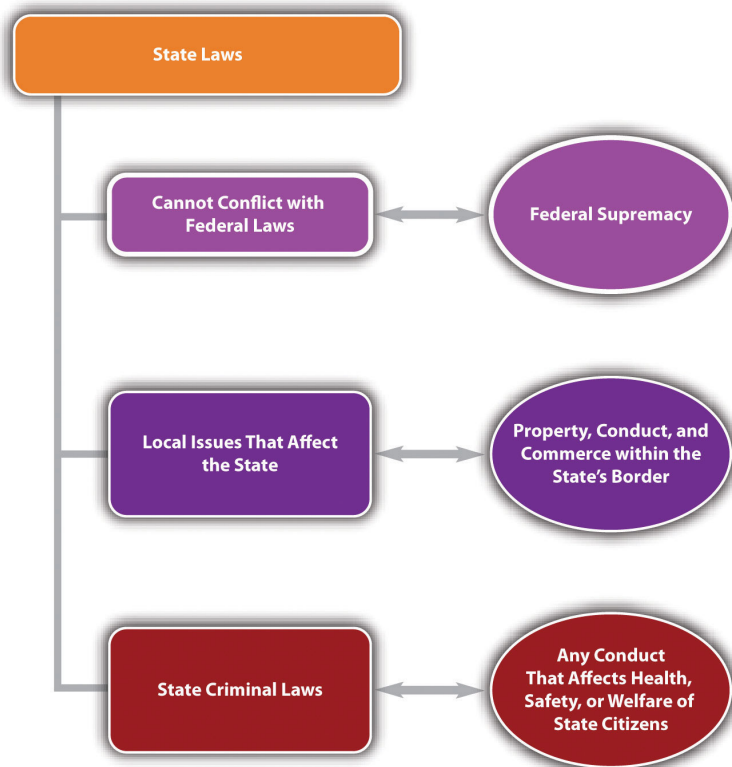
Example of Federal Supremacy

In Washington and several other states, an individual may possess and use marijuana for medicinal purposes with a prescription. Washington State Medicinal Marijuana Act, Chapter 69.51A RCW, accessed August 28, 2010, <http://apps.leg.wa.gov/RCW/default.aspx?cite=69.51a&full=true>; see all states that

5. If there is a conflict between federal and state law, courts must follow the federal law.

legalize medicinal marijuana: “16 Legal Medical Marijuana States and DC,” ProCon.org website, accessed August 28, 2010, <http://medicalmarijuana.procon.org/view.resource.php?resourceID=000881>. Federal law prohibits possession and use of marijuana under *any circumstances*. 21 U.S.C. Ch. 13 § 801 et. seq., accessed October 1, 2010, <http://www.deadiversion.usdoj.gov/21cfr/21usc/index.html>. Technically, this could be a conflict that violates **federal supremacy**. Until the courts address the federal supremacy issue, however, medical marijuana statutes can continue to stay in effect. Read about a recent ruling regarding the constitutionality of Michigan’s medicinal marijuana law under the Supremacy Clause: <http://www.pressandguide.com/articles/2011/04/09/news/doc4d9f557b8ab37805648033.txt>.

Figure 2.3 Diagram of State Laws



LAW AND ETHICS: THE ARIZONA IMMIGRATION LAW

Can a State Regulate Immigration?

Arizona passed a comprehensive immigration law designed to seek out and deport illegal immigrants. This law created a national furor, and its detractors insisted it would lead to unethical racial profiling. The federal government attacked the law in Federal District Court. Randal C. Archibold, “Judge Blocks Arizona’s Immigration Law,” *The New York Times* website, accessed October 1, 2010, <http://www.nytimes.com/2010/07/29/us/29arizona.html>. Judge Susan Bolton issued a preliminary injunction that stopped enforcement of the sections of the law that required state law enforcement to check an immigrant’s status while enforcing other laws and that required immigrants to prove they were in the country legally or risk state charges. Randal C. Archibold, “Judge Blocks Arizona’s Immigration Law,” *The New York Times* website, accessed October 1, 2010, <http://www.nytimes.com/2010/07/29/us/29arizona.html>. Read the District Court’s preliminary injunction ruling, which is available at this link: http://graphics8.nytimes.com/packages/pdf/national/20100729_ARIZONA_DOC.pdf.

1. What is the basis for Judge Bolton’s decision? Check your answer using the answer key at the end of the chapter.

Read about the most recent ruling on Arizona’s immigration law by the US Court of Appeals for the Ninth Circuit: <http://latindispatch.com/2011/05/10/arizonas-jan-brewer-to-appeal-immigration-law-to-u-s-supreme-court/>.

Read about Utah’s immigration law: http://articles.cnn.com/2011-05-11/politics/utah.immigration.bill_1_utah-law-gary-herbert-utah-gov?_s=PM:POLITICS.

Read about Alabama’s immigration law: <http://www.reuters.com/article/2011/06/10/tagblogsfindlawcom2011-freeenterprise-idUS123058502120110610>.

U.S. v. State of Arizona Video

10-16645 *U.S. v. State of Arizona*

This video is the Arizona governor's appeal of the district court preliminary injunction:

[\(click to see video\)](#)

KEY TAKEAWAYS

- Federalism is a system of government in which power is divided between one national, federal government and several independent state governments.
 - Congress gets its regulatory authority from Article I § 8 of the federal Constitution. This includes several delegated powers, the commerce clause, and the necessary and proper clause.
 - The commerce clause gives Congress the power to regulate commerce that crosses state lines.
 - The necessary and proper clause gives Congress the power to regulate if necessary to carry out all other powers listed in the Constitution.
- The Constitution specifically authorizes Congress to punish piracies and felonies on the high seas, counterfeiting, and treason. Case precedent has also expanded the federal government's power to enact criminal laws based on the commerce clause and the necessary and proper clause.
- The federal government is intended to be limited, with the bulk of regulatory authority residing in the states. The federal government is restricted to regulating in the areas designated in Article I § 8 of the federal Constitution. The states can regulate for the health, safety, and welfare of citizens pursuant to their police power, which is set forth in the Tenth Amendment of the federal Constitution.
- Federal criminal laws criminalize conduct that occurs on federal property or involves federal employees, currency, coin, treason, national security, rights secured by the Constitution, or commerce that crosses state lines. State criminal laws make up 90 percent of all criminal laws, are designed to protect state citizens' health, safety, and welfare, and often criminalize the same conduct as federal criminal laws.
- Federal supremacy, which is set forth in the Supremacy Clause of the federal Constitution, requires courts to follow federal laws if there is a conflict between a federal and state law.

EXERCISES

Answer the following questions. Check your answers using the answer key at the end of the chapter.

1. Congress passes a law criminalizing the posting of child pornography on the Internet. Where does Congress get the authority to pass this criminal law? If a state has a criminal law criminalizing the same conduct, can both the state *and* federal government prosecute a defendant for one act of downloading child pornography?
2. Read *U.S. v. Morrison*, 529 U.S. 518 (2000). Which part(s) of the Constitution did the US Supreme Court rely on when it held that 42 U.S.C. § 13981 is unconstitutional? The case is available at this link: <http://www.law.cornell.edu/supct/html/99-5.ZS.html>.
3. Read *Pennsylvania v. Nelson*, 350 U.S. 497 (1956). Why did the US Supreme Court invalidate the Pennsylvania Sedition Act? The case is available at this link: <http://supreme.justia.com/us/350/497/case.html>.

2.2 The Branches of Government

LEARNING OBJECTIVES

1. Identify the three branches of government.
2. Ascertain the head of the federal and state legislative branches of government.
3. Compare the Senate and the House of Representatives.
4. Ascertain the head of the federal and state executive branches of government.
5. Ascertain the head of the federal and state judicial branches of government.

