CHAPTER 14

The Federal Courts

CHAPTER OUTLINE

I. The Nature of the Judicial System (pp. 459-462)
   A. Introduction
      1. In criminal law cases, an individual is charged by the government with
         violating a specific law.
      2. Civil law involves no charge of criminality but concerns a dispute between
         two parties.
   B. Participants in the Judicial System
      1. Litigants
         a. Every case is a dispute between a plaintiff and a defendant.
         b. Standing to sue means that litigants must have serious interest in a
            case.
         c. Class action suits permit a small number of people to sue on
            behalf of all other people similarly situated.
         d. Justiciable disputes are issues that are capable of being settled by
            legal methods.
      2. Groups often support cases with amicus curiae (“friend of the court”)
         briefs.
      3. Attorneys

II. The Structure of the Federal Judicial System (pp. 462-467)
   A. Introduction
      1. Congress has created constitutional courts and legislative courts.
      2. Courts with original jurisdiction are those in which a case is heard first,
         usually in a trial.
      3. Courts with appellate jurisdiction hear cases brought to them on appeal
         from a lower court.
   B. District Courts
      1. The entry point for most litigation in the federal courts is one of the 91
         district courts.
      2. Most of the cases handled in the district courts are routine.
   C. Courts of Appeal
      1. The U.S. courts of appeal are appellate courts empowered to review all
         final decisions of district courts.
      2. The courts of appeal focus on correcting errors of procedure and law that
         occurred in the original proceedings of legal cases.
D. The Supreme Court
1. The pinnacle of the American judicial system is the U.S. **Supreme Court**.
2. Almost all of the business of the Court comes from the appellate process.

III. The Politics of Judicial Selection (pp. 467-472)
A. The Lower Courts
1. According to **senatorial courtesy**, nominations for lower court positions are not confirmed when opposed by a senator of the president’s party from the state in which the nominee is to serve.
2. The president usually has more influence in the selection of judges to the federal courts of appeal than to the federal district courts.

B. The Supreme Court
1. Nominations to the Court may be a president’s most important legacy to the nation.
2. The president operates under fewer constraints in nominating members to the Supreme Court.

IV. The Background of Judges and Justices (pp. 472-476)
A. Judges serving on the federal district and circuit courts are all lawyers and overwhelmingly white males.
B. Supreme Court justices are an elite group.

V. The Courts as Policymakers (pp. 476-483)
A. Accepting Cases
1. The most common way for the Court to put a case on its docket is by issuing to a lower federal or state court a **writ of certiorari**, a formal document that calls up a case.
2. The **solicitor general** is in charge of the appellate court litigation of the federal government.

B. Making Decisions
1. **Amicus curiae** briefs are briefs from parties who are interested in the outcome of the case but are not formal litigants.
2. An **opinion** is a statement of the legal reasoning behind the decision.
3. The vast majority of cases reaching the courts are settled on the principle of **stare decisis**, meaning that an earlier decision should hold for the case being considered.
4. All courts rely heavily on **precedent**—the way similar cases were handled in the past—as a guide to current decisions.
5. **Original intent** holds that judges and justices should determine the intent of the framers of the Constitution regarding a particular matter and decide cases in line with that intent.

C. Implementing Court Decisions
1. **Judicial implementation** refers to how and whether court decisions are translated into actual policy, affecting the behavior of others.
2. Implementation of court decisions involves an interpreting population, an implementing population, and a consumer population.

VI. Understanding the Courts (pp. 483-489)
   A. The Courts and Democracy
   B. What Courts Should Do: The Scope of Judicial Power
      1. **Judicial restraint** is when judges adhere closely to precedent and play minimal policymaking roles.
      2. **Judicial activism** is when judges make bolder policy decisions, even charting new constitutional ground.
      3. The doctrine of **political questions** is a means to avoid deciding some cases, principally those regarding conflicts between the president and Congress.
      4. If an issue is one of **statutory construction**, in which a court interprets an act of Congress, the legislature routinely passes legislation that clarifies existing laws.

