

Sources of Law and the Structure of State and Federal Courts

Tuesday, August 16, 2022
Willamette University College of Law

Prof. Jeff Dobbins
(Full PPT will be available on OSA website)

Sources of Law

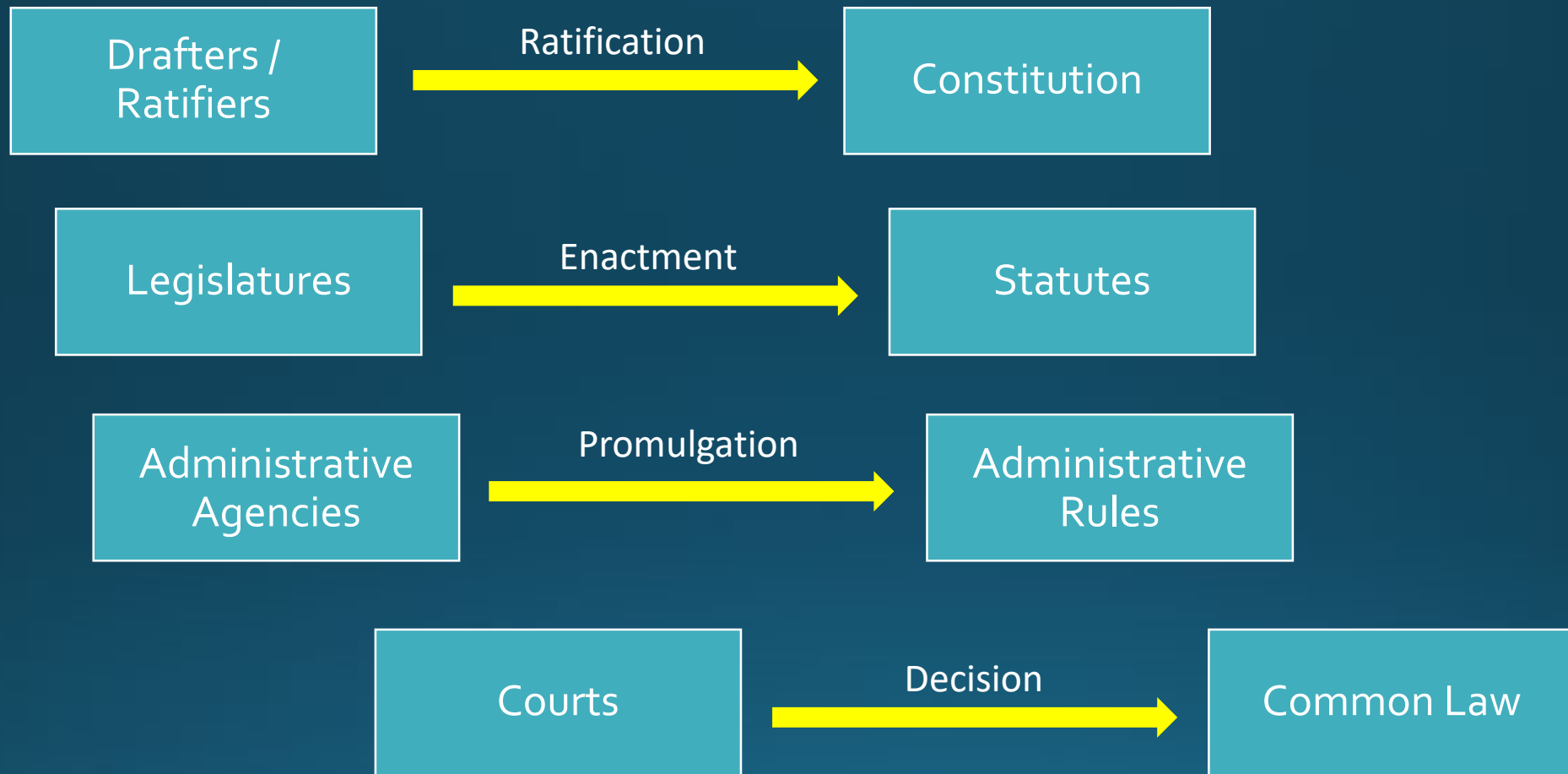
Constitution

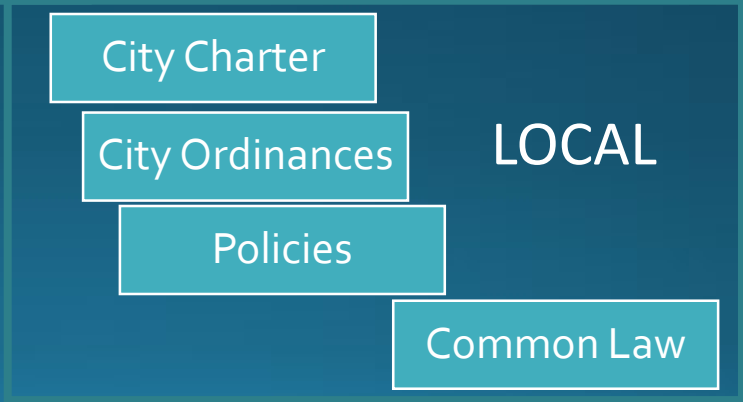
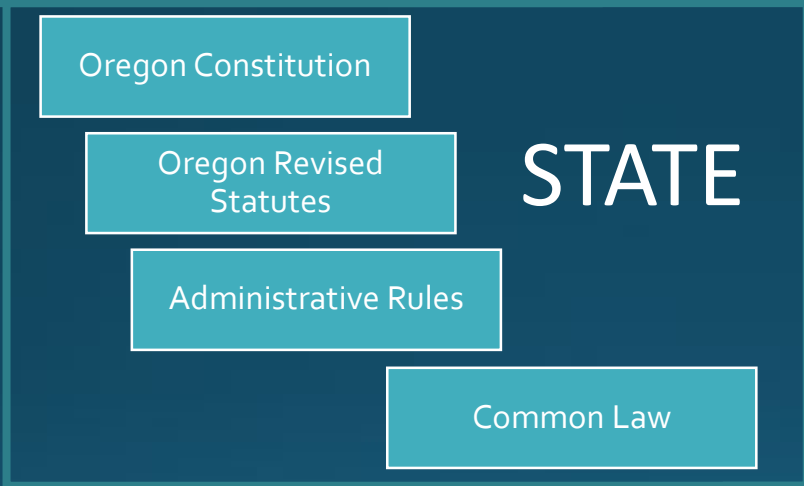
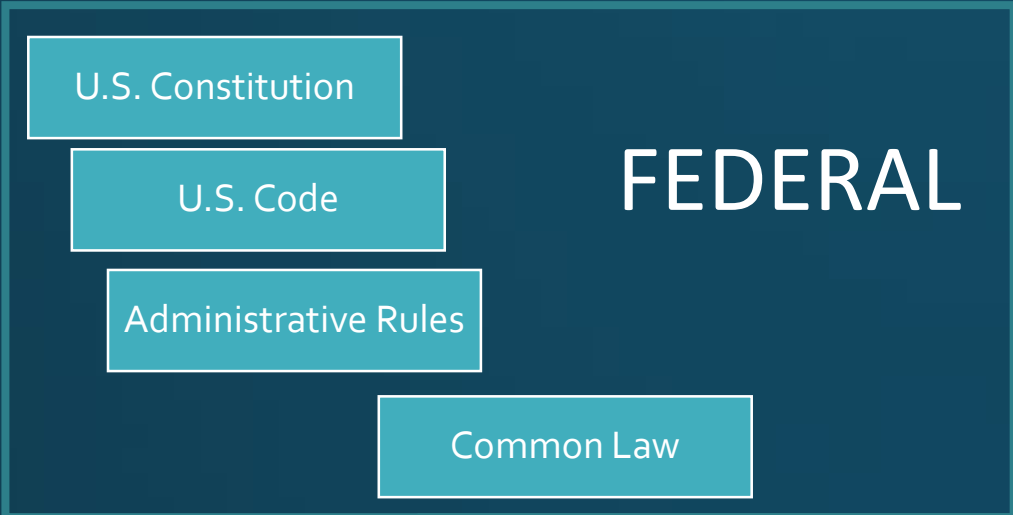
Statutes

Administrative Rules

Common Law

Sources of Law





Sources of Law

Constitution

Statutes

Administrative Rules

Common Law

- Drafted, then ratified (usually by legislative or popular vote)
- Provides structure of government
- Outlines powers, duties, limits of government
- Establishes fundamental rights of people (either that gov't must give, or cannot infringe upon)
- Difficult, but possible, to amend (sometimes direct by people)
- Examples: U.S. Constitution, Oregon Constitution

- Drafted, then ratified (usually

“Supremacy Clause”

Article VI. 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.



