

Law Day - May 1, 2012
**“No Courts, No Justice,
No Freedom”**



Open and accessible courts are the cornerstone of a free society. The framers of our Constitution recognized the importance of the courts when they made the judiciary one of the three coequal branches of our government. The courts are where we go to have our rights protected, our injuries redressed and our disputes resolved.

Whether you are a consumer or a corporation, a victim or an accused, a lender or a debtor, a parent or a child, the work of the courts affects your everyday life.

This educational series was created to give students and readers a general understanding of the process of the courts and the roll the justice system has in our lives. For the next five days this newspaper will run features covering the following topics:

Criminal Courts
Civil Courts
Juries
The Appeals Process
Alternative Dispute Resolution

This series is intended to prompt discussion in the classroom and give a better understanding of the law and our court system.



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Criminal Courts

Every court case is tried based on either civil or criminal law. Criminal law involves a duty owed by an individual to society as a whole. Most of the court cases we see in the movies and on television dramas are examples of criminal cases. In criminal trials, a government prosecutor brings suit on behalf of society (“The People”) against a person who is believed to have broken the law, violating a duty owed to society. “The People” (of the State or of the United States) are represented by the prosecutor and the accused person is the defendant.

Du-ty [doo-tee] *noun*

1) The responsibility of persons or legal entities to abide by the rules and regulations laid by the law of land to maintain the constitutional rights of its citizens.

A crime is classified as either a misdemeanor or a felony. A misdemeanor is a lesser offense and is generally punishable by a fine and/or imprisonment of up to one year in jail. Examples of misdemeanors are petty theft (cash or items valued under \$1,000), disorderly conduct and vandalism (damages less than \$250). A felony is a more serious crime and punishment exceeds one year of imprisonment. Felonies include arson, kidnapping, and murder.

In order to search a person or their property, or to make an arrest, the police must have probable cause, a reasonable belief that an individual committed a crime. Someone arrested on suspicion of breaking the law, prior to questioning or interrogation, must be informed of certain basic constitutional rights, referred to as Miranda rights. These include:

- that he or she has the right to remain silent, and that anything the person says can be used against that person in court
- that he or she has the right to consult with an attorney and to have that attorney present during questioning and
- that if he or she cannot afford an attorney, one will be provided at no cost to represent him or her

Once charges are filed an arraignment is held. An arraignment is a court proceeding where the accused (defendant) is informed of the crime with which he or she is charged. Bail may be set to allow the accused to remain out of jail prior to the trial. In a criminal case, the defendant is presumed to be innocent and the government must prove the defendant is guilty beyond a reasonable doubt.

If the defendant is convicted, he or she may have to serve time in jail, pay a fine or both. Anyone convicted of a crime has the right to appeal.

Newspaper Activity:

Look through the newspaper for news about a current criminal court case. Based on the facts provided in the newspaper coverage and other sources, try to determine the outcome of the trial.

Continue to follow the reports to see if your prediction of the verdict agrees with that of the court.

Student Assessment:

Complete this statement:
I was surprised to learn...

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Civil Courts

Civil law deals with duties owed by one party to another. Civil law encompasses issues relating to business, contracts, estates, domestic (family) relations, accidents or intentional wrongful acts. In New York state, civil law is established through both state and federal statutes and through court decisions. Examples of civil matters are court actions (or lawsuits) regarding contracts between two parties, suits to recover money for personal injuries, and actions in domestic relations (family issues, like divorce and child custody).

Civ-il [siv-uhl]
adjective 1) of, pertaining to, or consisting of citizens: civil life; civil society; 2) of citizens in their ordinary capacity, or of the ordinary life and affairs of citizens

In a civil case, either party may be a government entity, a business or an individual. Also, the defendant cannot be imprisoned, even if he or she cannot pay the damages awarded.

The burden of proof in a civil trial is “preponderance of the evidence,” which means that a party has shown that its version of facts is *more likely than not* the correct version.

Using the visual of a scale, the evidence that weighs more should prevail.

Federal civil courts require jury verdicts to be unanimous. In civil cases tried in New York state courts, a verdict does not have to be unanimous; agreement by five of the six jurors is sufficient.

In a civil case, the defendant may be found liable, not liable or partially liable. Either party may appeal the verdict in a civil case.

Newspaper Activity:

Looking through today's newspaper, see if you can find news stories of incidences that may result in civil court cases. What examples did you find? Select one and briefly explain the conflict, the parties involved and why you think it could lead to a civil lawsuit.



Student Assessment:

What one new thing did you learn from this activity?

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Juries

Most Americans are more likely to experience the American justice system as a juror than as any other type of participant in the legal system. In a jury trial, the fact-finding function belongs to the jury. Jurors have the duty to judge and weigh the credibility of witnesses and the arguments of the parties. The judge provides the jury with instructions on how to apply the law to the facts determined by the jury.

Ju-ror [joor-er] *noun*

1) one of a group of persons sworn to deliver a verdict in a case submitted to them; member of a jury

Potential jurors are randomly selected from lists of registered voters, holders of drivers' licenses or ID's issued by the Division of Motor Vehicles, New York State income tax filers, recipients of unemployment insurance or family assistance, and from volunteers.

To be eligible to serve on a jury you must be a citizen of the United States, at least 18 years of age, live in the county that you are summoned to serve, be able to understand and communicate in English and have never been convicted of a felony.