The federal Constitution was written to ensure that government power is distributed and never concentrated in one or more areas. This philosophy is served by **federalism**, where the federal government shares power with the states. It is also further served by dividing the government into three branches, all responsible for different government duties and all *checking and balancing* each other. The three branches of government are detailed in Articles I–III of the federal Constitution and are the **legislative branch**⁶, the **executive branch**⁷, and the **judicial branch**⁸. While the federal Constitution identifies only the federal branches of government, the principle of checks and balances applies to the states as well. Most states identify the three state branches of government in their state constitution.

Each branch of government has a distinct authority. When one branch encroaches on the duties of another, this is called a violation of **separation of powers**⁹. The *courts* decide whether a government branch has overstepped its boundaries because courts interpret the Constitution, which describes each branch's sphere of influence. Thus the judicial branch, which consists of all the courts, retains the balance of power.

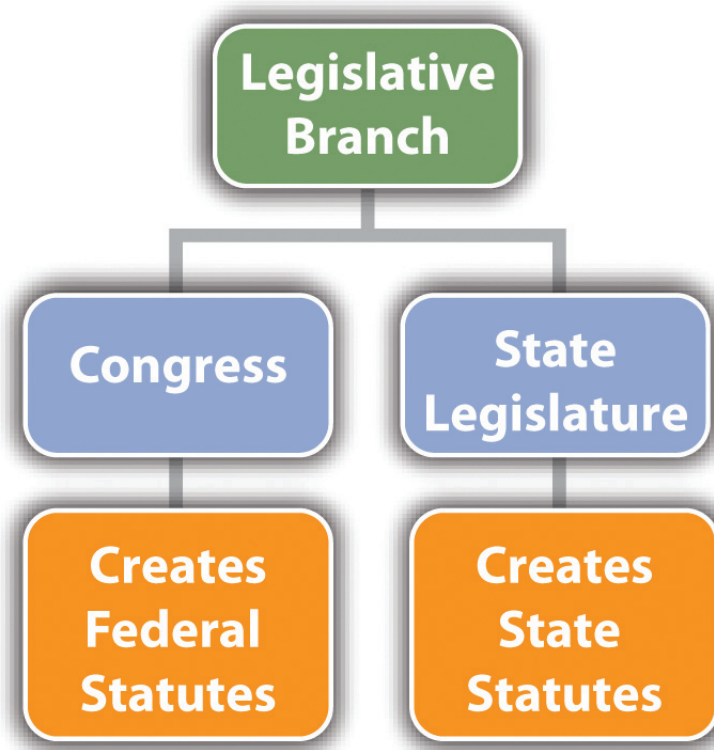
The Legislative Branch

The **legislative branch** is responsible for creating statutory laws. Citizens of a state can vote for some state statutes by ballot, but the **federal legislative branch** enacts all federal statutes. In the federal government, the legislative branch is headed by Congress. States' legislative branches are headed by a state legislature. Congress is **bicameral**¹⁰, which means it is made up of two houses. This system provides equal representation among the several states and by citizens of the United States. States

6. The branch of government responsible for creating statutory law.
7. The branch of government responsible for enforcing statutory law.
8. The branch of government responsible for interpreting statutory and constitutional law(s).
9. Each government branch must act only within the scope set forth in the Constitution.
10. Made up of two houses.

are represented by the **Senate**¹¹. Every state, no matter how large or small, gets two senators. Citizens are represented by the **House of Representatives**¹². Membership in the House of Representatives is based on population. A heavily populated state, like California, has more representatives than a sparsely populated state, like Alaska. States' legislatures are generally bicameral and have a similar structure to the federal system.

Figure 2.4 Diagram of the Legislative Branch



Examples of Legislative Branch Checks and Balances

The legislative branch can check and balance both the *executive* branch and the *judicial* branch. Congress can impeach the president of the United States, which is the first step toward removal from office. Congress can also enact statutes that supersede judicial opinions, as discussed in [Chapter 1 "Introduction to Criminal Law"](#). Similarly, state legislature can also impeach a governor or enact a state statute that supersedes a state case law.

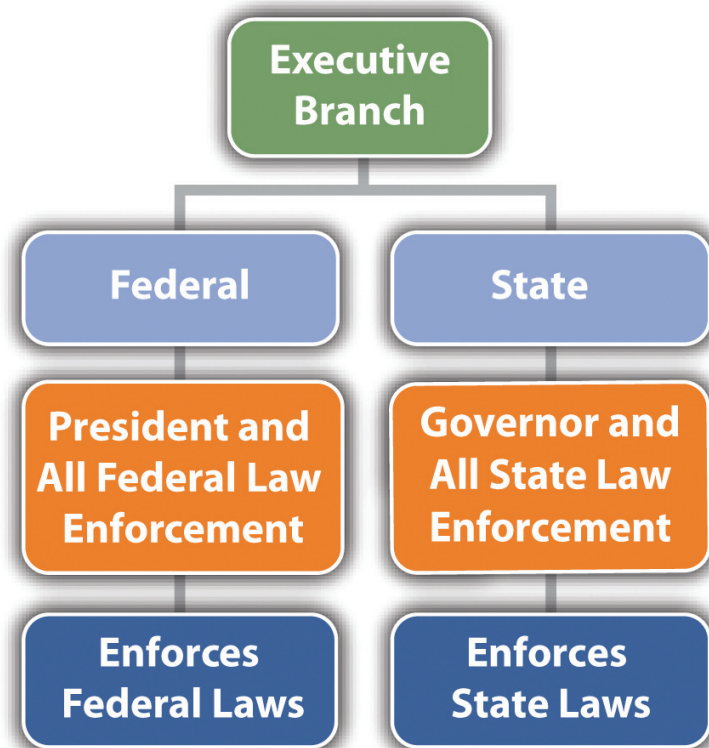
11. The house of Congress responsible for representing each state.

12. The house of Congress responsible for representing each citizen of the United States.

The Executive Branch

The **executive branch** is responsible for enforcing the statutes enacted by the legislative branch. In the federal government, the executive branch is headed by the president of the United States. States' executive branches are headed by the governor of the state.

Figure 2.5 Diagram of the Executive Branch



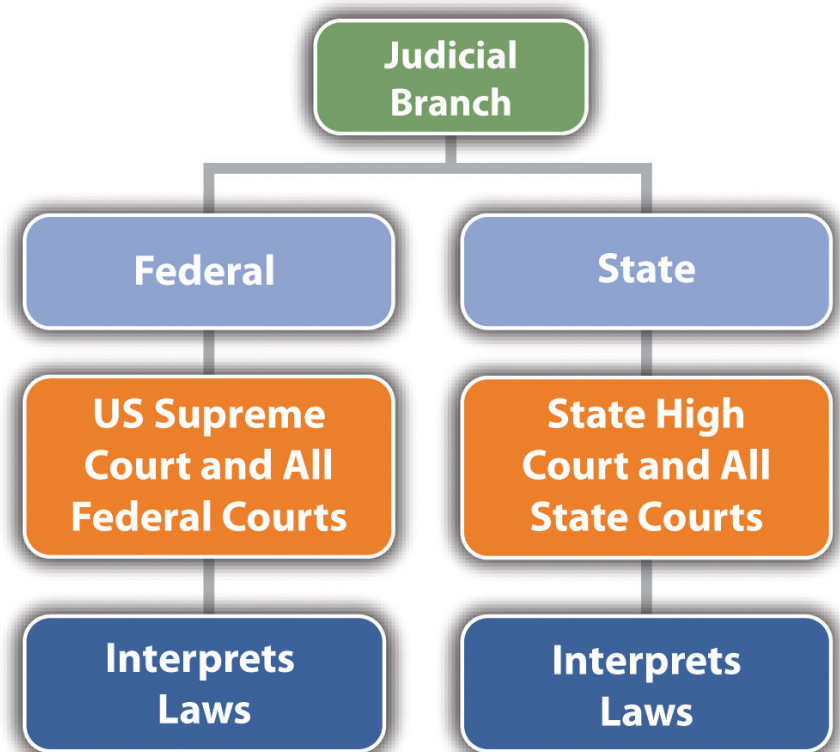
Examples of Executive Branch Checks and Balances

The executive branch can check and balance both the *legislative* branch and the *judicial* branch. The president of the United States can veto statutes proposed by Congress. The president also has the authority to nominate federal justices and judges, who thereafter serve for life. State executive branches have similar check and balancing authority; a governor can generally veto statutes proposed by state legislature and can appoint some state justices and judges.