Sources of Law

Constitution

Statutes

Administrative Rules

Common Law

- Enacted by legislature with executive branch approval (or veto override)
- Includes Civil and Criminal Law
- Limited by scope of Constitutional powers, restrictions on same
- Often preceded / accompanied by legislative committee reports, hearings
- Occasionally based on model codes
- Can be amended by subsequent legislative enactments
- Examples: U.S. Code, Oregon Revised Statutes (codified statutes)
- 16 U.S.C. § 347; O.R.S. 173.300

Source

Const

Adm

1946L TITLE 18 - CONSERVATION Date: 019
SUBCHAPTER XXXIX—DENALI NATIONAL PARK

§ 347. Establishment; boundaries

The tract of land in the Territory of Alaska particularly described by and included within the metes and bounds, to wit: Beginning at a point as shown on Plate III, reconnaissance map of the Mount McKinley region, Alaska, prepared in the United States Geological Survey, edition of 1911, said point being at the summit of a hill between two forks of the headwaters of the Toklat River, approximate latitude sixty-three degrees forty-seven minutes, longitude one hundred and fifty degrees twenty minutes; thence south six degrees twenty minutes west nineteen miles; thence south sixty-eight degrees west sixty miles; thence in a southeasterly direction approximately twenty-eight miles to the summit of Mount Russell; thence in a northeasterly direction approximately eighty-nine miles to a point twenty-five miles due south of a point due east of the point of beginning; thence due north twenty-five miles to said point; thence due west twenty-eight and one-half miles to the point of beginning, is reserved and withdrawn from settlement, occupancy, or disposal under the laws of the United States, and said tract is dedicated and set apart as a public park for the benefit and enjoyment of the people, under the name of the Denali National Park. In addition to the above-

§ 102(a), Dec. 20, 2005; 119 STAT. 2061. more or less, to a point on the one hundred and forty-

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Common Law

- (aka “regulations”) Promulgated by Administrative Agencies (which were created by statute)
- Most common form of interaction with public in the US
- Limited by scope of Constitutional and statutory authority given to agency
- Process of promulgation and application of rules is subject of Administrative Law
- Can be modified by later rules
- Examples: Code of Federal Regulations; Oregon Admin. Rules (codified rules)
- 36 C.F.R. § 13.920

Source

Cons

Adm

613 016

36 CFR Ch. I (7-1-13 Edition)

§ 13.920 Wildlife distance conditions.

(a) *Bears.* The following are prohibited:

(1) Approaching within 300 yards of a bear; or

(2) Engaging in photography within 300 yards of a bear.

(b) *Other wildlife.* The following are prohibited:

(1) Approaching within 25 yards of a moose, caribou, Dall sheep, wolf, an active raptor nest, or occupied den site; or

(2) Engaging in photography within 25 yards of a moose, caribou, Dall sheep, wolf, an active raptor nest, or occupied den site.

(c) *Prohibitions.* The prohibitions in this section do not apply to persons—

(1) Within a motor vehicle or a hard sided building;

(2) Within 2 yards of their motor vehicle or entrance to a hard sided building that is 25 yards or more from a bear;

