

Researching US Law for Canadian Research Problems

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Why?

- US law won't bind Canadian courts
- So why research US law for a Canadian research problem?
 - The law is undeveloped or underdeveloped in Canada
 - To investigate or advance an approach novel in Canada but with precedent in the US
 - The area of law traces origin to US
- US law then can be persuasive

First: Understand US Law Basics

- Persuasiveness: level of court, jurisdiction
- US court system – note differences
 - Federal
 - 94 districts (geographic and subject)
 - 13 appellate “circuits”
 - limited jurisdiction
 - State
 - variations among states
 - US Supreme Court (SCOTUS)
 - Difference: SCOTUS *usually* – not always – court of last resort

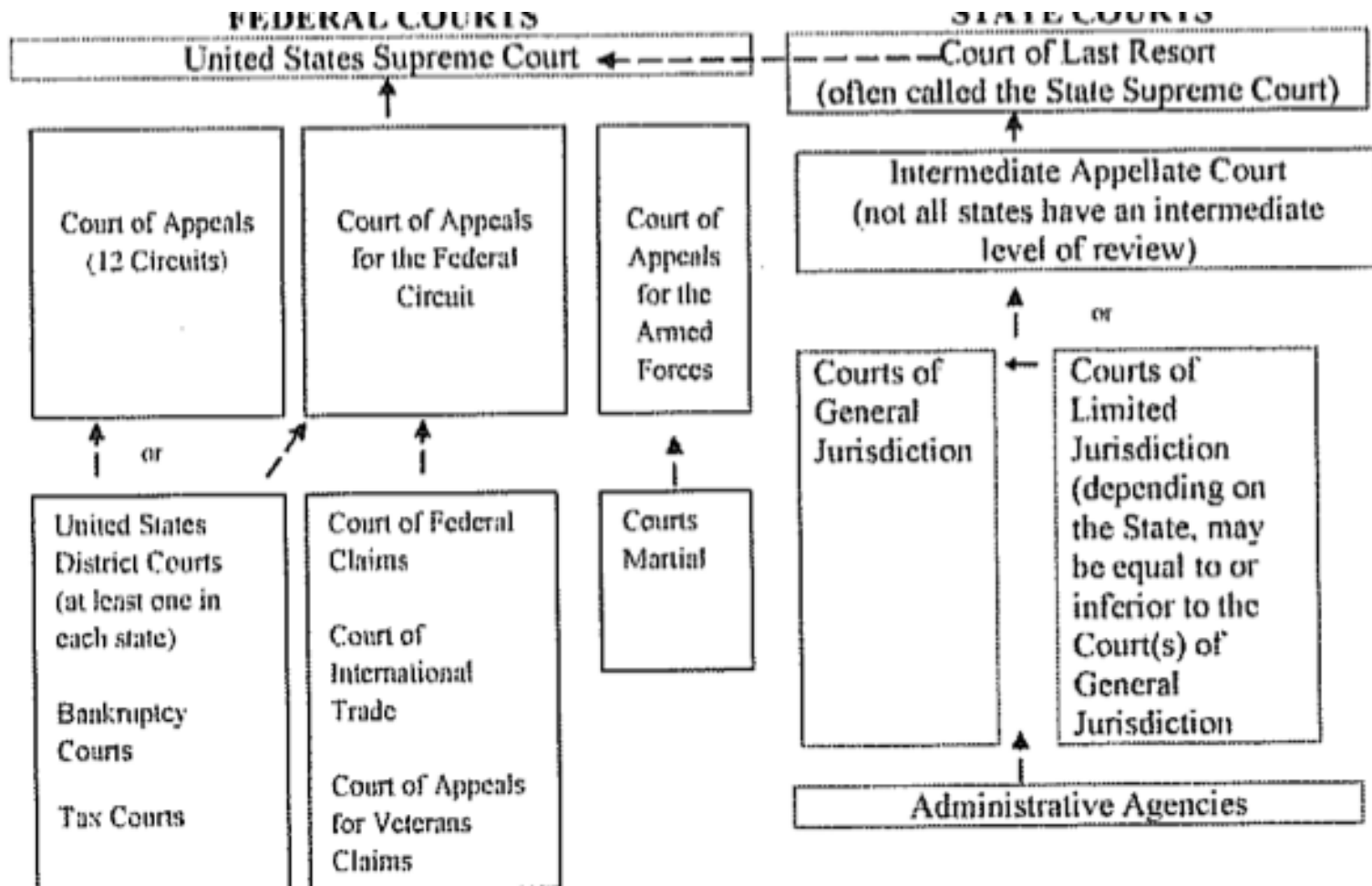
Federal Courts

- Jurisdiction:
 - Limited to 7 areas:
 1. US constitution
 2. A “federal question”: US federal laws, treaties
 3. Ambassadors, federal public officials
 4. Inter-state disputes
 5. Certain disputes between people of different states
 6. Dispute with US government
 7. Jurisdiction assigned to federal courts
 - Can review state courts in those 7 jurisdictional areas
 - Include federal administrative agencies