The Judicial Branch

The **judicial branch** is responsible for interpreting all laws, including statutes, codes, ordinances, and the federal and state constitutions. This power is all encompassing and is the basis for **judicial review**, referenced in [Chapter 1 "Introduction to Criminal Law"](#). It allows the judicial branch to invalidate any unconstitutional law in the statutory source of law and also to change the federal and state constitutions by interpretation. For example, when a court creates an exception to an amendment to the constitution, it has made an informal change without the necessity of a national or state consensus. The federal judicial branch is headed by the US Supreme Court. Each state's judicial branch is headed by the highest-level state appellate court. Members of the judicial branch include all judges and justices of every federal and state court in the court system, which is discussed shortly.

Figure 2.6 Diagram of the Judicial Branch



Examples of Judicial Branch Checks and Balances

The judicial branch can check and balance both the *legislative* branch and the *executive* branch. The US Supreme Court can invalidate statutes enacted by Congress

if they conflict with the Constitution. The US Supreme Court can also prevent the president from taking action if that action violates separation of powers. The state courts can likewise nullify unconstitutional statutes passed by the state legislature and void other executive branch actions that are unconstitutional.

Table 2.1 The Most Prominent Checks and Balances between the Branches

Government Branch	Duty or Authority	Check and Balance	Government Branch Checking and Balancing
Legislative	Create statutes	President can veto	Executive
Executive	Enforce statutes	Congress can override presidential veto by 2/3 majority	Legislative
Judicial	Interpret statutes and Constitution	President nominates federal judges and justices	Executive
Executive	Enforce statutes	Senate can confirm or reject presidential nomination of federal judges and justices	Legislative
Executive	Enforce statutes	Congress can impeach the president	Legislative
Legislative	Create statutes	Courts can invalidate unconstitutional statutes	Judicial
Executive	Enforce statutes	Courts can invalidate unconstitutional executive action	Judicial
Judicial	Interpret statutes and Constitution	Statutes can supersede case law	Legislative

KEY TAKEAWAYS

- The three branches of government are the legislative branch, the executive branch, and the judicial branch.
- The head of the federal legislative branch of government is Congress. The head of the state legislative branch of government is the state legislature.
- The Senate represents every state equally because each state has two senators. The House of Representatives represents each citizen equally because states are assigned representatives based on their population.
- The head of the federal executive branch of government is the president. The head of each state executive branch of government is the governor.
- The head of the federal judicial branch of government is the US Supreme Court. The head of each state judicial branch of government is the highest-level state appellate court.

EXERCISES

Answer the following questions. Check your answers using the answer key at the end of the chapter.

1. A mayor enacts a policy that prohibits police officers in his city from enforcing a state law prohibiting the possession and use of marijuana. The mayor's policy specifically states that within the city limits, marijuana is legal to possess and use. Which constitutional principle is the mayor violating? Which branch of government should check and balance the mayor's behavior in this matter?
2. Read *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952). In *Youngstown*, President Truman seized control of steel mills to avert a strike, using his authority as commander in chief of the armed forces. President Truman wanted to ensure steel production during the Korean War. Did the US Supreme Court uphold President Truman's action? Why or why not? The case is available at this link: <http://supreme.justia.com/us/343/579/>.
3. Read *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004). In *Hamdi*, the US Supreme Court reviewed the US Court of Appeals for the Fourth Circuit's decision prohibiting the release of a US citizen who was held as an enemy combatant in Virginia during the Afghanistan War. The citizen's detention was based on a federal statute that deprived him of the opportunity to consult with an attorney or have a trial. Did the US Supreme Court defer to the federal statute? Why or why not? The case is available at this link: http://scholar.google.com/scholar_case?case=6173897153146757813&hl=en&as_sdt=2&as_vis=1&oi=scholar.

2.3 The Court System

LEARNING OBJECTIVES

1. Compare federal and state courts.
2. Define jurisdiction.
3. Compare original and appellate jurisdiction.
4. Identify the federal courts and determine each court's jurisdiction.
5. Identify the state courts and determine each court's jurisdiction.

Every state has two court systems: the *federal* court system, which is the same in all fifty states, and the *state* court system, which varies slightly in each state. Federal courts are fewer in number than state courts. Because of the Tenth Amendment, discussed earlier in [Section 2.1.2 "The Scope of State Law"](#), most laws are state laws and therefore most legal disputes go through the state court system.

Federal courts are exclusive; they adjudicate only *federal* matters. This means that a case can go through the federal court system only if it is based on a federal *statute* or the federal *Constitution*. One exception is called **diversity of citizenship**.²⁸ U.S.C. § 1332, accessed August 30, 2010, <http://www.law.cornell.edu/uscode/28/1332.html>. If citizens from different states are involved in a civil lawsuit and the amount in controversy exceeds \$75,000, the lawsuit can take place in federal court. All federal *criminal prosecutions* take place in federal courts.

State courts are nonexclusive; they can adjudicate state or federal matters. Thus an individual who wants to sue civilly for a federal matter has the option of proceeding in state or federal court. In addition, someone involved in a lawsuit based on a federal statute or the federal Constitution can remove a lawsuit filed in state court to federal court.²⁸ U.S.C. § 1441 et. seq., accessed August 30, 2010, <http://www.law.cornell.edu/uscode/28/1441.html>. All state *criminal prosecutions* take place in state courts.

Jurisdiction

Determining which court is appropriate for a particular lawsuit depends on the concept of **jurisdiction**¹³. Jurisdiction has two meanings. A court's jurisdiction is the power or authority to hear the case in front of it. If a court does not have jurisdiction, it cannot hear the case. Jurisdiction can also be a geographic area over which the court's authority extends.

13. Either a court's power to hear a case or a court's authority over a geographic area.

There are two prominent types of court jurisdiction. **Original jurisdiction**¹⁴ means that the court has the power to hear a trial. Usually, only *one* opportunity exists for a trial, although some actions result in both a criminal and a civil trial, discussed previously in [Chapter 1 "Introduction to Criminal Law"](#). During the trial, evidence is presented to a **trier of fact**¹⁵, which can be either a judge or a jury. The trier of fact determines the facts of a dispute and decides which party prevails at trial by applying the law to those facts. Once the trial has concluded, the next step is an appeal. During an appeal, *no evidence is presented*; the appellate court simply reviews what took place at trial and determines whether or not any major errors occurred.

The power to hear an appeal is called **appellate jurisdiction**¹⁶. Courts that have appellate jurisdiction review the **trial record** for error. The trial record includes a court reporter's **transcript**, which is typed notes of the words spoken during the trial and pretrial hearings. In general, with exceptions, appellate courts cannot review a trial record until the trial has ended with a *final judgment*. Once the appellate court has made its review, it has the ability to take three actions. If it finds no compelling or prejudicial errors, it can **affirm**¹⁷ the judgment of the trial court, which means that the judgment remains the same. If it finds a significant error, it can **reverse**¹⁸ the judgment of the trial court, which means that the judgment becomes the opposite (the winner loses, the loser wins). It can also **remand**¹⁹, which means send the case back to the trial court, with instructions. After remand, the trial court can take action that the appellate court cannot, such as adjust a sentence or order a new trial.

Some courts have only original jurisdiction, but most courts have a little of original and appellate jurisdiction. The US Supreme Court, for example, is primarily an appellate court with appellate jurisdiction. However, it also has original jurisdiction in some cases, as stated in the Constitution, Article III, § 2, clause 2: "In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate jurisdiction."