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Constitution

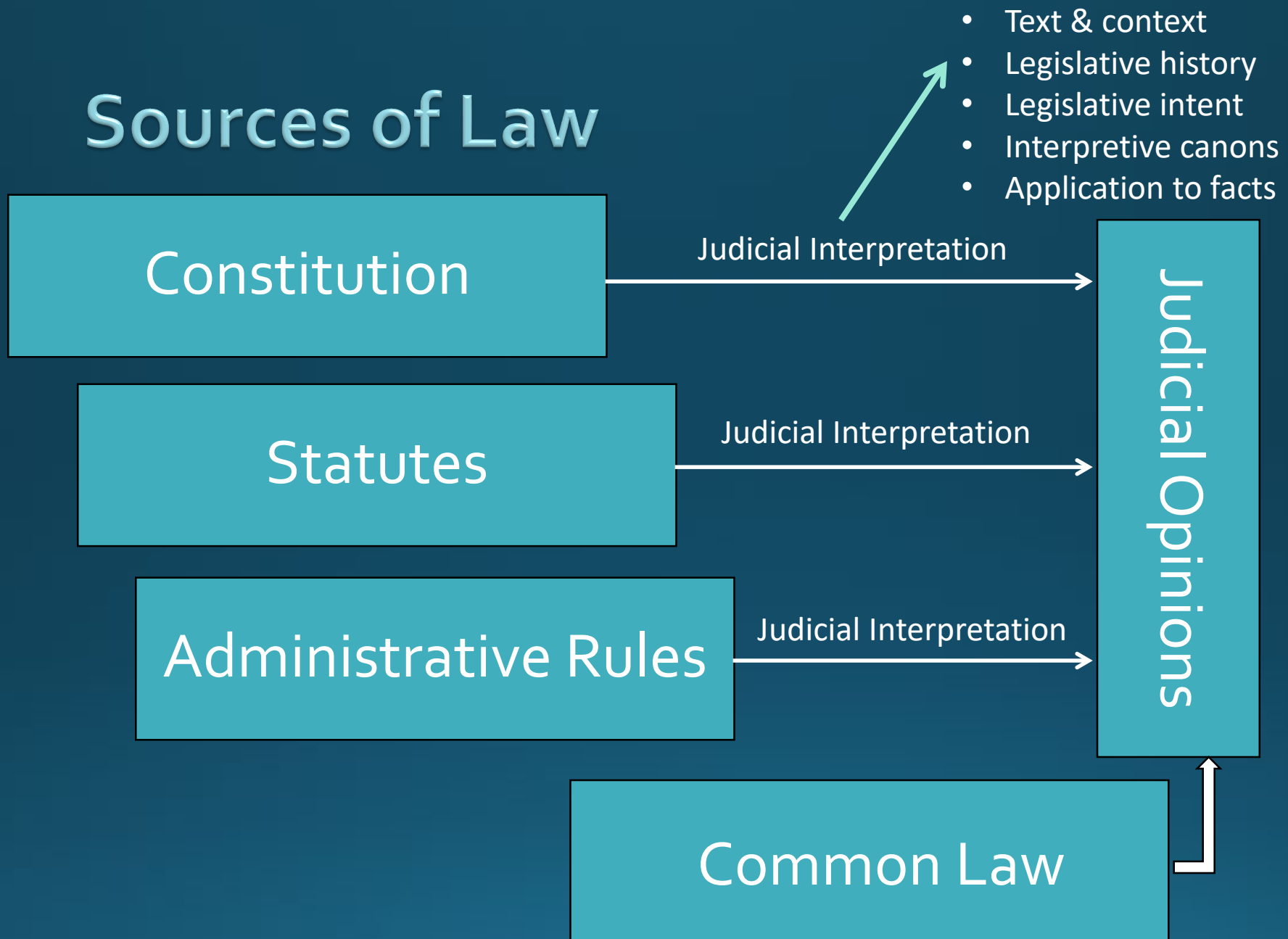
Statutes

Administrative Rules

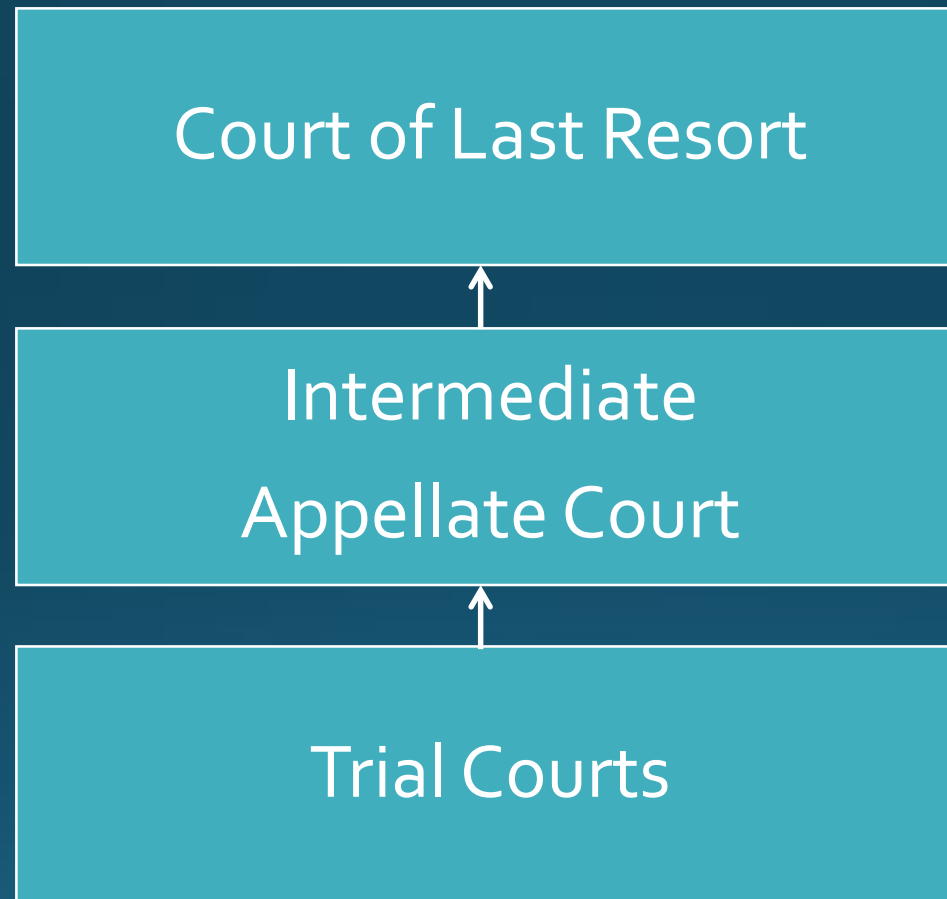
Common Law

- Law announced by Courts in certain fundamental areas
- Source of much law in nation's first 100 years (rooted in English law)
- Much of First Year of Law School focuses on common law areas: Contract, Criminal, Tort, Property
- Almost exclusively state opinions
- Common law cases can be overruled by courts, or (most common now) codified - turned into statutes by legislatures, or overruled legislatively
- Model codes (seen in most areas) attempt to synthesize & write down common law principles for enactment; Restatements summarize the law.
- Limited by rules of jurisdiction & justiciability (can't reach out)

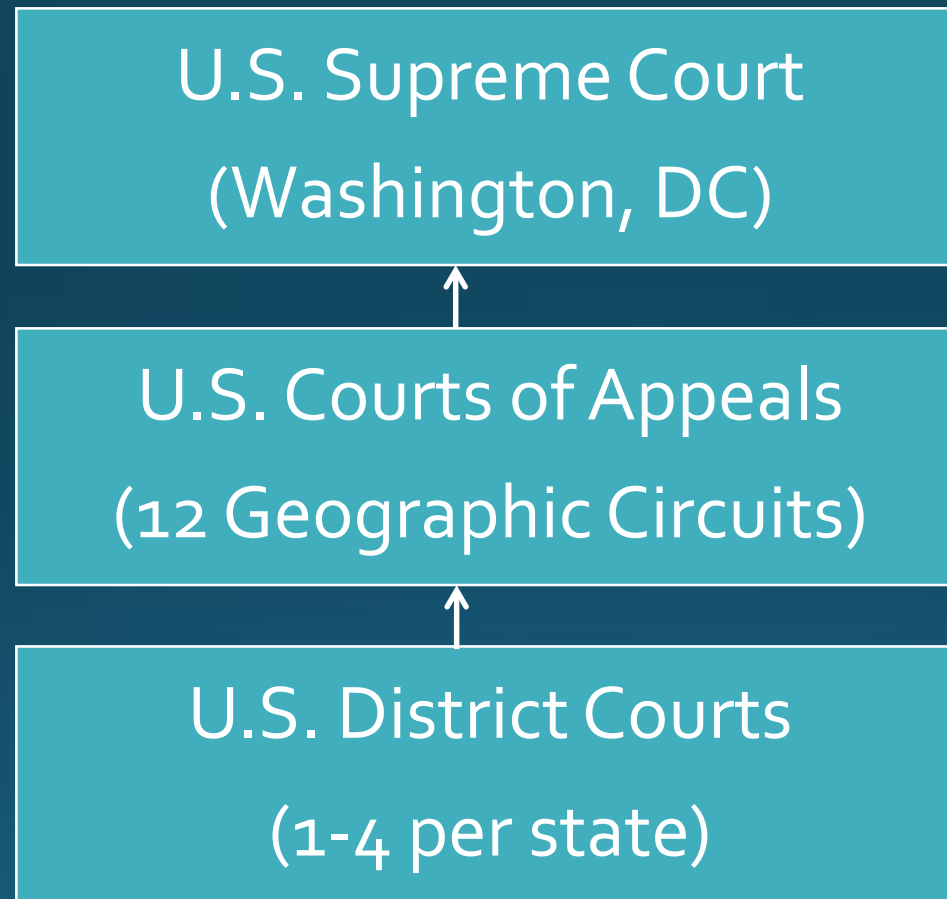
Sources of Law



“Typical” US Court Structure



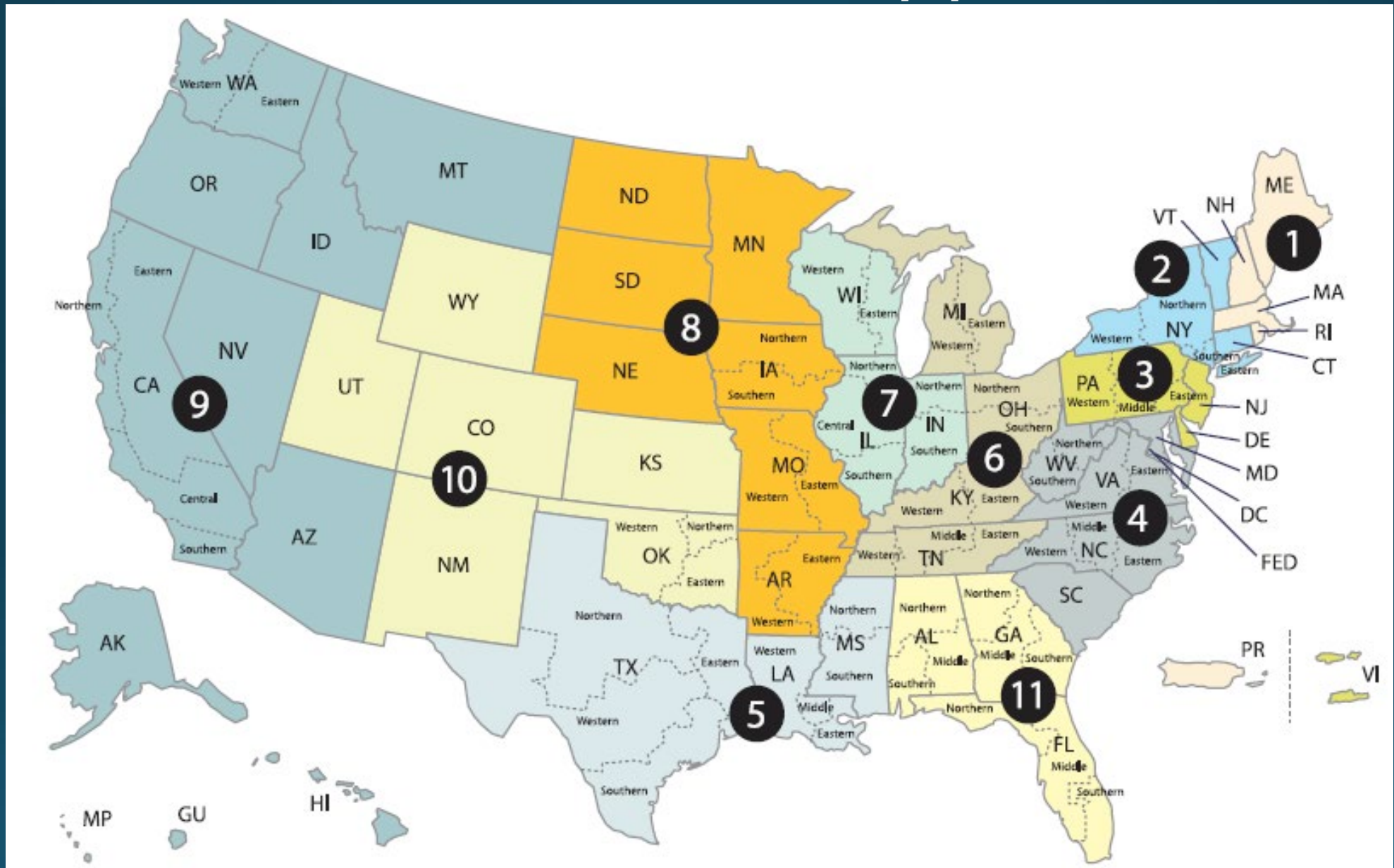
U.S. Federal Court Structure



The Supreme Court of the United States



U.S. Courts of Appeals



U.S. Court of Appeals for the Ninth Circuit (9th Cir.) (CA9)