State Courts

- Hear any cases not specifically prohibited to hear or assigned to federal
- *General* structure:
 - minor trial courts: courts of limited jurisdiction small claims
 - civil and criminal trial courts of general jurisdiction: names vary across states
 - intermediate appellate court: *usually* [state] Court of Appeal
 - the state court of last resort: *usually* [state] Supreme Court.
 - But e.g.: NYSC → NYSC (AD) (intermediate appellate) → NYCA (last resort)
- State court of last resort: final say on state law and *state constitution* issues — except to extent US constitutional or federal law also involved
- See National Center for State Courts for structure:
<http://www.ncsc.org/Information-and-Resources/Comparing-state-courts.aspx>

US Courts Organizational Chart



US Legislative Framework

- US Constitution

- =federal
- 27 amendments at present
- Amendments 1-10 = the Bill of Rights

- US Code

- Unlike Canadian federal, US legislation is codified
- 50 Titles
- Sections of new statutes added throughout Code in relevant Titles
- States: own constitutions, own legislation, own codes

Research process is the same

Secondary  Primary

- Secondary:
 - Legal dictionaries
 - Legal encyclopedias
 - Digests
 - Treatises, texts
 - Legal periodical literature
- Primary:
 - Case law
 - Legislation
 - Note up

Secondary: Dictionaries

- Dictionaries and Words & Phrases
 - Use less as you learn
 - Renewed importance for US law: different terminology
 - e.g. antitrust=competition; eminent domain=expropriation
- Examples:
 - Black's Law Dictionary
 - Words & Phrases (West)
 - dictionary.law.com
 - Wex: <http://www.law.cornell.edu/wex>: wiki like legal dictionary and encyclopedia

Secondary: Legal Encyclopedias

- **American Jurisprudence 2d (“Am Jur”)**
 - Like the CED
 - multivolume subject and title index
 - ~80 volumes by subject
 - Cumulative “pocket parts”
 - some case citations; not comprehensive
 - We have: print in library; our Westlaw Canada

Secondary: Legal Encyclopedias

- **American Law Reports (ALR)**
 - several hundred volumes
 - case summaries
 - annotations: short articles on legal issues
 - all US jurisdictions
 - Reconcile conflicting decisions
 - ALR Federal; ALR 3d=state law
 - We have: print in library; our Westlaw Canada

Secondary: Legal Encyclopedias

- **Restatements of the Law of...**
 - Distill cases
 - Concise “black letter” statements of common law
 - Various common law subjects: Restatement on the Law of Agency, ...of Property, ...of Torts, etc.
 - Restatements in the Courts: covers court interpretations of the Restatements
 - Highly authoritative secondary literature
 - We have: print in library; our Westlaw Canada

Secondary: Legal Encyclopedias

- **Corpus Juris Secundum**

- Like a combination of CED and Canadian Abridgment
- >160 vols: subject
- Five-volume index
- Cumulative pocket parts
- Attempt to cite all reported cases on topic
- We don't have. Available in US on Westlaw.

Secondary: Digests

- **American Digests**
 - Like Canadian Abridgment
 - Topical collection
 - Digests of all cases West reports
 - “key number”
 - We have: print in library; our Westlaw Canada

Secondary: Research Guides and Websites

- US law school library research guides
 - e.g., Northwestern
 - [Conduct Research](#)
 - [Pritzker Legal Research Center topical research guides](#)
 - e.g., Chicago
 - [D'Angelo Law Library Research Guides](#)
 - [Research Guides by Jurisdiction](#)
 - [Research Guides by Topic \(US\)](#)

US Legislation and sources

- US Constitution
 - =federal
 - 27 amendments at present
 - Amendments 1-10 = the Bill of Rights
 - Interpretation: via LoC resources
- US Code
 - or unofficial via GPO Fdsys, or via LII, or via
 - Unlike Canadian (except QC), US legislation is codified
 - 50 Titles
 - Sections of new statutes added throughout Code in relevant Titles
 - Print = evidentiary
 - Congress.gov: Bills, sessional statutes (THOMAS)
- States: own constitutions, own legislation

Primary: Legislation

- US Code, constitution available here in print
 - [annotated](#) (West)
- Better: Use online sources:
 - Many free, regularly updated
 - [uscode.house.gov](#)
 - LII – [law.cornell.edu](#):
 - US Constitution Annotated
 - US Code
 - Some state legislation
 - Fdsys: [gpo.gov/fdsys](#): regulations, bills, US Code, other federal government publications
 - [Congress.gov](#): progress of legislation, etc
 - Our Westlaw Canada, LexisNexis Canada
 - HeinOnline: legislative histories

Primary: Cases

- Little current print case law in Canadian libraries
- We have some
- Most discontinued
- Use online:
 - our Westlaw Canada, LexisNexis Canada
 - usually cases found through secondary research or citation in Canadian case
 - LexisNexis Academic
 - HeinOnline + Fastcase
 - “Shepardize”

Primary: Free and Developing

- Legislation:
 - Noted earlier: LII, FDsys, House of Reps
- Cases:
 - Google Scholar scholar.google.ca
 - Fastcase fastcase.com
 - Integrated into HeinOnline
 - Casetext casetext.com
 - Crowdsourced annotations
 - Basic (free): all US Supreme Court, many federal circuit, federal district >30 years, some Delaware