14. A court's power to hear a trial and accept evidence.
15. The decision maker at trial; could be a judge or jury.
16. A court's power to hear an appeal and review a trial for error.
17. An appellate court's power to uphold a lower court decision.
18. An appellate court's power to change a lower court decision.
19. An appellate court's power to send a case back to the trial court, with instructions.

Example of Original and Appellate Jurisdiction

Paulina is prosecuted for the attempted murder of Ariana. Paulina is represented by public defender Pedro. At Paulina's trial, in spite of Pedro's objections, the judge rules that Paulina's polygraph examination results are admissible, but prohibits the admission of certain witness testimony. Paulina is found guilty and appeals, based on the judge's evidentiary rulings. While Pedro is writing the appellate brief, he discovers case precedent barring the admission of polygraph examination results. Pedro *can include* the case precedent in his appellate brief but *not the prohibited witness testimony*. The appellate court has the jurisdiction to hold that the objection was improperly overruled by the trial court, but is limited to reviewing the trial

record for error. The appellate court *lacks* the jurisdiction to admit new evidence not included in the trial record.

The Federal Courts

For the purpose of this book, the focus is the federal trial court and the intermediate and highest level appellate courts because these courts are most frequently encountered in a criminal prosecution. Other federal specialty courts do exist but are not discussed, such as bankruptcy court, tax court, and the court of military appeals.

The federal trial court is called the **United States District Court**. Large states like California have more than one district court, while smaller states may have only one. District courts hear all the federal trials, including civil and criminal trials. As stated previously, a dispute that involves only state law, or a state criminal trial, cannot proceed in district court. The exception to this rule is the diversity of citizenship exception for civil lawsuits.

After a trial in district court, the loser gets one **appeal of right**²⁰. This means that the intermediate appellate federal court *must* hear an appeal of the district court trial if there are sufficient grounds. The intermediate appellate court in the federal system is the **United States Court of Appeals**. There is less federal law than state law, so only thirteen US Courts of Appeals exist for all fifty states. The US Courts of Appeals are spread out over thirteen judicial circuits and are also referred to as Circuit Courts.

Circuit Courts have appellate jurisdiction and can review the district court criminal and civil trials for error. The Circuit Court reviews only trials that are federal in nature, with the exception of civil lawsuits brought to the district court under diversity of citizenship. As noted in [Chapter 1 "Introduction to Criminal Law"](#), the federal Constitution governs criminal trials, so *only a guilty defendant* can appeal. In general, with exceptions, appeal of a not-guilty verdict (also called an **acquittal**²¹) violates a defendant's double jeopardy protection.

After a Circuit Court appeal, the loser has one more opportunity to appeal to the highest-level federal appellate court, which is the **United States Supreme Court**. The US Supreme Court is the highest court in the country and is located in Washington, DC, the nation's capital. The US Supreme Court has eight associate justices and one chief justice: all serve a lifetime appointment.

20. A party is guaranteed an appeal if grounds are present.

21. A not-guilty verdict.

The US Supreme Court is a **discretionary court**²², meaning it does not have to hear appeals. Unlike the Circuit Courts, the US Supreme Court can pick and choose which appeals it wants to review. The method of applying for review with the US Supreme Court is called filing a petition for a **writ of certiorari**²³.

Any case from a Circuit Court, or a case *with a federal matter at issue* from a state's highest-level appellate court, can petition for a writ of certiorari. If the writ is granted, the US Supreme Court reviews the appeal. If the writ is denied, which it is the majority of the time, the ruling of the Circuit Court or state high court is the final ruling. For this reason, the US Supreme Court reverses many cases that are accepted for review. If the US Supreme Court wants to "affirm" the intermediate appellate court ruling, all it has to do is deny the petition and let the lower court ruling stand.

The State Courts

For the purpose of this book, a representative state court system is reviewed. Slight variations in this system may occur from state to state.

Most states offer their citizens a "people's court," typically called small claims court. **Small claims court** is a civil court designed to provide state citizens with a low-cost option to resolve disputes where the amount in controversy is minimal. A traditional small claims court only has the jurisdiction to award money damages. This means that it cannot adjudicate criminal matters or family court matters such as granting a petition for divorce. Small claims courts also limit the amount of money damages available, typically less than \$10,000.

Small claims court has special rules that make it amenable to the average individual. Attorneys cannot represent clients in small claims court, although they certainly can represent themselves just like any other individual. Small claims court proceedings are generally informal, and usually no court reporter types what is said. Therefore, no court record exists for appeal. Small claims court *appeals* are the exception to the general rule and are usually new trials where evidence is accepted.

States generally have a **state trial court** that can also be the appellate court for small claims court appeals. This trial court is usually called superior court, circuit court, or county court. State trial courts are generally all-purpose and hear civil litigation matters, state criminal trials, and nonlitigation cases including family law, wills and probate, foreclosures, and juvenile adjudications. States can, however, create "specialty courts" to hear special matters and free up the trial courts for basic criminal prosecutions and civil litigation trials. Some states divide their trial courts into lower and higher levels. The lower-level trial court adjudicates

22. A court that can accept or reject appeals.

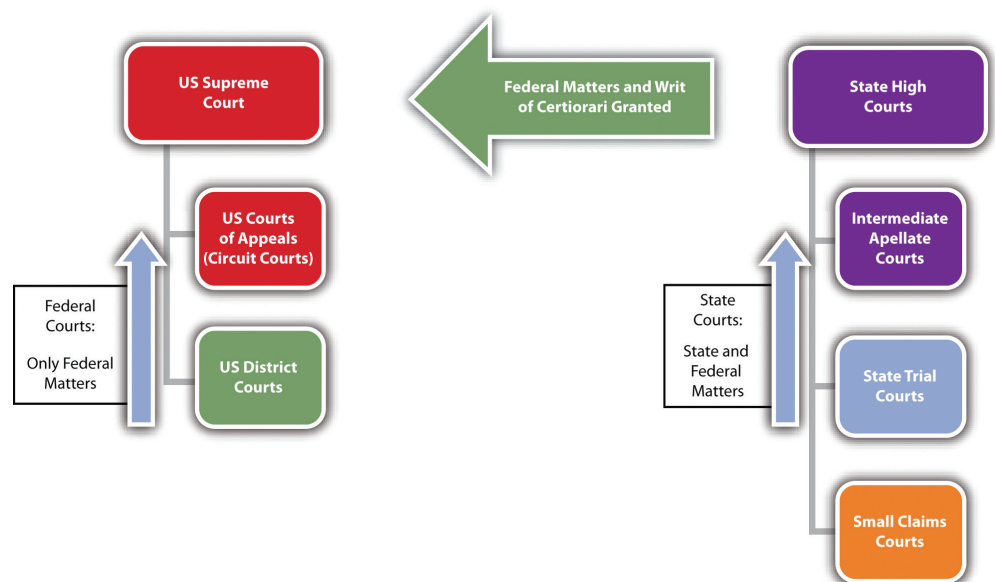
23. A petition that must be granted to reach the United States Supreme Court.

infractions and misdemeanors, along with civil lawsuits with a smaller amount in controversy. The higher-level trial court adjudicates felonies and civil lawsuits with a higher amount in controversy.

The intermediate appellate court for the state court system is usually called the **state court of appeals**, although some smaller or low-population states may have only *one* appellate court called the **state supreme court**. The state courts of appeal provide appeals of right, meaning they *must* hear an appeal coming from the state's trial court if adequate grounds are present. Appeals can be of any case adjudicated in the state trial court. In state criminal prosecutions, as stated earlier in the discussion of federal appeals, only a guilty defendant can appeal without violating the protection against double jeopardy. At the appellate level, the state court of appeal simply reviews the trial court record for error and does not have the **jurisdiction** to hear new trials or accept evidence.