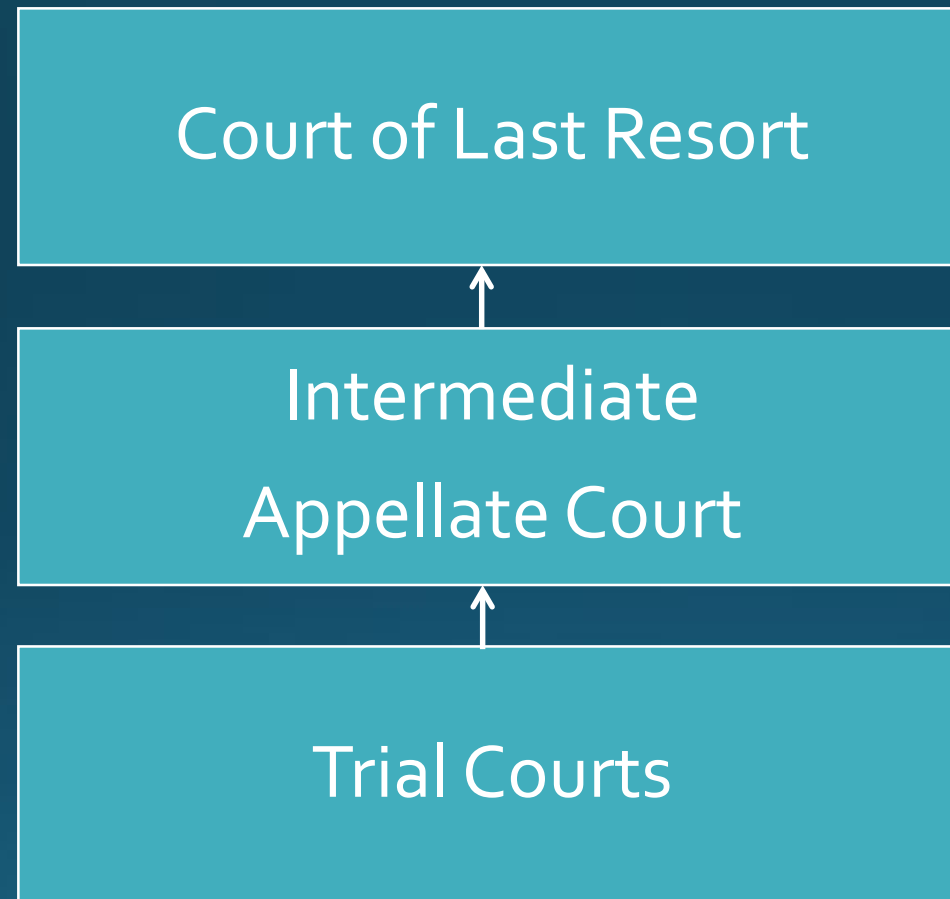
James R. Browning Federal Courthouse, San Francisco, CA
(also in Pasadena, Portland, Seattle)

U.S. District Court for the District of Oregon (D. Or.)

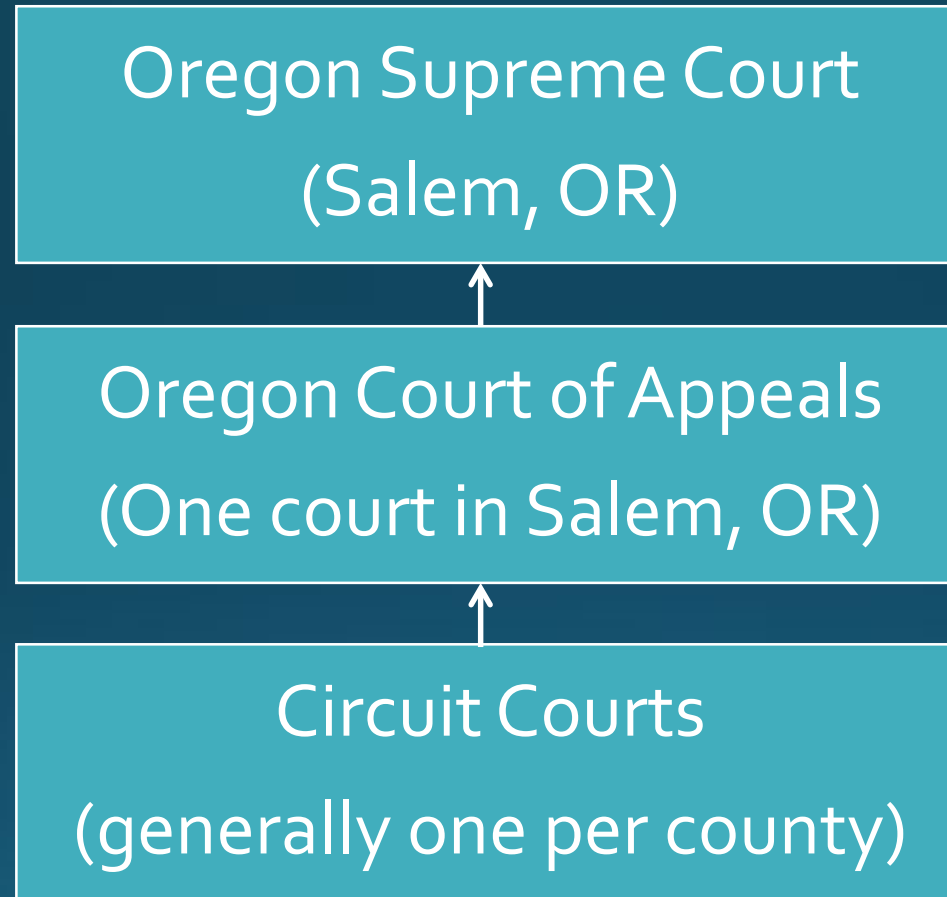


Mark O. Hatfield Federal Courthouse, Portland, OR
(also in Eugene, Medford, Pendleton)

