**CHAPTER 1**

**The U.S. Legal System**

SUMMARY

Most students taking an undergraduate course in communications law have had little formal instruction on how the legal system actually works in the United States. Though an exhaustive understanding of the legal system is not a prerequisite to studying the substance of communications law, a rudimentary understanding of the system is indeed necessary. Therefore, this chapter acquaints students with basic legal concepts, procedures, and terminology that necessarily will be encountered in later chapters of the textbook.

Specifically, students should understand that the law comes from federal and state jurisdictions and that within each jurisdiction there are multiple sources of law, with varying degrees of supremacy. It is also important that students understand how state and federal court systems are structured and the difference between trial and appellate courts. Furthermore, students should know the basic stages involved in criminal prosecutions and civil litigation, and they should understand why only a small percentage of cases actually go to trial. The chapter also illustrates how to read a case citation — an important point for students who may wish to look up the actual judicial opinions in some communications law cases.

Perhaps the most difficult concept in this chapter is that of common law and how it relates to the broader term, case law. The term common law refers to rules that originated independently in the courts, as judges strove to fairly resolve the disputes before them. Case law is sometimes used synonymously with common law, but it can also be a broader term that refers not only to common law rules but to any court interpretations of other sources of law, such as constitutional provisions or statutes. In either instance — whether establishing legal principles from scratch or applying laws written by legislative bodies — the court rulings may establish binding precedent.

THE HYPOTHETICAL: THREAT OF A LAWSUIT

A chapter explaining the legal system and a host of legal terms can seem a bit dry and abstract. The hypothetical problem at the beginning of this chapter is intended to combat that tendency by combining a realistic scenario with some curiosity-raising questions about how the legal system would apply.

By reading the chapter, students should find the answers to the questions posed at the end of the hypothetical. Occasional paragraphs or sentences in the text refer back to the hypothetical. In addition, the last paragraph in the summary points section, at the end of the chapter, contains brief answers to most of the questions presented in the hypothetical.

Instructors may wish to change the facts of this hypothetical slightly for purposes of class discussion. For example, suppose that instead of a threatened copyright lawsuit from the newspaper, a local resident identified in one of the stories vowed to sue the radio station for libel. This would change a couple of the answers substantially. Libel law in most jurisdictions is primarily of common law origins, rather than statutory. And the lawsuit would more likely be filed in state court rather than federal.

What if the threat was from the Federal Communications Commission, which concluded that the station broadcast indecency? Now the source of the law would be a combination of federal statute and administrative rules; the "case" would not initially go to court but rather to an agency hearing; and the federal court battle might begin only after the FCC sends the station a notice of its decision to fine the station.

EXAM QUESTIONS

1. The term jurisdiction refers to

a. the geographical territory within which a government may exercise authority.

b. the subject area or type of dispute over which legislatures and court systems have authority.

\* c. Both a and b

d. None of the above

2. The federal government exercises exclusive jurisdiction over

a. advertising regulation.

b. privacy law.

\* c. copyrights.

d. obscenity prosecutions.

3. Lawsuits concerning federal constitutional rights may be adjudicated in

a. federal court only.

b. state court only.

\* c. federal court or state court.

4. The final arbiter on all legal questions involving the U.S. Constitution is

a. Congress.

b. the U.S. Attorney General.

\* c. the Supreme Court of the United States.

d. the various state supreme courts.

5. The main trial court in the federal system is called the

\* a. United States District Court.

b. Superior Court of the United States.

c. United States Court of Appeals.

d. Federal Circuit Court.

6. The United States is composed of how many sovereign legal systems?

a. 49

b. 3

c. 50

\* d. 51

7. Federal and state judicial systems consist of two basic kinds of courts. They are:

a. justice courts and equity courts.

b. jury courts and justice courts.

\* c. trial courts and appellate courts.

d. local courts and supreme courts.

8. Under the doctrine of judicial review, it is the role of each state court system to

a. administer the applicable precedent accordingly.

\* b. interpret that jurisdiction's constitution.

c. determine whether statutes make good public policy.

d. None of the above

9. Statutes enacted by the federal government are published in the

\* a. United States Code.

b. Federal Reporter.

c. Journal of Federal Regulations.

d. Statutory File.

10. Laws passed by federal administrative agencies are published in the

a. U.S. Administrative Code.

b. Federal Supplement.

\* c. Code of Federal Regulations.

d. U.S. Daily Journal.

11. What is the hierarchy of laws, from the most powerful source to the least powerful?

a. Constitutional law, common law, statutory law and administrative law

b. Constitutional law, administrative law, common law and statutory law

c. Common law, constitutional law, administrative law and statutory law

\* d. Constitutional law, statutory law, administrative law and common law

12. Legal rules conceived and fostered independently by the courts are known as

a. administrative law.

b. constitutional law.

\* c. common law.

d. statutory law.

13. Without the \_\_\_\_\_\_\_\_ , common law would simply be a worthless muddle of disjointed rules.

a. federal judicial system

\* b. doctrine of precedent

c. U.S. Constitution

d. doctrine of judicial review

14. In most jurisdictions, statutes passed by legislative bodies are systematically arranged in bound volumes. These compilations are referred to as

a. statutory law.

b. statutory journals.

\* c. codes.

d. decisional law.

15. In a criminal case

a. the government prosecutes accused individuals.

b. the evidence of guilt must be convincing beyond a reasonable doubt.

c. the injured individual is compensated by the government.

\* d. Both a and b

16. One area that is mainly a criminal matter is the law of

a. copyright.

\* b. obscenity.

c. torts.

d. libel.

17. The usual remedy sought in a civil lawsuit is

a. a fine and time in jail.

\* b. compensation in the form of money.

c. a new contract.

d. an official apology.

18. The party who initiates a civil lawsuit is called the

a. prosecutor.

b. appellee.

\* c. plaintiff.

d. applicant.

19. Which of the following wrongful acts most likely would be a breach of contract rather than a tort?

a. Publishing harmful falsehoods about another person.

b. Secretly "bugging" someone's house.

\* c. Failing to pay a model who posed for photographs.

d. Playing a cruel practical joke over the radio.

20. When there is no contested issue of fact, a judge may end a case prior to trial by granting a motion for

a. settlement.

b. change of venue.

c. injunction.

\* d. summary judgment.

21. An appealing party is referred to as the

a. appellee.

b. respondent.

\* c. appellant.

d. plaintiff.

22. Each year the U.S. Supreme Court receives several thousand requests for review. Of these, the Court actually decides about how many cases?

\* a. 100

b. 1,000

c. half of all requests

d. 90 percent

23. A weaker substitute for a majority opinion is a

a. dissenting opinion.

\* b. plurality opinion.

c. concurring opinion.

24. Suppose the case of Laurel v. Hardy was decided by the U.S. Supreme Court in 1990 and the opinion is published at page 210 of the United States Reports, volume 464. The proper citation would be:

a. Laurel v. Hardy, 1990, U.S. 464, 210.

b. Laurel v. Hardy, 210 U.S. vol. 464, 1990.

\* c. Laurel v. Hardy, 464 U.S. 210 (1990).

d. 464 Laurel v. Hardy 210/1990.

25. A significant limitation on courts is that they may only rule on "justiciable controversies." What does this mean?

[Courts are empowered only to resolve specific legal disputes between particular people or entities whose legal rights are in jeopardy. Courts may not issue rulings on abstract or hypothetical legal questions.]