The highest appellate court for the state court system is usually called the state supreme court. In states that have both intermediate and high-level appellate courts, the state supreme court is a discretionary court that gets to select the appeals it hears, very similar to the US Supreme Court. The state supreme court generally grants a petition for writ of certiorari, or a **petition for review**, if it decides to hear a civil or criminal case coming out of the state court of appeal. If review is denied, the state court of appeal ruling is the final ruling on the case. If review is granted and the state supreme court rules on the case, the loser has one more chance to appeal, *if there is a federal matter*, to the US Supreme Court.

Figure 2.7 Diagram of the Court System



KEY TAKEAWAYS

- Federal courts are exclusive and hear only federal matters or cases involving diversity of citizenship. State courts are nonexclusive and can hear state and federal matters. All federal criminal prosecutions take place in federal court, and all state criminal prosecutions take place in state court.
- Jurisdiction is either the court's power to hear a matter or a geographic area over which a court has authority.
- Original jurisdiction is a court's power to hear a trial and accept evidence. Appellate jurisdiction is a court's power to hear an appeal and review the trial for error.
- Three federal courts adjudicate criminal matters: the trial court, which is called the United States District Court; the intermediate court of appeal, which is called the United States Court of Appeals or Circuit Court; and the high court of appeal, which is called the United States Supreme Court. The district court has original jurisdiction; the Circuit Court and US Supreme Court have primarily appellate jurisdiction.
- State courts are usually limited to four, and only three adjudicate criminal matters. Small claims court is a "people's court" and hears only civil matters with a low threshold of damages. The state trial court, often called superior, circuit, or county court, is the trial court for the state system. Some states have an intermediate court of appeal, which is generally called the state court of appeals. Some states have a high court of appeal, which is generally called the state supreme court. The trial court has original jurisdiction; the state court of appeal and state supreme court primarily have appellate jurisdiction.

EXERCISES

Answer the following questions. Check your answers using the answer key at the end of the chapter.

1. Jenna sues Max for \$25,000, based on a car accident that occurs in Indiana. Jenna loses at trial and appeals to the highest state appellate court in Indiana, where she loses again. Can Jenna appeal her case to the US Supreme Court? Why or why not?
2. Read *United States v. P.H.E., Inc.*, 965 F.2d 848 (1992). In *P.H.E., Inc.*, the defendant never went to trial but was *indicted*. The defendant challenged the indictment, which was upheld by the trial court. The government claimed that the Court of Appeals for the Tenth Circuit could not hear an appeal of the trial court's decision, because there was never a "final judgment." Did the Circuit Court agree? Why or why not? The case is available at this link: http://scholar.google.com/scholar_case?case=16482877108359401771&hl=en&as_sdt=2&as_vis=1&oi=scholar.
3. Read *Hertz Corp. v. Friend*, 130 S. Ct. 1181 (2010). How did the US Supreme Court determine citizenship of a *corporation* for the purpose of diversity jurisdiction? The case is available at this link: http://scholar.google.com/scholar_case?case=11481058059843290042&hl=en&as_sdt=2&as_vis=1&oi=scholar.

2.4 The Burden of Proof

LEARNING OBJECTIVES

1. Define the burden of proof.
2. Distinguish between the burden of production and the burden of persuasion.
3. Compare the civil and criminal burden of proof.
4. Compare inference and presumption.
5. Compare circumstantial and direct evidence.

The key to the success of a civil or criminal trial is meeting the **burden of proof**²⁴. A *failure* to meet the burden of proof is also a common ground for appeal. In this section, you learn the burden of proof for the plaintiff, prosecution, and defendant. You also are introduced to different classifications of evidence and evidentiary rules that can change the outcome of the trial.

Definition of the Burden of Proof

The burden of proof is a party's responsibility to prove a disputed charge, allegation, or defense. Yourdictionary.com, "Definition of Burden of Proof," accessed September 26, 2010, <http://www.yourdictionary.com/burden-of-proof>. The burden of proof has two components: the **burden of production**²⁵ and the **burden of persuasion**²⁶. The burden of production is the obligation to *present* evidence to the judge or jury. The burden of persuasion is the duty to *convince* the judge or jury to a certain standard, such as **beyond a reasonable doubt**²⁷, which is defined shortly. This standard is simply a measuring point and is determined by examining the quantity and quality of the evidence presented. "Meeting the burden of proof" means that a party has introduced enough compelling evidence to reach the standard defined in the burden of persuasion.

The plaintiff or prosecutor generally has the burden of proving the case, including every element of it. The defendant often has the burden of proving any defense. The trier of fact determines whether a party met the burden of proof at trial. The trier of fact would be a judge in a nonjury or **bench trial**²⁸. In a *criminal* case, the trier of fact is almost always a jury because of the right to a jury trial in the Sixth Amendment. Jurors are not legal experts, so the judge explains the burden of proof in jury instructions, which are a common source of appeal.

24. An obligation to prove a disputed charge, allegation, or defense.

25. The duty to present evidence to the trier of fact.

26. The duty to convince the trier of fact to a certain standard.

27. The burden of proof in a criminal case, which must be enough compelling evidence to overcome the defendant's presumption of innocence.

28. A trial where the trier of fact is a judge, rather than a jury.

Burden of Proof in a Civil Case

Burdens of proof vary, depending on the type of case being tried. The plaintiff's burden of proof in a civil case is called **preponderance of evidence**²⁹.

Preponderance of evidence requires the plaintiff to introduce slightly more or slightly better evidence than the defense. This can be as low as 51 percent plaintiff to 49 percent defendant. When preponderance of evidence is the burden of proof, the judge or jury must be convinced that it is "more likely than not" that the defendant is liable for the plaintiff's injuries. Preponderance of evidence is a fairly low standard, but the plaintiff must still produce more and better evidence than the defense. If the plaintiff offers evidence of questionable quality, the judge or jury can find that the burden of proof is not met and the plaintiff loses the case.

The defendant's burden of proof when proving a defense in a civil case is also preponderance of evidence. For example, in the O. J. Simpson civil case discussed in Chapter 1 "Introduction to Criminal Law", O. J. Simpson failed to meet the burden of proving the defense of *alibi*. The defendant does not always have to prove a defense in a civil case. If the plaintiff does not meet the burden of proof, the defendant is victorious without having to present *any evidence at all*.

Burden of Proof in a Criminal Prosecution

The prosecution's burden of proof in a criminal case is the most challenging burden of proof in law; it is **beyond a reasonable doubt**. Judges have struggled with a definition for this burden of proof. As Chief Justice Shaw stated nearly a century ago,

[w]hat is reasonable doubt? It is a term often used, probably pretty well understood, but not easily defined. It is not mere possible doubt; because every thing relating to human affairs, and depending on moral evidence, is open to some possible or imaginary doubt. It is that state of the case, which, after the entire comparison and consideration of all the evidence, leaves the minds of jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge. *Commonwealth v. Webster*, 59 Mass. 295, 320 (1850), accessed September 26, 2010, <http://masscases.com/cases/sjc/59/59mass295.html>.

In general, the prosecution's evidence must overcome the defendant's **presumption of innocence**³⁰, which the Constitution guarantees as due process of law. *In re Winship*, 397 U.S. 358 (1970), accessed September 26, 2010, http://www.law.cornell.edu/supct/html/historics/USSC_CR_0397_0358_ZO.html. This fulfills the policy of criminal prosecutions, which is to punish the guilty, not the innocent. If even a slight chance exists that the defendant is innocent, the case

29. The burden of proof for the plaintiff and defendant in a civil trial, and for some defenses in a criminal prosecution, which is enough evidence to prove that it is more likely than not that the party should prevail.