“Typical” US State Court Structure



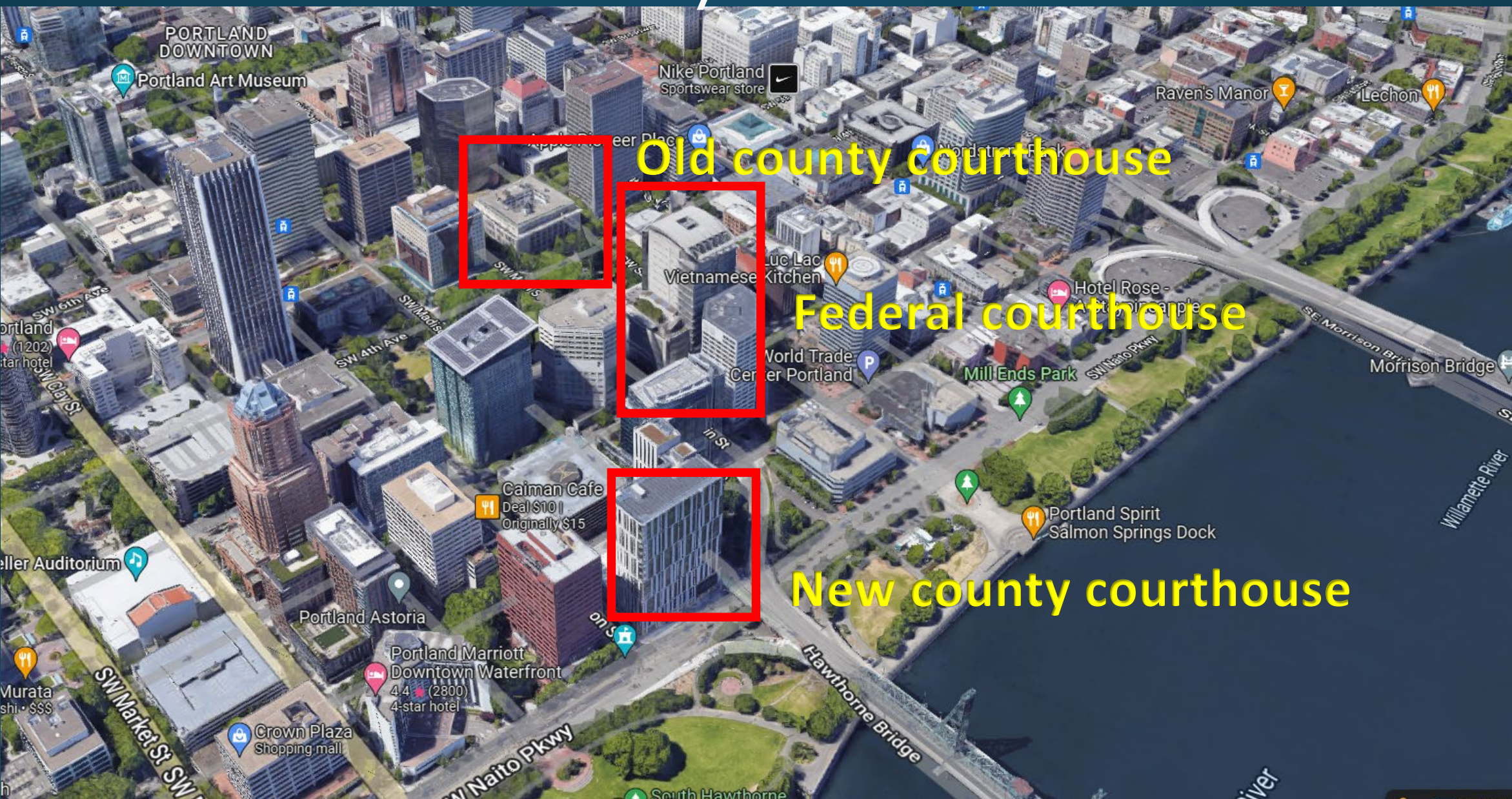
Oregon State Court Structure



Oregon Supreme Court (Or.) and Court of Appeals (Or. App.)