VII. Summary (pp. 489-490)

**LEARNING OBJECTIVES**

*After studying Chapter 14, you should be able to:*

1. Understand the nature of the judicial system.
2. Explain how courts in the United States are organized and the nature of their jurisdiction.
3. Describe the role of judges in the judicial process, including their backgrounds and how they were selected.
4. Discuss Supreme Court policymaking and judicial implementation.
5. Evaluate how the courts operate in a democratic system and how their activities affect the scope of government.

*The following exercises will help you meet these objectives:*

Objective 1: Understand the nature of the judicial system.

1. Explain the difference between criminal law and civil law.

   Criminal law:
Civil law:

2. List three regular participants in the judicial system other than judges, and briefly explain the role they play.
   
   1.
   
   2.
   
   3.

3. What is meant by “justiciable disputes”?

Objective 2: Explain how courts in the United States are organized and the nature of their jurisdiction.

1. What are the differences between constitutional courts and legislative courts?

   Constitutional courts:

   Legislative courts:
2. Complete the following table on the structure of the federal judicial system.

<table>
<thead>
<tr>
<th>Court</th>
<th>Number of Courts</th>
<th>Number of Judges</th>
<th>Jurisdiction</th>
<th>Policy Implications</th>
</tr>
</thead>
<tbody>
<tr>
<td>District Court</td>
<td></td>
<td></td>
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<tr>
<td>Court of Appeal</td>
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<tr>
<td>Supreme Court</td>
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</tbody>
</table>

3. What is the role of a U.S. attorney?

Objective 3: Describe the role of judges in the judicial process, including their backgrounds and how they were selected.

1. Explain the practice of “senatorial courtesy.”

2. Name three conditions in which nominations to the Supreme Court are more likely to run into trouble.

   1. 

   2. 

   3. 

3. Present a demographic profile of the “typical” federal judge.
4. List six criteria that have been important in choosing Supreme Court justices over the years.

1.

2.

3.

4.

5.

6.

Objective 4: Discuss Supreme Court policymaking and judicial implementation.

1. What are the four key functions of the solicitor general?

   1.

   2.

   3.

   4.

2. What are the functions of *amicus curiae* briefs?
3. What is the difference between a majority opinion, a dissenting opinion, and a concurring opinion?

Majority opinion:

Dissenting opinion:

Concurring opinion:

4. What is the difference between \textit{stare decisis} and precedent?

\textit{Stare decisis}:

Precedent:

5. List and explain the three elements of judicial implementation according to Charles Johnson and Bradley Canon.

1.

2.

3.

Objective 5: Evaluate how the courts operate in a democratic system and how their activities affect the scope of government.

1. In what ways might it be said that courts are not a very democratic institution?

2. Explain the difference between judicial activism and judicial restraint. Judicial activism:
Judicial restraint:

3. Define the terms “political question” and “statutory construction” as they apply to the Supreme Court, and give an example of each.

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
<th>Example</th>
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</thead>
<tbody>
<tr>
<td>Political Question</td>
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<tr>
<td>Statutory Construction</td>
<td></td>
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</tbody>
</table>

**KEY TERMS**

*Identify and describe:*

- standing to sue
- class action suits
- justiciable disputes
- *amicus curiae* briefs
- original jurisdiction
appellate jurisdiction

district courts

courts of appeal

Supreme Court

senatorial courtesy

solicitor general

opinion

stare decisis

precedents

judicial implementation

original intent
judicial restraint

judicial activism

political questions

statutory construction

Compare and contrast:

standing to sue and class action suits

original jurisdiction and appellate jurisdiction

district courts, courts of appeal, and Supreme Court

stare decisis and precedent

judicial restraint and judicial activism

political questions and statutory construction
Name that term:

1. Capable of being settled by legal methods.
   ____________________________

2. These are submitted by interested parties who are not litigants.
   ____________________________

3. The way of disposing of state-level federal judicial nominations.
   ____________________________

4. This office represents the government before the Supreme Court.
   ____________________________

5. A statement of the legal reasoning behind a Supreme Court decision.
   ____________________________

6. How and whether court decisions are translated into policy.
   ____________________________

7. This is sometimes referred to as “strict constructionism.”
   ____________________________

8. The doctrine used to avoid deciding some cases.
   ____________________________

USING YOUR UNDERSTANDING

1. Investigate the composition of the current Supreme Court in terms of the different types of individuals that are found there. Find out who appointed them, their political party affiliations, their ages, their ethnicity, their religions, their home states, their previous occupations, and other such defining characteristics. Then see if you can find out how the different justices voted on some recent court cases
having to do with public policy issues. Try to develop a profile of the Supreme Court in which you relate the characteristics of its members to their voting behavior. Briefly discuss the implications of a justice’s background for the way he or she behaves on the bench.