30. The trier of fact must begin a criminal trial concluding that the defendant is innocent.

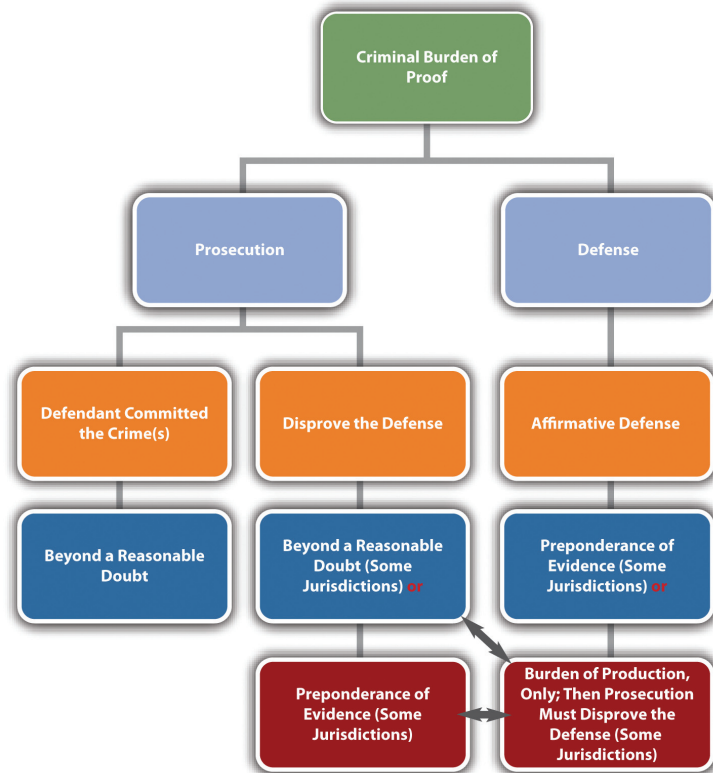
most likely lacks convincing and credible evidence, and the trier of fact should acquit the defendant.

States vary as to their requirements for the defendant's burden of proof when asserting a defense in a criminal prosecution. Findlaw.com, "The Insanity Defense among the States," findlaw.com website, accessed October 1, 2010, <http://criminal.findlaw.com/crimes/more-criminal-topics/insanity-defense/the-insanity-defense-among-the-states.html>. Different defenses also have different burdens of proof, as is discussed in detail in [Chapter 5 "Criminal Defenses, Part 1"](#) and [Chapter 6 "Criminal Defenses, Part 2"](#). Some states require the defendant to meet the burden of production, but require the prosecution to thereafter meet the burden of persuasion, *disproving* the defense to a preponderance of evidence or, in some states, beyond a reasonable doubt. Other states require the defendant to meet the burden of production *and* the burden of persuasion. In these states, the defendant's standard is typically preponderance of evidence, *not* beyond a reasonable doubt. The defendant does not always have to prove a defense in a criminal prosecution. If the prosecution does not meet the burden of proof, the defendant is acquitted without having to present any evidence at all.

Example of a Failure to Meet the Burden of Proof

Ann is on trial for first-degree murder. The only key piece of evidence in Ann's trial is the murder weapon, which was discovered in Ann's dresser drawer during a law enforcement search. Before Ann's trial, the defense makes a motion to suppress the murder weapon evidence because the search warrant in Ann's case was signed by a judge who was inebriated and mentally incompetent. The defense is successful with this motion, and the judge rules that the murder weapon is *inadmissible* at trial. The prosecution decides to proceed anyway. If there is no other convincing and credible evidence of Ann's guilt, Ann does not need to put on a defense in this case. The prosecution will fail to meet the burden of proof and Ann will be acquitted.

Figure 2.8 Diagram of the Criminal Burden of Proof



Inference and Presumption

Parties can use two tools to help meet the burden of proof: **inference**³¹ and **presumption**³². Jury instructions can include inferences and presumptions and are often instrumental in the successful outcome of a case.

An inference is a conclusion that the judge or jury *may* make under the circumstances. An inference is never mandatory but is a choice. For example, if the prosecution proves that the defendant punched the victim in the face after screaming, “I hate you!” the judge or jury can infer that the punch was thrown intentionally.

A presumption is a conclusion that the judge or jury *must* make under the circumstances. As stated previously, all criminal defendants are presumed innocent. Thus the judge or jury *must* begin any criminal trial concluding that the defendant is not guilty.

31. A conclusion the trier of fact may make.

32. A conclusion the trier of fact must make.

Presumptions can be **rebuttable**³³ or **irrebuttable**³⁴. A party can disprove a *rebuttable* presumption. The prosecution can rebut the presumption of innocence with evidence proving beyond a reasonable doubt that the defendant is guilty. An irrebuttable presumption is irrefutable and *cannot* be disproved. In some jurisdictions, it is an irrebuttable presumption that children under the age of seven are incapable of forming criminal intent. Thus in these jurisdictions children under the age of seven cannot be criminally prosecuted (although they may be subject to a juvenile adjudication proceeding).

Circumstantial and Direct Evidence

Two primary classifications are used for evidence: **circumstantial evidence**³⁵ or **direct evidence**³⁶.

Circumstantial evidence indirectly proves a fact. Fingerprint evidence is usually circumstantial. A defendant's fingerprint at the scene of the crime *directly* proves that the defendant placed a finger at that location. It *indirectly* proves that because the defendant was present at the scene and placed a finger there, the defendant committed the crime. Common examples of circumstantial evidence are fingerprint evidence, DNA evidence, and blood evidence. Criminal cases relying on circumstantial evidence are more difficult for the prosecution because circumstantial evidence leaves room for doubt in a judge's or juror's mind. However, circumstantial evidence such as DNA evidence can be very reliable and compelling, so the prosecution can and often does meet the burden of proof using *only* circumstantial evidence.

Direct evidence directly proves a fact. For example, eyewitness testimony is often direct evidence. An eyewitness testifying that he or she saw the defendant commit the crime *directly* proves that the defendant committed the crime. Common examples of direct evidence are eyewitness testimony, a defendant's confession, or a video or photograph of the defendant committing the crime. Criminal cases relying on direct evidence are easier to prove because there is less potential for reasonable doubt. However, direct evidence can be unreliable and is not necessarily preferable to circumstantial evidence. If an eyewitness is **impeached**³⁷, which means he or she loses credibility, the witness's testimony lacks the evidentiary value of reliable circumstantial evidence such as DNA evidence.

33. Can be overcome with evidence.

34. Cannot be overcome with evidence.

35. A type of evidence that indirectly proves a fact.

36. A type of evidence that directly proves a fact.

37. When a witness is made to appear untruthful.

Table 2.2 Comparison of Circumstantial and Direct Evidence in a Burglary Case

Evidence	Circumstantial	Direct
Fiber from the defendant's coat found in a residence that has been burglarized	Yes	No—directly proves presence at the scene , not that the defendant committed burglary
GPS evidence indicating the defendant drove to the burglarized residence	Yes	No—same explanation as fiber evidence
Testimony from an eyewitness that she saw the defendant go into the backyard of the burglarized residence	Yes	No—could prove trespassing because it directly proves presence at the scene , but it does not directly prove burglary
Surveillance camera footage of the defendant purchasing burglar tools	Yes	No—does not directly prove they were used on the residence
Cell phone photograph of the defendant burglarizing the residence	No	Yes—directly proves that the defendant committed the crime
Witness testimony that the defendant confessed to burglarizing the residence	No	Yes—directly proves that the defendant committed the crime
Pawn shop receipt found in the defendant's pocket for items stolen from the residence	Yes	No—directly proves that the items were pawned, not stolen

Casey Anthony Trial Video

Casey Anthony Verdict: Found Not Guilty of Murder

In this video, the jury foreperson in the Casey Anthony trial reads the trial verdict. Casey Anthony was acquitted of murder, manslaughter, and child abuse of her daughter, Caylee Anthony. The evidence in the case was all *circumstantial*, and the coroner did not determine the cause of the victim's death. David Lohr, "Casey Anthony Verdict: NOT GUILTY of First-Degree Murder," Huffingtonpost.com website, accessed August 24, 2011, http://www.huffingtonpost.com/2011/07/05/casey-anthony-trial-verdict_n_890173.html#s303265&title=Casey_Anthony_Verdict.