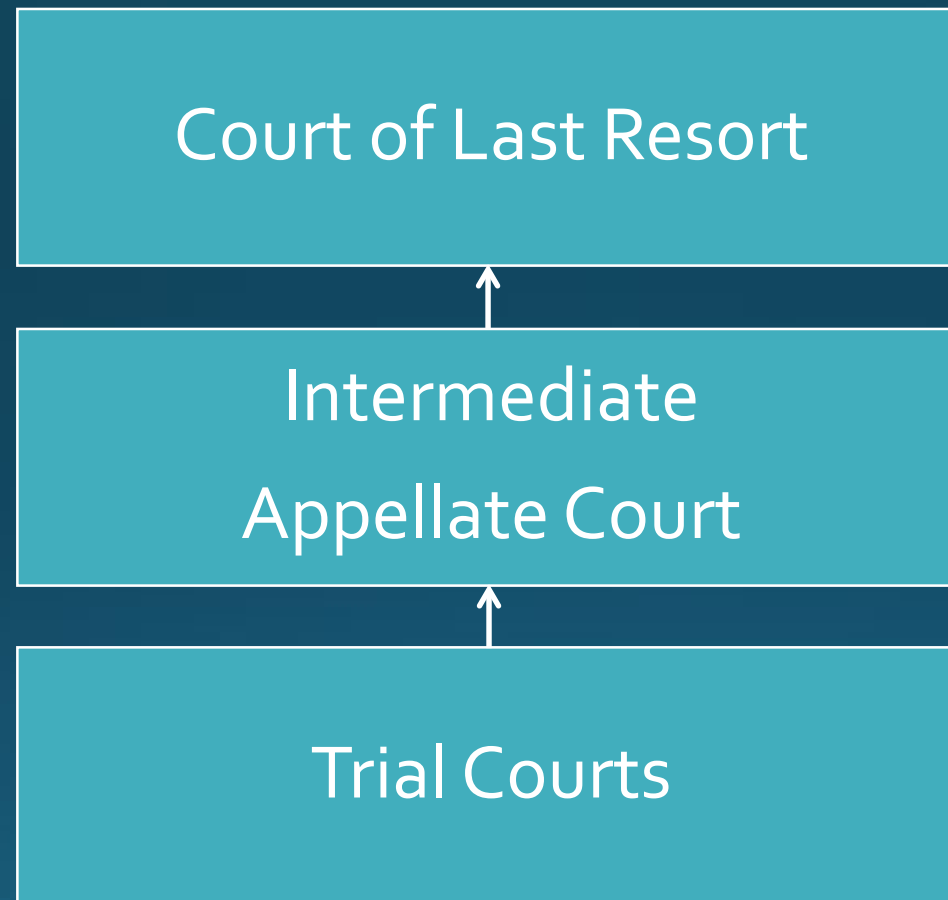


Multnomah County Circuit Court

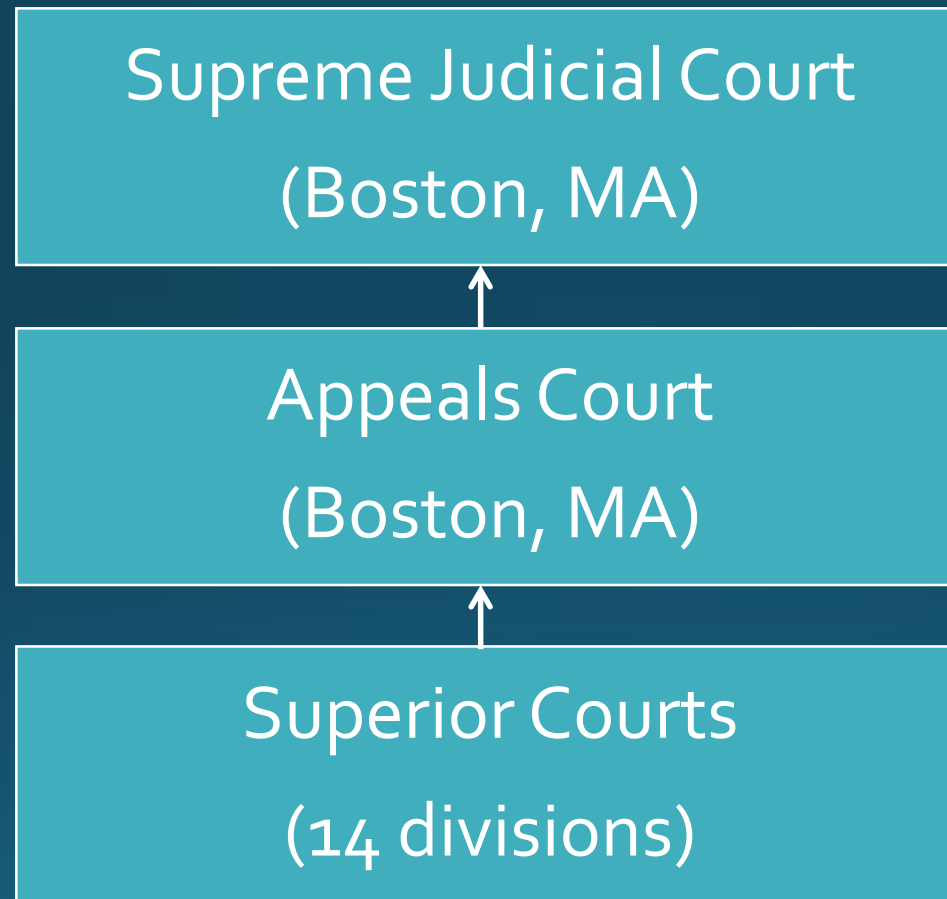


“Typical” US Court Structure

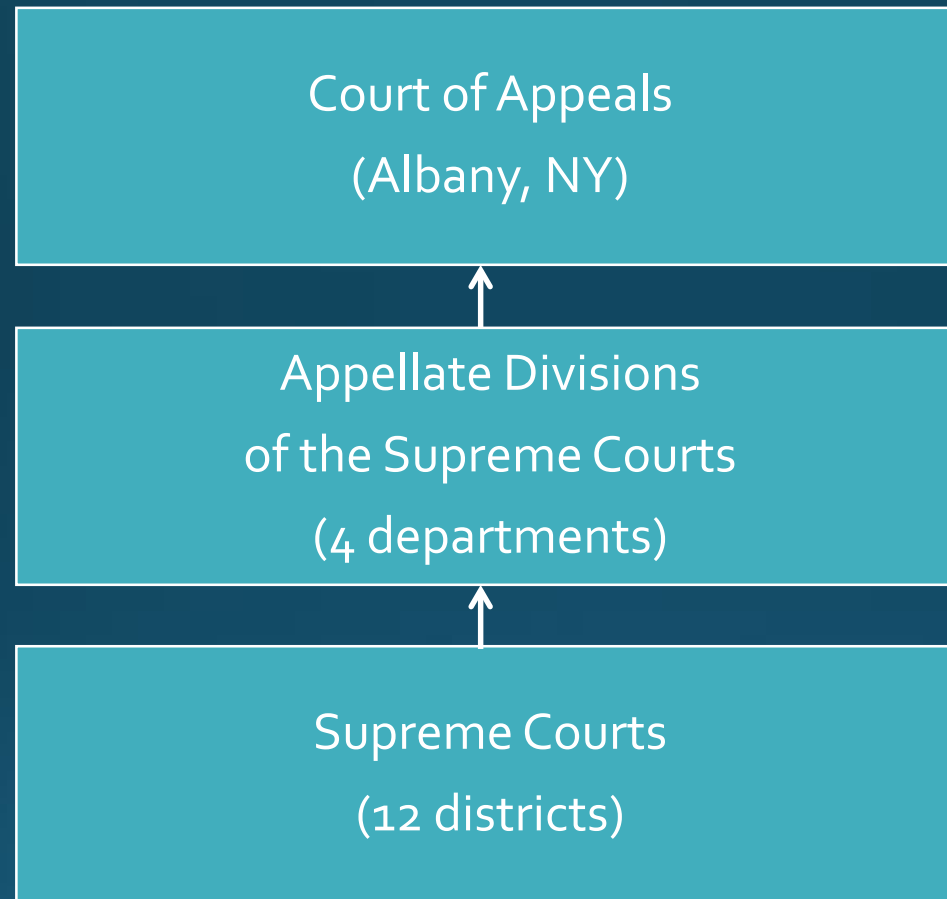
www.courtstatistics.org



Massachusetts State Court Structure



New York State Court Structure



Ohio State Court Structure

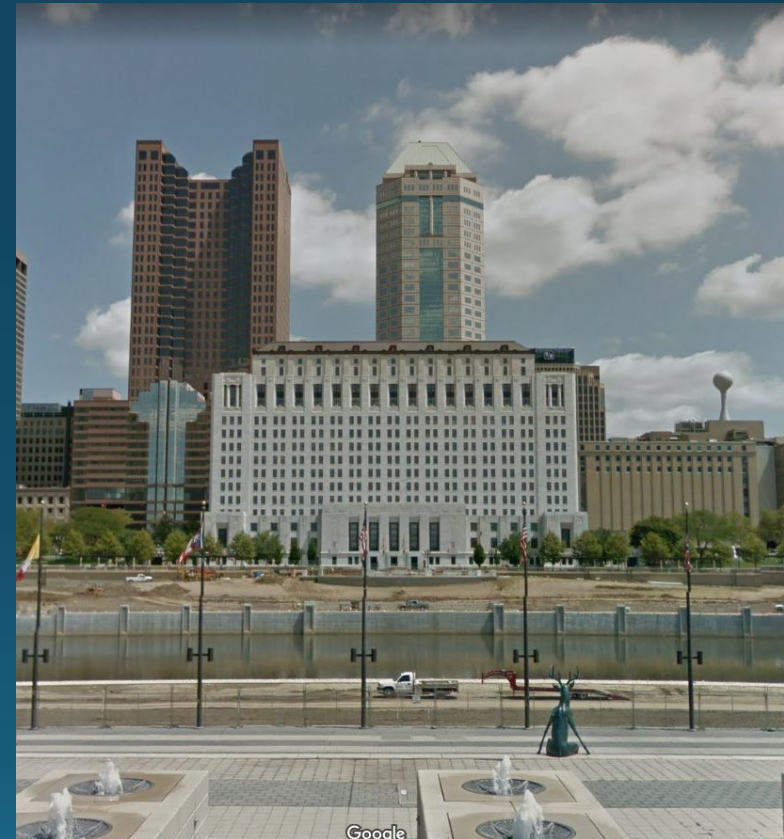
Supreme Court of Ohio
(Columbus, OH)



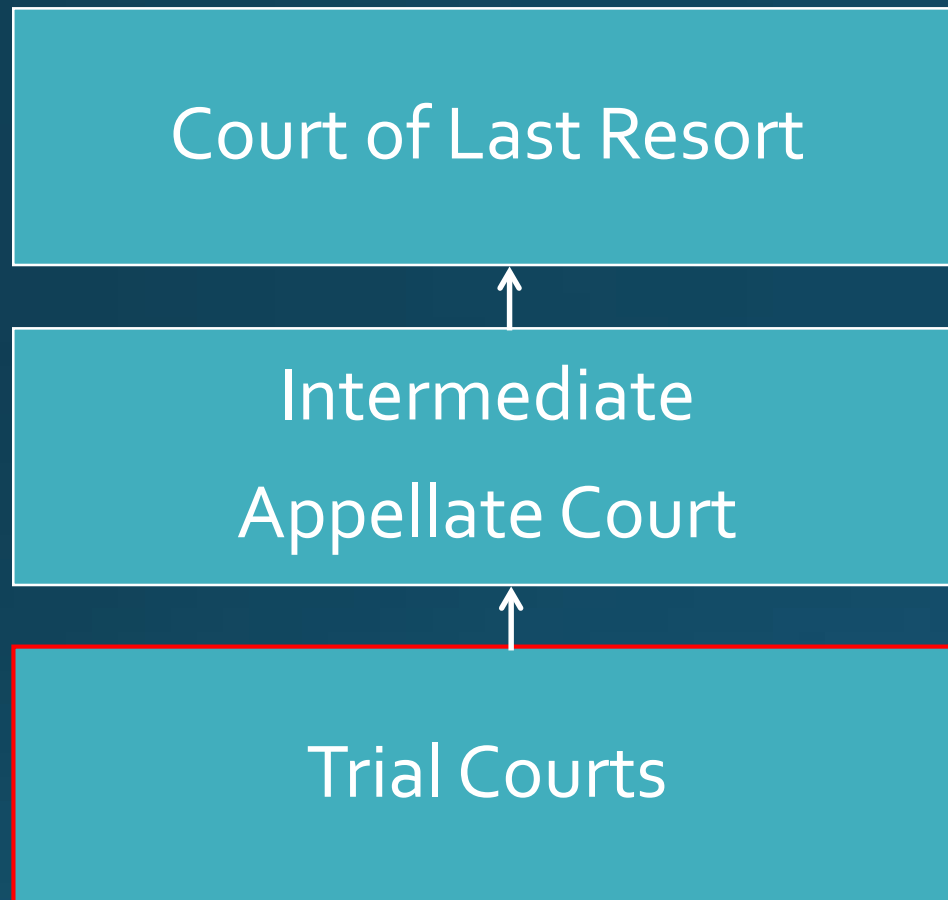
Ohio Ct. of Appeals
(Columbus, OH)



Court of Common Pleas
(County-based)