Potential jurors are questioned by the trial judge and/or the parties' lawyers in order to discover any reason to believe that they

may have a potential bias or prejudice relating to the parties or to issues in the case. If a juror admits to such a bias or prejudice, or if evidence suggests he or she may have a bias, either attorney may ask the court to "strike the juror for cause" and remove him or her from the panel of potential jurors in that case.

In addition to challenges for cause, each lawyer can make peremptory challenges. These challenges permit a lawyer to excuse a potential juror without stating a cause. Peremptory challenges are limited in number and determined by the kind of lawsuit being tried. They can't be used to remove potential jurors on the basis of race or gender.

In criminal cases tried in New York state courts, a defendant cannot be found guilty unless there is a unanimous verdict from all 12 jurors. If the jury cannot reach a unanimous verdict, it is a hung jury. The judge will declare a mistrial and the case may be tried again before another jury.

Student Assessment: Do you feel differently about the courts and our justice system now that you've learned more? Explain why.

Today, jurors in New York state courts are permitted to take notes during the trial however, jurors are not allowed to read, watch or listen to stories in the media or on the Internet relating to the trial. Jurors are also not allowed to discuss anything about the case until deliberations.

Newspaper Activity:

A jury must weigh all evidence to determine guilt or innocence. This is similar to distinguishing between facts and opinions. Select an article, editorial or advertisement from the newspaper. Circle every opinion and underline all facts in the example you selected. Is it always easy to determine what are facts and what are opinions?

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The Appeals Process

A defendant who is found guilty of a crime can appeal the ruling to a higher court. Either side may appeal in a civil case. When an appellate court hears a case, the person appealing the case, called the appellant, must show that the trial court made an error of law that affected the outcome of the case. Each side presents its argument in a written document called a brief. The court bases its decision on the record of the case and does not solicit new testimony or evidence. The appeals court does not review the facts as determined by the jury at the trial because the jurors are in the unique position to judge the credibility of the witnesses since the jurors and not the judges on the appeals court got to see and hear the witnesses testify.

Ap-peal [uh-peel]
noun 1) an earnest request for aid, support, sympathy, mercy, etc.; entreaty; petition; plea; 2) an application or proceeding for review by a higher tribunal

In New York, The Appellate Division, Appellate Term, and certain county courts handle appeals and are the next highest level of court in the New York appeal process. These courts are referred to as the intermediate appellate courts.

The highest appeals court in New York state is the New York Court of Appeals. No other court can overturn its interpretation of New York law. Even the United States Supreme Court must rely on the New York Court of Appeals for interpretations of New York State law. The court's decision is final unless the case is sent back to a trial court.

If the New York Court of Appeals hears the case, but the appellant is still unsuccessful, then the next step would be to seek permission to appeal to the United States Supreme Court. The U.S. Supreme Court, however, will only take an appeal

of a conviction in a state court if there is a claim that the party's federal constitutional rights were violated in some way. Such appeals to the U.S. Supreme Court are very rarely granted.

Newspaper Activity:

Look through the newspaper (print or online) for examples of current appeal cases. Select one and determine what level of court is hearing the case. Based on what you know and have read about this case, do you think the appeal will be successful and why or why not? Is there still a higher court that the defendant could ask to hear his or her case if the current appeal is unsuccessful? If so, what court might hear the case?

Student Assessment: What is the most interesting thing you learned about the appeals process? Explain.

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Alternate Dispute Resolution

The vast majority of cases – nearly 98 percent – of both criminal and civil, never go to trial. Instead, the parties of the dispute arrive at an agreement resolving the dispute before trial. In criminal cases, the agreement is called a plea bargain. In a plea bargain, the defendant pleads guilty to a lesser charge in return for a lighter sentence. In civil cases the agreement is called a settlement. In a settlement, the defendant makes a payment to the plaintiff for dropping the case. Unlike in a plea bargain, the defendant does not admit to any wrongdoing. In plea bargains and settlements, both parties to the agreement are trading uncertainty for certainty.

Ar-bi-trate - [ahr-bi-treyt] *verb* – to decide; determine

Me-di-ate [mee-dee-yet] *verb* – to bring about an agreement, accord, truce, or peace as an intermediary between parties by compromise, reconciliation, removal of misunderstanding

Other alternative dispute resolution processes include arbitration and mediation.

Arbitration refers to a decision made by a neutral person called an “arbitrator” who acts like a judge, hears arguments and evidence from each side and then makes a decision. Arbitration decisions can be “binding” – the parties agree beforehand that the judgment is final or “non-binding” – the parties may

still request a trial.

In mediation a neutral person called a “mediator” helps the parties involved communicate so they can try to settle the dispute themselves by arriving at a mutually agreed to resolution.

Alternative dispute resolution processes often save money and speed settlements. These processes are generally confidential, less formal, and less stressful than traditional court proceedings.

Newspaper Activity:

Look through the newspaper (print or online) for a current conflict among individuals or groups of people. Be sure to identify all the individuals or groups involved. Divide the class to represent each party and research details about their point-of-view. What is at stake for each party? Why does each feel the way they do? With an understanding of all these details, as a class discuss the possible solutions and work on finding the best compromise.

Student Assessment:

Complete this statement – I still have a question about...