[\(click to see video\)](#)

KEY TAKEAWAYS

- The burden of proof is a party's obligation to prove a charge, allegation, or defense.
- The burden of production is the duty to present evidence to the trier of fact. The burden of persuasion is the duty to convince the trier of fact to a certain standard, such as preponderance of evidence or beyond a reasonable doubt.
- The civil burden of proof is preponderance of evidence, for both the plaintiff and the defendant. The criminal burden of proof for the prosecution is beyond a reasonable doubt.
 - The criminal burden of proof for the defense is generally preponderance of evidence. States vary on whether they require the criminal defendant to meet both the burden of production and persuasion or just the burden of production. Different defenses also require different burdens of proof.
 - In states that require the defendant to meet only the burden of production, the prosecution must disprove the defense to a preponderance of evidence or beyond a reasonable doubt, depending on the state and on the defense.
- An inference is a conclusion the trier of fact may make, if it chooses to. A presumption is a conclusion the trier of fact must make. A rebuttable presumption can be disproved; an irrebuttable presumption cannot.
- Circumstantial evidence indirectly proves a fact. A fingerprint at the scene of the crime, for example, indirectly proves that because the defendant was present at the scene, the defendant committed the crime. Direct evidence directly proves a fact. If the defendant confesses to a crime, for example, this is direct evidence that the defendant committed the crime.

EXERCISES

Answer the following questions. Check your answers using the answer key at the end of the chapter.

1. Bria is asserting the insanity defense in her criminal prosecution for murder. In Bria's state, defendants have the burden of production and persuasion to a preponderance of evidence when proving the insanity defense. Bria offers her own testimony that she is insane and incapable of forming criminal intent. Will Bria be successful with her defense? Why or why not?
2. Read *Patterson v. New York*, 432 U.S. 197 (1977). In *Patterson*, the defendant was on trial for murder. New York law reduced murder to manslaughter if the defendant proved extreme emotional disturbance to a **preponderance of evidence**. Did the US Supreme Court hold that it is *constitutional* to put this burden on the defense, rather than forcing the prosecution to disprove extreme emotional disturbance beyond a reasonable doubt? Which part of the Constitution did the Court analyze to justify its holding? The case is available at this link: <http://supreme.justia.com/us/432/197/case.html>.
3. Read *Sullivan v. Louisiana*, 508 U.S. 275 (1993). In *Sullivan*, the jury was given a constitutionally deficient jury instruction on beyond a reasonable doubt. Did the US Supreme Court hold that this was a prejudicial error requiring reversal of the defendant's conviction for murder? Which part of the Constitution did the Court rely on in its holding? The case is available at this link: http://scholar.google.com/scholar_case?case=1069192289025184531&hl=en&as_sdt=2002&as_vis=1.

2.5 End-of-Chapter Material

Summary

The United States' system of government is called federalism and consists of one federal government regulating issues of a national concern and separate state governments regulating local issues. The bulk of criminal lawmaking resides with the states because of the police power granted to the states in the Tenth Amendment. Ninety percent of all criminal laws are state laws. Many federal crimes are also state crimes, and a defendant can be prosecuted federally and by a state without triggering double jeopardy protection. If a federal statute exists on an issue, a state statute cannot conflict with it because of the Constitution's Supremacy Clause.

The Constitution sets forth three branches of government. The legislative branch consists of Congress and has the authority to create laws. The executive branch is headed by the president of the United States and has the authority to enforce the laws created by the legislative branch. The judicial branch is headed by the US Supreme Court and has the authority to interpret laws and the Constitution. Each branch checks and balances each other, and the judicial branch ensures that no branch oversteps its authority and violates separation of powers. State governments mimic the federal branches of government at the state level and set forth authorities in each state's constitution.

The federal court system exclusively adjudicates federal matters and consists primarily of the US District Court, the US Court of Appeals or Circuit Court, and the US Supreme Court. Each state has its own court system consisting primarily of a trial court, intermediate court of appeal, and possibly a high court of appeal. Trial courts have original jurisdiction and can accept evidence. Appellate courts have appellate jurisdiction and are limited to reviewing the trial courts' decisions for error.

Each party in a civil or criminal trial must meet a burden of proof, which consists of a burden of producing evidence and a burden of persuading the trier of fact. The burden of proof for a civil plaintiff or defendant is preponderance of evidence, which means that the trier of fact must be convinced it is more likely than not that a party should prevail. The burden of proof for the prosecution in a criminal case is beyond a reasonable doubt, which is a stricter standard than preponderance of evidence and consists of enough compelling evidence to rebut the defendant's presumption of innocence. The burden of proof for a criminal defense varies but is often preponderance of evidence. Inferences, which are conclusions the trier of fact may make, and presumptions, which are conclusions the trier of fact must make, can help meet the burden of proof. The evidence presented to meet the burden of proof can be circumstantial, which indirectly proves a fact, or direct, which directly proves a fact. Circumstantial evidence leaves room for reasonable doubt, but it can be reliable and the basis of a successful criminal prosecution.

YOU BE THE JUROR

Read the prompt, review the case, and then decide whether enough evidence exists to meet the burden of proof. Check your answers using the answer key at the end of the chapter.

1. The defendant was convicted of possession of a handgun with an altered serial number. The defendant contended that he *did not know* the serial number had been altered. The prosecution offered evidence that the gun was “shiny” in the location of the serial number. The prosecution also proved that the defendant was in possession of the handgun for a week. Is this sufficient evidence to prove beyond a reasonable doubt that the defendant knew the serial number had been altered? Read *Robles v. State*, 758 N.E.2d 581 (2001). The case is available at this link: http://scholar.google.com/scholar_case?case=7369971752262973607&q=Indiana+2001+%22Robles+v.+State%22&hl=en&as_sdt=2.5.
2. The defendant was convicted of attempted first-degree murder of a peace officer when he shot a sheriff. The defendant contended that he *did not know* the victim was a peace officer. The sheriff was in a vehicle with a whip antenna, was armed, and was well known as a sheriff in Angola Prison, where the defendant was incarcerated previous to the shooting incident. However, the sheriff was in an unmarked car with the red light covered, out of uniform, and his badge was obscured. Is this sufficient evidence to prove beyond a reasonable doubt that the defendant knew the victim was a peace officer? Read *Donahue v. Burl Cain*, 231 F.3d 1000 (2000). The case is available at this link: <http://openjurist.org/231/f3d/1000/larry-donahue-v-burl-cain>.
3. The defendant was convicted of third-degree robbery, which requires a threat of immediate use of physical force. The defendant entered a McDonald’s restaurant twenty minutes before closing dressed in sunglasses, a leather jacket, and a bandana that covered his hair. The defendant beckoned the clerk and thereafter demanded that she put money from different cash register drawers into his bag. The defendant did not appear armed, nor did he raise his voice or verbally threaten the clerk. Is this sufficient evidence to prove beyond a reasonable doubt that the defendant threatened immediate use of physical force? Read *State v. Hall*, 966 P.2d 208 (1998). The case is available at this link: <http://www.publications.ojd.state.or.us/S44712.htm>.
4. The defendant was convicted of possession of cocaine with intent to sell. The defendant possessed seven individual packages of white powdery substance, but only one package was tested (and it tested positive for cocaine). Is this sufficient evidence to prove beyond a reasonable doubt

that the defendant possessed cocaine with intent to sell? Read *Richards v. Florida*, No. 4008-4216 (2010). The case is available at this link: <http://www.4dca.org/opinions/June%202010/06-09-10/4D08-4216.op.w-dissent.pdf>.