2. Conduct a study of judicial selection by comparing the two Supreme Court nominations from the Clinton administration (Ruth Bader Ginsburg and Stephen G. Breyer) with the two nominations from the George W. Bush administration (Samuel A. Alito and John G. Roberts). How do Bush’s choices differ from Clinton’s choices? How did the two nominations differ? What were the most important factors influencing the presidents’ choices? Who else was considered as potential nominees by each president, and why were the successful candidates chosen instead of any of the others? How did the public react to the nominations? How did the Senate react to the nominations? Compare the confirmation hearings of the two nominees. How did they differ and how were they similar? Evaluate the judicial selection process for Supreme Court justices in light of these two cases. Is the process fair? How might the process be improved?

REVIEW QUESTIONS

Check ☒ the correct answer:

1. The majority of American judicial policy is made by the Supreme Court.
   ☐ True
   ☐ False

2. Federal judges
   ☐ a. actively initiate cases.
   ☐ b. issue advisory opinions on hypothetical cases.
   ☐ c. cannot resolve justiciable disputes.
   ☐ d. are impartial arbiters between two contending views.

3. Which of the following is NOT associated with civil law?
   ☐ a. a plaintiff and a defendant
   ☐ b. a charge that a law has been violated
   ☐ c. statutes and common law
   ☐ d. a dispute between two parties

4. Most civil and criminal cases begin and end in the state courts.
   ☐ True
   ☐ False
5. Every judicial case involves
☐ a. a plaintiff and defendant.
☐ b. a jury.
☐ c. a federal judge.
☐ d. criminal law.

6. Plaintiffs must have
☐ a. a jury trial.
☐ b. standing to sue.
☐ c. original jurisdiction.
☐ d. a civil dispute.

7. The concept of standing to sue has been broadened by the use of
☐ a. class action suits.
☐ b. appellate jurisdiction.
☐ c. common law.
☐ d. justiciable disputes.

8. Which of the following is NOT a justiciable dispute?
☐ a. a divorce proceeding
☐ b. a dispute over an insurance claim
☐ c. a suit calling for the abolishment of a federal program
☐ d. a murder trial

9. Interest groups ignore the judicial process because of its limited impact on public policy.
☐ True
☐ False

10. The federal government provides legal assistance to the poor through the
☐ a. National Association for the Advancement of Colored People.
☐ b. American Civil Liberties Union.
☐ c. Legal Services Corporation.
☐ d. all of the above

11. The Court of Military Appeals and the Tax Court are
☐ a. constitutional courts.
☐ b. legislative courts.
☐ c. state courts.
☐ d. local courts.
12. The Constitution specifically created the
☐ a. Supreme Court.
☐ b. federal district courts.
☐ c. federal courts of appeal.
☐ d. all of the above

13. Courts with appellate jurisdiction
☐ a. review the factual record of cases.
☐ b. hear the majority of court cases in the United States.
☐ c. review the legal issues involved in cases.
☐ d. are all federal courts.

14. Each state has at least one federal district court.
☐ True
☐ False

15. Cases in the federal district courts
☐ a. are usually presided over by one judge.
☐ b. cannot involve litigants from different states.
☐ c. are heard on appeal from state courts.
☐ d. involving civil law are rarely settled.

16. Duties of the federal magistrates include all of the following EXCEPT
☐ a. issuing warrants for arrest.
☐ b. hearing motions subject to review by the district judge.
☐ c. representing the U.S. government in civil cases.
☐ d. presiding over some trials.

17. Most of the cases handled in the district courts
☐ a. are settled by a jury.
☐ b. are routine.
☐ c. result in policy innovations.
☐ d. are published by the U.S. government.