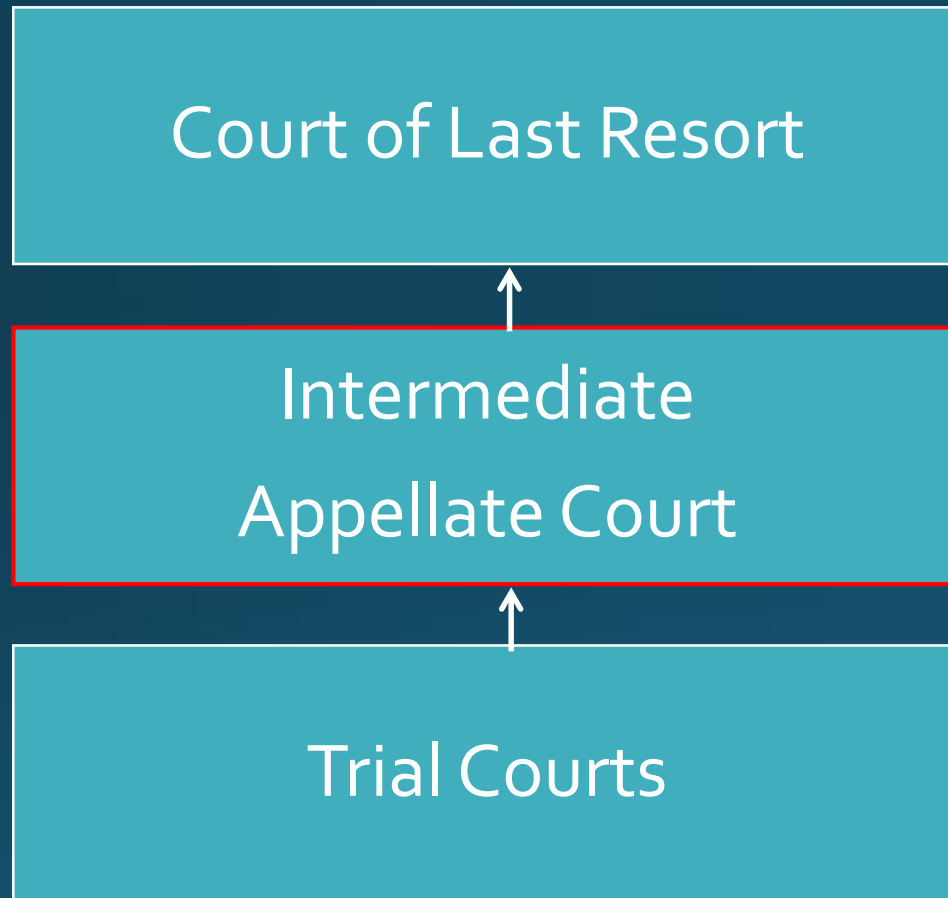


“Typical” US Court Structure



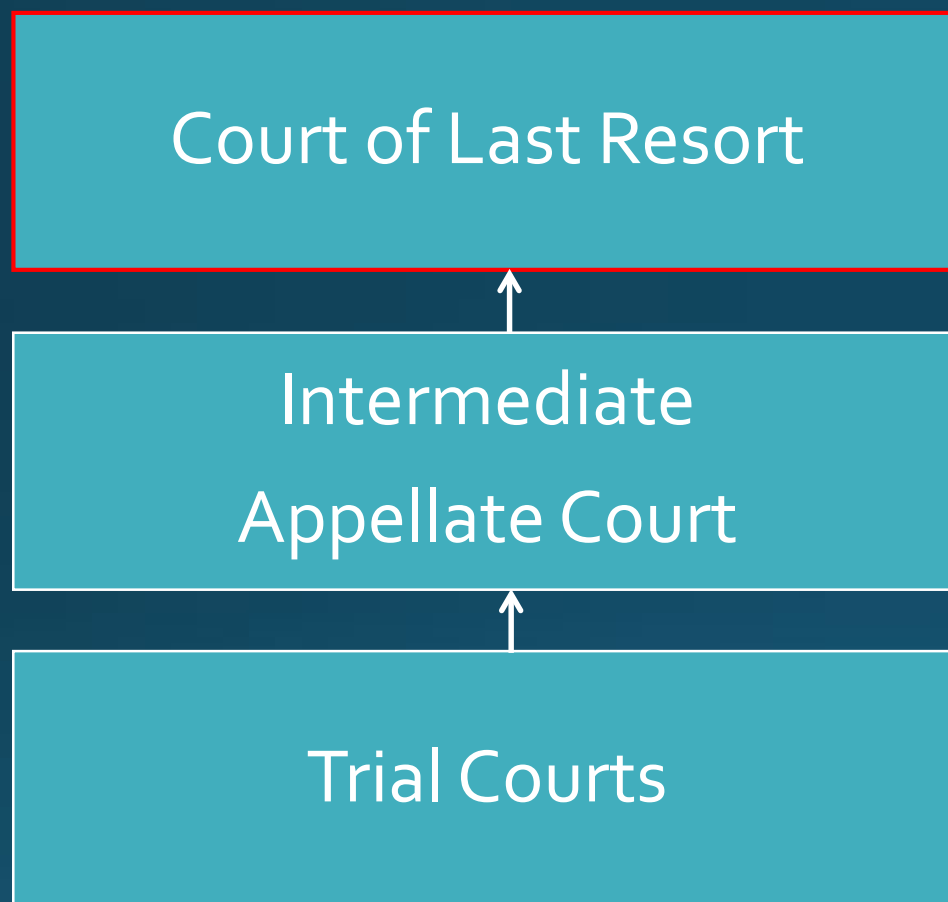
- State: Courts of “General Jurisdiction” (Federal = Limited J.)
- 1 or more judges on “court”
- Judges sit individually & manage cases filed by parties
 - Criminal: State or Prosecutor files vs. Defendant (the accused), who is “guilty” or not guilty (std. of proof: BARD)
 - Civil: Plaintiff or Petitioner files vs. Defendant or Respondent; D is “liable” or “not liable”
Preponderance OTE
- Facts found by judge or jury based on affidavit & testimony / cross ex
- Many (90+%) filed cases are never tried, but settled or dismissed
- Occasional written opinions on motion; rarely reported @ state level, federal D.Ct. more common; 254 F. Supp.2d 1196 (D. Or. 2014).

“Typical” US Court Structure



- Appeal “as of right” when losing party requests review
- 5-20+ judges on court
- Hear cases in groups (panels) of 3+
- Limited by established factual record
- Limited by issues presented by parties below or in briefs
- Limited by “standard of review.” Don’t necessarily reverse just because disagree
- Limited by “harmless error” doctrine
- Focus on issues of law – disputes of fact rarely relevant
- Written opinions, usually reported.
- Examples: *Sohappy v. Smith*, 529 F.2d 570 (9th Cir. 1976); *Atkeson v. T & K Lands, LLC*, 258 Or. App. 373, 309 P.3d 188 (2013).

“Typical” US Court Structure



- Discretionary review (choose cases) + some appeals as of right (capital cases, e.g.).
- 5-9 judges on “court”; sit *en banc*
- Appellate decisions – attention to legal holdings, rather than facts.
- Focus on areas of particular importance, conflict or uncertainty
- Written, almost always reported opinions, often multiple opinions by different judges / justices
- Examples: *Citizens United v. FEC*, 558 U.S. 310 (2010); *State v. Lawson*, 352 Or. 724 (2012).

Announcing and reporting opinions

- Reported opinions – dominant source of reading material for your 1L year (and beyond), though supplemented by statutes, rules, other commentary
- Generally applying, interpreting law (constitutional, statutory, administrative, common law).
- Most written opinions (though not all) are from appellate courts.
- Multiple judges on a panel sometimes => multiple opinions.
 - Majority opinion (majority of court joins and agrees)
 - Concurring opinion (agrees with outcome, but has something else to say regarding reasoning)
 - Dissenting opinion (disagrees with outcome)
 - Will occasionally apply to different parts of opinion.

Understanding Multiple Opinions

- *J. McIntyre Machinery v. Nicastro*, 564 U.S. ____ (2011).

KENNEDY, J., announced the judgment of the Court and delivered an opinion, in which ROBERTS, C. J., and SCALIA and THOMAS, JJ., joined. BREYER, J., filed an opinion concurring in the judgment, in which ALITO, J., joined. GINSBURG, J., filed a dissenting opinion, in which SOTOMAYOR and KAGAN, JJ., joined.

- 6 justices support the judgment (outcome).
- Compare “delivered an opinion” to “announced the opinion of the Court...”
- Reasoning: 4 total for Kennedy, 2 more agree w/ outcome (Breyer + Alito), but have their own idea on why.
- 3 disagree with outcome (dissent) and reasoning.
- “Per curiam” – unsigned; often (but not always) unanimous.

The Role of Precedent

- Precedent: The principle that a court's legal* decisions should be guided* by relevant* prior legal holdings* by other courts.
 - *Legal decisions, not factual ones.
 - *Guidance can vary in strictness – depends on relationships between second court and first one.
 - *Relevance can be tricky to determine
 - *Holdings count, not “dicta.”

The Role of Precedent

- Precedent: The principle that a court's legal* decisions should be guided* by relevant* prior legal holdings* by other courts.
- Applies to all types of decisions & legal principles (common law, statutes, constitutional interp., etc.)
- Note: Does not apply to degree that first court does not intend later courts to be bound. (So: unpublished, "non-binding" decisions or orders are often considered non-precedential.)

“Types” of Precedent

1. “Binding” Precedent
2. Stare Decisis
3. Persuasive Precedent
4. Other Sources

Main Difference: How much room does the second court have to maneuver if there's a direct conflict between holding of a prior case and the case at issue?

1. Binding Precedent (1 of 2)

- The second court has no choice but to follow the legal principles of the prior decision.
- Usually applies only to situations in which decisions by the second court can be appealed to the first court. Second court is “bound” by prior court’s precedent.
- Exceptions?
 - If the law changes. Statutes changed or repealed.
 - If you want to challenge / disagree with prior decision, you can – but chances are, you’ll be reversed.
 - “Has no choice” usually just means “the court will be quickly reversed on appeal.”