Cases of Interest

- *Clinton v. Jones*, 520 U.S. 681 (1997), discusses separation of powers: http://scholar.google.com/scholar_case?case=1768307810279741111&q=Clinton+v.+Jones&hl=en&as_sdt=2,5.
- *Gonzales v. Raich*, 545 U.S. 1 (2005), discusses the reach of the commerce clause: http://scholar.google.com/scholar_case?case=15669334228411787012&q=%22criminal+burden+of+proof%22&hl=en&as_sdt=2,5&as_ylo=2000.
- *Sabri v. United States*, 541 U.S. 600 (2004), discusses the federal government's ability to criminalize bribery of a local government official: <http://www.law.cornell.edu/supct/html/03-44.ZS.html>.
- *U.S. v. Comstock*, 627 F.3d 513 (2010), discusses criminal and civil burdens of proof: http://scholar.google.com/scholar_case?case=15669334228411787012&q=%22criminal+burden+of+proof%22&hl=en&as_sdt=2,5&as_ylo=2000.

Articles of Interest

- Connections between federalism and homeland security: <http://www.hsaj.org/?fullarticle=2.3.4>
- Video court: <http://www.businessweek.com/ap/financialnews/D9N3D24G0.htm>
- Burden of proof: <http://law.jrank.org/pages/18346/Burden-Proof-Criminal-Civil.html>
- Federal and state court systems: <http://www.uscourts.gov/EducationalResources/FederalCourtBasics/CourtStructure/UnderstandingFederalAndStateCourts.aspx>

Websites of Interest

- US Supreme Court: <http://www.supremecourt.gov>
- Federal courts: <http://www.uscourts.gov/Home.aspx>
- Civic participation: <http://www.congress.org>

Statistics of Interest

- US Supreme Court: [http://www.allcountries.org/uscensus/356 u s supreme court cases filed.html](http://www.allcountries.org/uscensus/356%20u%20s%20supreme%20court%20cases%20filed.html)

Answers to Exercises

From Section 2.1 "Federalism"

1. Congress gets the authority to criminalize conduct involving the Internet from the commerce clause because the Internet includes economic activity and *crosses state lines*. Both the federal and state government can prosecute the defendant under federal and state criminal statutes for one act without violating double jeopardy.
2. The US Supreme Court relied on the commerce clause and the Fourteenth Amendment. Specifically, the Court ruled that gender-motivated crimes of violence are not *economic activity* and do not have a *national* effect, so the commerce clause does not support federal legislation in this area. Furthermore, the Court held that the Fourteenth Amendment due process clause is targeted at state government action, not *individual* defendants, so it is likewise inapplicable.
3. The US Supreme Court held that the Pennsylvania Sedition Act is *superseded* by the Smith Act, 18 U.S.C. § 2385. Specifically, the Court referenced the supremacy of federal law on the same topic, thereby preempting the state statute.

Answers to Exercises

From Section 2.2 "The Branches of Government"

1. The mayor is violating separation of powers because members of the executive branch cannot invalidate or supersede laws passed by the legislative branch; only the *judicial* branch is entitled to do this via *judicial review*. The judicial branch should check and balance this action, *if* someone attacks the mayor's policy in court.
2. The US Supreme Court did not uphold President Truman's action and ruled that he was violating *separation of powers*. A statute on point already disallowed the president's action (the Taft-Hartley Act). The president cannot supersede Congress's authority by ignoring a constitutional statute that Congress enacted, even during wartime.
3. The US Supreme Court reversed the US Court of Appeals for the Fourth Circuit. The Court held that the judicial branch is not required to allow unconstitutional federal statutes to remain in effect during wartime because of *separation of powers*. The Court determined that the detainee's constitutional right to due process allowed him access to an attorney and a court trial, in spite of the federal statute.

Answers to Exercises

From Section 2.3 "The Court System"

1. Jenna cannot appeal to the US Supreme Court because she does not appear to have a *federal* issue. Parties can appeal from a state's highest level appellate court directly into the US Supreme Court, but the US Supreme Court is a federal court and only has the jurisdiction to hear federal matters. Jenna cannot meet the criteria of diversity jurisdiction or diversity of citizenship because even if she and Max are citizens of different states, the amount in controversy is too low (it needs to be at least \$75,000).
2. The US Court of Appeals for the Tenth Circuit held that there *was jurisdiction*, in spite of the absence of a trial. The court also held that the extraordinary circumstances compelled a reversal of the district court order denying a motion to dismiss the defendants' indictment. The court essentially ruled that the defendants had a right not to be tried.
3. The US Supreme Court held that a corporation is a citizen of its state of incorporation *and* the state in which its *principal place of business* is located. The principal place of business is the "nerve center state," which is the state that houses the corporate headquarters.

Answers to Exercises

From Section 2.4 "The Burden of Proof"

1. Bria will not be successful with the insanity defense because she cannot meet the burden of proof, which is **preponderance of evidence**. Preponderance of evidence is a fairly low standard, but Bria must still convince the trier of fact that it is more likely than not she is insane. She cannot do this with her testimony, standing alone. Clearly, Bria has an important *self-interest* in eliminating her criminal responsibility in this case. Thus her *subjective* testimony regarding her own mental state is not compelling enough to meet the 51 percent to 49 percent standard.
2. The US Supreme Court held that it is *constitutional* to put the burden of proving extreme emotional disturbance on the defendant, reducing murder to manslaughter. The Court held that this did not relieve the prosecution of the burden of proving every element of murder beyond a reasonable doubt and thus was in compliance with the **due process clause** of the Constitution.
3. The US Supreme Court held that a constitutionally deficient jury instruction on the definition of beyond a reasonable doubt was a *prejudicial error* and required a reversal of the defendant's conviction for murder. The Court determined that the improper jury instruction deprived the defendant of his Sixth Amendment right to a jury trial.

Answer to Law and Ethics Question

1. The federal judge Susan Bolton based her decision on *federal preemption* and an *impermissible state burden* on legal resident aliens. The judge reasoned that federal authority to make law in the area of immigration has been confirmed by the US Supreme Court, based on enumerated and implied powers, and the designated sections of the Arizona law conflicted with this authority and are thus preempted. Order, *U.S. v. Arizona*, No. CV 10-1413-PHX-SRB, U.S. District Court, accessed October 1, 2010, http://graphics8.nytimes.com/packages/pdf/national/20100729_ARIZONA_DOC.pdf. The judge further held that enforcement of the enjoined sections of the Arizona law would divert federal resources Order, *U.S. v. Arizona*, No. CV 10-1413-PHX-SRB, U.S. District Court, accessed October 1, 2010, http://graphics8.nytimes.com/packages/pdf/national/20100729_ARIZONA_DOC.pdf. and also impermissibly burden legal resident aliens by restricting their liberty while their status is checked. Order, *U.S. v. Arizona*, No. CV 10-1413-PHX-SRB, U.S. District Court, accessed October 1, 2010, http://graphics8.nytimes.com/packages/pdf/national/20100729_ARIZONA_DOC.pdf.

Answers to You Be the Juror

1. The Indiana Court of Appeals held that there was **sufficient** evidence to prove beyond a reasonable doubt that the defendant knew the serial numbers on the gun had been altered. The appearance of the gun and the defendant's week-long possession were enough for a reasonable juror to infer knowledge.
2. The US Court of Appeals for the Fifth Circuit held that there was **insufficient** evidence to prove beyond a reasonable doubt that the defendant knew the victim was a peace officer. The court held that a reasonable juror could not infer knowledge from the whip antennae and the victim's job at Angola prison.
3. The Supreme Court of Oregon held that there was **sufficient** evidence to prove beyond a reasonable doubt that the defendant threatened immediate use of physical force. The court held that the defendant's appearance, combined with the lateness of the hour and the demands for money, could be an implicit threat under the circumstances.
4. The District Court of Appeal of Florida held that there was **sufficient** evidence to prove beyond a reasonable doubt that the defendant possessed cocaine with the intent to sell. The court pointed out that the criminal statute at issue did not require a specified quantity of cocaine. The court also reasoned that a jury could infer from the packaging and expert testimony that the other packages also contained cocaine.