18. Cases in the federal courts of appeal
☐ a. involve trials and testimony.
☐ b. focus on the correction of errors in procedure and law.
☐ c. rarely come from the federal district courts.
☐ d. must be decided by a unanimous vote.
19. Which of the following is NOT among the functions of the Supreme Court?
   □ a. maintaining national supremacy in the law
   □ b. ensuring uniformity in interpretations of national laws
   □ c. enforcing the orders of federal regulatory agencies
   □ d. resolving conflicts among the states

20. Few cases arise under the Supreme Court's original jurisdiction.
   □ True
   □ False

21. Cases appealed to the Supreme Court from state courts must involve
   □ a. a crime.
   □ b. at least $50,000 in a civil case.
   □ c. a substantial federal question.
   □ d. all of the above

22. Federal judges and justices
   □ a. serve for life.
   □ b. cannot be impeached.
   □ c. can be removed for political reasons.
   □ d. are elected to office.

23. (bonus) The only Supreme Court justice who was tried but not convicted by the Senate was
   □ b. Samuel Chase.
   □ d. William Rehnquist.

24. Senatorial courtesy allows any senator to prevent the confirmation of a federal judiciary nominee.
   □ True
   □ False

25. Nominees for the federal judiciary are evaluated by
   □ a. the Department of Justice.
   □ b. the Federal Bureau of Investigation.
   □ c. sitting judges.
   □ d. all of the above

26. The president’s appointments to the Supreme Court may be his or her most important legacy.
   □ True
   □ False
27. Which of the following does the president rely on most to identify and screen candidates for the Supreme Court?
   - a. the Senate Judiciary Committee
   - b. the attorney general and the Department of Justice
   - c. sitting justices
   - d. the American Bar Association

28. Candidates for the Supreme Court usually aggressively pursue the position, especially by politicking the Senate Judiciary Committee.
   - True
   - False

29. The nomination of Clarence Thomas became controversial because
   - a. of disclosures that he used marijuana while he was a law professor.
   - b. of his conservative stand on the issues.
   - c. of sexual harassment charges.
   - d. he is an African American.

30. Which of the following works to the advantage of a Supreme Court nominee?
   - a. a reputation for judicial activism
   - b. nomination by a president at the end of his term
   - c. nomination by a president whose party is in the minority in the Senate
   - d. ethics, competence, and a low profile

31. Which of the following statements is TRUE?
   - a. Federal judges are highly representative of the American people.
   - b. The Constitution does not require federal judges to be lawyers.
   - c. Most federal judges have never been involved in politics.
   - d. The Reagan administration ignored ideology in making judicial appointments.

32. The race and gender of nominees for Supreme Court justice have become less salient in recent years.
   - True
   - False

33. Many Supreme Court justices, including some of the most distinguished ones, have not had previous judicial experience.
   - True
   - False
34. An important influence on the selection of judges and justices is
   □ a. partisanship.
   □ b. ideology.
   □ c. politics.
   □ d. all of the above

35. Which of the following statements is FALSE?
   □ a. Partisan politics affects judicial appointments.
   □ b. Presidents usually nominate judges and justices who share their ideological beliefs.
   □ c. Members of the federal bench may time their retirement so that the president can choose compatible successors.
   □ d. Presidents can always rely on their judicial appointees to vote the way he wants them to vote.

36. Which of the following statements is FALSE?
   □ a. Republican judges are somewhat more conservative than Democratic judges.
   □ b. Judges who are former prosecutors are somewhat less sympathetic toward defendant rights.
   □ c. Judges’ ethnicity and gender strongly influence their judicial behavior.
   □ d. The influence of background on judicial decision making is generally limited.

37. A *writ of certiorari* is a formal document that
   □ a. calls up a case for review by the Supreme Court.
   □ b. is used to sentence convicted criminals.
   □ c. initiates a civil law suit.
   □ d. requires a witness to testify in federal court.

38. The solicitor general of the United States
   □ a. represents the United States before the Supreme Court.
   □ b. is a presidential appointee.
   □ c. typically has the confidence of the Supreme Court.
   □ d. all of the above

39. A Supreme Court decision without explanation is known as
   □ a. a *writ of certiorari*.
   □ b. a *writ of mandamus*.
   □ c. a *per curiam* decision.
   □ d. an *amicus curiae* brief.
40. Which of the following is NOT a characteristics of *amicus curiae* briefs?
   □ a. Parties who are formal litigants file them.
   □ b. They are intended to influence court decisions.
   □ c. Some are filed by the solicitor general on behalf of the government.
   □ d. They raise additional points of view and information.