1. Binding Precedent (2 of 2)

- Example: Decisions of the U.S. Supreme Court on the federal constitution and federal statutes are “binding precedent” on all federal and state courts.
- Example: Decisions of the U.S. Court of Appeals for the Ninth Circuit are “binding precedent” on all U.S. District Courts for districts in the Ninth Circuit (OR, WA, ID, CA, etc.)
- Example: Decisions of the Washington Supreme Court are “binding precedent” on all Washington trial courts.
- Example: Decisions of WA S.Ct. are binding on issues of WA state law on federal courts and courts of other states.
- Unusual Example: A decision by one panel of U.S. Court of Appeals judges is binding on all subsequent panels unless *en banc* court of appeals overrules.

2. Stare Decisis (1 of 2)

- To “stand on what has been decided”
- Principle that a court, in deciding a subsequent case, should follow *its own* legal holdings in prior cases.
- Why? Consistency, efficiency, fairness, predictability, encourages respect for the court.
- Not as strict as “binding precedent” because a court has absolute authority to overrule its own prior legal holdings.
- In most situations, a court will not overrule its prior cases without well-articulated reasons.
- Examples: Applies in U.S. Supreme Court to prior decisions of U.S. Supreme Court, applies in OR S. Ct. to prior decisions of OR S. Ct.

2. Stare Decisis (2 of 2)

- *Planned Parenthood v. Casey*, 505 U.S. 833, 854-855 (U.S.Pa.,1992) (O'Connor, Kennedy, Souter)
- "...[W]hen this Court reexamines a prior holding, its judgment is customarily informed by a series of prudential and pragmatic considerations designed to test the consistency of overruling a prior decision with the ideal of the rule of law, and to gauge the respective costs of reaffirming and overruling a prior case. ... [W]e may ask whether the rule has proven to be intolerable simply in defying practical workability; whether the rule is subject to a kind of reliance that would lend a special hardship to the consequences of overruling and add inequity to the cost of repudiation; whether related principles of law have so far developed as to have left the old rule no more than a remnant of abandoned doctrine; or whether facts have so changed, or come to be seen so differently, as to have robbed the old rule of significant application or justification."

3) Persuasive Precedent & 4) Other

3) Persuasive Precedent

No “obligation” to follow the decision of another court. Generally applies when the first decision is from a jurisdiction outside of the appellate process for the second court.

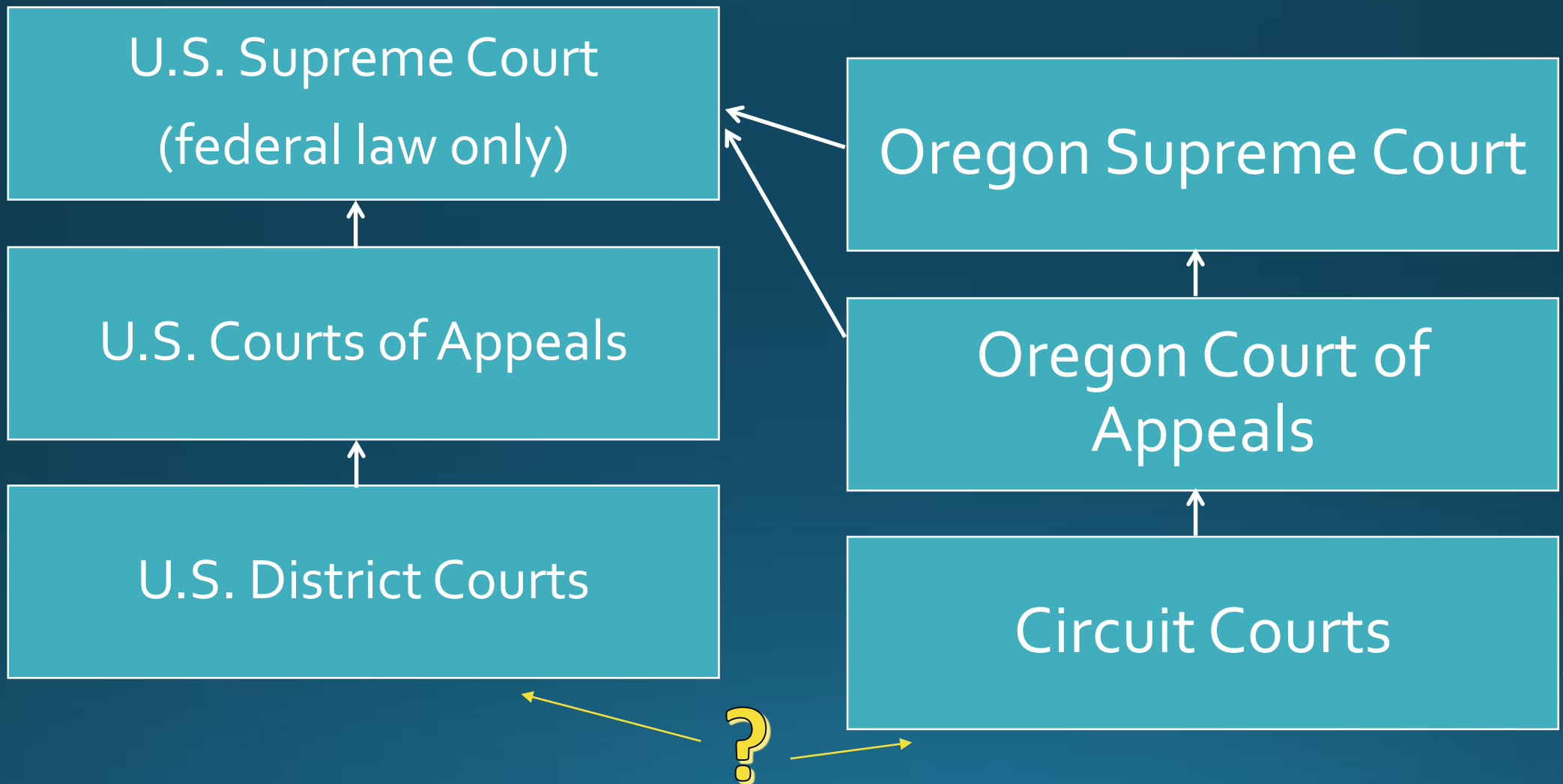
- Example: CA Supreme Court decisions are merely “persuasive” precedent for OR S.Ct. on issues of common law
- Depends on quality of reasoning, perceived quality of court, relevance of prior decision (“directly on point,” well-reasoned prior decision makes more difference than rambling, poorly-written one).
- Often, persuasive precedent is largely irrelevant and courts don’t want to hear it. Clutters the brief. Tell them what they are obligated to do, and that’s it.

4) Other (“Secondary Sources”) - Statements that aren’t opinions deciding an issue in a case, or statements by entities other than courts, which may be useful to reasoning in a later case, but which doesn’t really have any precedential value at all. (Though some are more persuasive than others.)

Relationship Between Court Systems

- Highest court in a system has the “last word” on that sovereign’s law (whether constitutional, statutory, or common law).
 - U.S. Supreme Court has “last word” on interpretation of U.S. Constitution, federal statutes, federal administrative rules
 - Oregon Supreme Court is bound by U.S. Supreme Court on interpretations of US Law, BUT OR S.Ct. is “last word” on interpretation of Oregon Constitution, statutes & rules (including common law).
 - U.S. S.Ct. won’t interpret Oregon’s Laws
 - Federal courts will apply Oregon laws on occasion, but are attempting to apply/interpret law as OR S.Ct. would.
 - State courts must apply federal law (and US Supreme Court will review their interpretations of it).
 - Of course, if OR S.Ct. interprets OR Statute to require action unconstitutional under federal law, USSC can apply federal law and overrule state law.

Appellate process in the US



Trial court you start in depends on whether there is federal trial court jurisdiction, and (except in rare cases of exclusive federal jurisdiction, whether parties choose to call upon that jurisdiction.

Summary of Points

- Constitution; Statutes; Rules; Common Law (both traditional and interpretive)
- Different sources (Ratifiers, Legislature, Agencies, Courts)
- Multiple sovereigns – federal, state, local
- Court of Last Resort; Intermediate Court of Appeals; Trial Court
- Trial = fact; Appellate = law
- Principles of structure, precedent & supremacy govern relationships between courts & decisions
- Federal courts: limited jurisdiction. State courts: general jurisdiction.
- Civil case: Plaintiff sues defendant to determine liability by POTE
- Criminal case: Prosecutor charges the defendant to determine guilt BARD
- Majority (governs precedential effect) / Concurrence / Dissent

Questions?