41. The written opinion in a Supreme Court case
   □ a. is irrelevant compared to the decision itself.
   □ b. is a statement of the legal reasoning behind a decision.
   □ c. is always prepared by the chief justice.
   □ d. always represents the views of all nine justices.

42. Opinions written not only to support a majority decision but also to stress a different constitutional or legal basis are called
   □ a. majority opinions.
   □ b. dissenting opinions.
   □ c. opposing opinions.
   □ d. concurring opinions.

43. The majority of cases in the courts are settled on the principle of *stare decisis*.
   □ True
   □ False

44. When judicial precedents are clear, the Supreme Court tends to be divided in ideological terms.
   □ True
   □ False

45. The idea of original intent refers to
   □ a. original jurisdiction.
   □ b. the intent of the Constitution’s framers.
   □ c. the ideological positions of justices.
   □ d. the views of a popular majority.

46. How and whether court decisions are translated into actual policy is called
   □ a. judicial activism.
   □ b. judicial precedents.
   □ c. judicial implementation.
   □ d. judicial policymaking.
47. Which of the following is NOT among the key elements of judicial implementation according to Charles Johnson and Bradley Canon?
☐ a. interpreting population
☐ b. implementing population
☐ c. consumer population
☐ d. general population

48. (bonus) Who said “It seems to me that there’s nothing more antithetical to the idea of what a good judge should be than to think it has something to do with representative democracy”?
☐ a. Justice Potter Stewart
☐ b. Chief Justice William Rehnquist
☐ c. Justice Thurgood Marshall
☐ d. Alexander Hamilton

49. It may be said that the courts are not a very democratic institution because
☐ a. federal judges are not elected.
☐ b. it is almost impossible to remove judges.
☐ c. the courts are dominated by elites.
☐ d. all of the above

50. The Supreme Court is generally insulated from the normal forms of politics.
☐ True
☐ False

51. Which of the following statements is FALSE?
☐ a. In some ways, courts are very undemocratic.
☐ b. Supreme Court decisions are often in line with public opinion.
☐ c. Few major policy decisions actually end up in court.
☐ d. Agencies and businesses commonly find themselves ordered by different courts to do opposite things.

52. Which of the following is NOT a general characteristic of judicial restraint?
☐ a. adherence to precedent
☐ b. deference to legislatures
☐ c. a minimum policymaking role
☐ d. achieving political ends through judicial means

53. The policy in which judges make bold policy decisions, even charting new constitutional ground, is called
☐ a. judicial restraint.
☐ b. judicial activism.
☐ c. judicial liberalism.
☐ d. judicial conservatism.
54. Liberal members of the Supreme Court tend toward judicial activism whereas conservatives tend toward judicial restraint.
   □ True
   □ False

55. The federal courts use the doctrine of “political questions”
   □ a. to settle disputes regarding the political parties.
   □ b. to make bold policy decisions.
   □ c. when the federal government is one of the litigants.
   □ d. as a means to avoid deciding some cases.

56. Congress can influence the Supreme Court and its decisions by
   □ a. beginning the process of amending the Constitution.
   □ b. altering the structure of the courts.
   □ c. passing legislation that clarifies existing laws and, in effect, overturns the courts.
   □ d. all of the above

ESSAY QUESTIONS

1. How do the courts work? Who are the key participants in the American judicial system and what do they do?

2. Explain the structure of the American judicial system. What are the differences among the federal district courts, courts of appeal, and the Supreme Court?

3. What is the process by which members of the Supreme Court are chosen? How does the appointment process for other federal courts differ?

4. What are the typical characteristics of American judges and justices? How do their backgrounds and personal characteristics affect their judicial behavior?

5. How do courts shape public policy in their decisions and in the opinions by judges used to justify decisions?

6. How do court decisions become public policy? What is involved in judicial implementation? Use examples to illustrate the potential problems of implementing court decisions.

7. What is the role of courts in a democracy? What are the major criticisms of the court system in the United States today? In what ways might the courts be considered too strong or too weak?