

The Judicial Branch

A. Courts settle civil disputes between private parties, a private party and the government, or the United States and a state or local government. Each side presents its position. The court applies the law and decides in favor of one or the other.

B. Courts also hold criminal trials for people accused of crimes. Witnesses present evidence and a jury or a judge delivers a verdict of guilt or innocence.

C. All accused people have the right to a public trial and a lawyer. If they cannot afford a lawyer, the court will appoint and pay for one. Accused people are considered innocent until proven guilty. They may ask for a review of their case if they think the court has made a mistake.

The U.S. Supreme Court

The Supreme Court of the United States was created by Sec. 1 Article III of the Constitution. The organization of the Court is also spelled out by legislation. The Court itself develops the rules governing the presentation of cases. One of the most important powers of the Supreme Court is **judicial review**. While the Supreme Court is a separate branch of government, outside factors do exert some influence on the Court.

Powers of the Court

A. The legislative and executive branches must follow Supreme Court rulings. Because the Court is removed from politics and the influences of special-interest groups, the parties involved in a case are likely to get a fair hearing.

B. The Court's main job is to decide whether laws and government actions are constitutional, or allowed by the Constitution. It does this through judicial review—the power to say whether any law or government action goes against the Constitution.

C. The Constitution does not give the Supreme Court the power of judicial review. The court claimed the power when it decided the case *Marbury v. Madison*.

D. As President John Adams was leaving office, he signed an order making William Marbury a justice of the peace. The incoming president, Thomas Jefferson, refused to carry out the order. Marbury took his case to the Supreme Court.

E. In the Court's opinion, Chief Justice John Marshall set forth three principles of judicial review: (1) The Constitution is the supreme law of the land. (2) If a law conflicts with the Constitution, the Constitution rules. (3) The judicial branch has a duty to uphold the Constitution. Thus, it must be able to determine when a law conflicts with the Constitution and nullify that law.

F. The power of judicial review serves as a check on the actions of the executive and legislative branches.

G. Congress writes laws in general language. Through its rulings, the Supreme Court interprets the meaning of laws, helping the police and other courts apply them.

Short Summary on Marbury v. Madison

First decision by the Supreme Court to declare a law unconstitutional (1803).

- At the very end of his term, President John Adams had made many federal appointments, including William Marbury as justice of the peace in the District of Columbia.
- Thomas Jefferson, the new president, refused to recognize the appointment of Marbury.
- The normal practice of making such appointments was to deliver a "commission," or notice, of appointment. This was normally done by the Secretary of State. Jefferson's Secretary of State at the time was James Madison.
- At the direction of Jefferson, Madison refused to deliver Marbury's commission. Marbury sued Madison, and the Supreme Court took the case.
- Chief Justice John Marshall wrote that the Judiciary Act of 1789, which spelled out the practice of delivering such commissions for judges and justices of the peace, was unconstitutional because it gave the Supreme Court authority that was denied it by Article III of the Constitution. Thus, the Supreme Court said, the Judiciary Act of 1789 was illegal and not to be followed.

This was the first time the Supreme Court struck down a law because it was unconstitutional. It was the beginning of the practice of "judicial review."

How Cases Make Their Way to the U.S. Supreme Court

About 4,500 cases are requested for review by the Supreme Court each year. Less than 200 cases are actually decided by the Court each year. There are three ways for a case to make its way to the US Supreme Court.

1) There are cases in which the US Supreme Court has **original jurisdiction**, the authority to be the first to hear a case. Cases in which a state is a party and cases dealing with diplomatic personnel, like ambassadors, are the two examples.

2) Those cases **appealed**, requested to be heard again, from lower federal courts can be heard at the Supreme Court. Higher courts have **appellate jurisdiction**, this is the authority of a court to hear and review cases decided in lower courts. Some laws obligate (or force) the Supreme Court to hear them. But most cases get chosen by the Supreme Court Justices. Four out of the nine justices have to vote to hear a case. If a case gets accepted it goes on the court **docket**, or calendar.

3) The US Supreme Court reviews appeals from state supreme courts that present substantial "federal questions," usually where a constitutional right has been denied in the state courts.

In both **civil and criminal law**, the Supreme Court is the final court of appeal.

Initially, the Court consisted of five justices, but since 1869 has maintained nine –one chief justice and eight associate justices. When a vacancy appears, a new justice is appointed by the president and approved by a majority vote in the Senate. Once appointed, the justices serve for life, unless illness, retirement or illegal or unethical conduct force them out (the latter of which has never been done in the Court's history). Moreover, the Court's process of determining a law unconstitutional is remarkably thorough. First, the Court must select cases to consider that are submitted from the lower courts. In the eyes of the justices, these cases must present a vital constitutional issue. Next, the Court closely reviews briefs submitted by the lawyers representing the individual cases. Then, the lawyers present oral arguments to the Court for further consideration of the case, during which the justices participate in intensive analysis and discussion.

Lastly, the Court writes an opinion, which is a detailed explanation of the decision they reached in the case. This process is long and painstaking and usually involves considerable examination and reconsideration of the case.

Once an opinion is completed, it then becomes binding, or law. The document that results is referred to as majority opinion.

Overall, the Supreme Court has had an immeasurable impact on the American political system and way of life. Its existence has helped maintain fairness and balance in the United States government, and its decisions have in some way affected virtually every member of society.

Attachment P

What is a writ of certiorari?

Certiorari is a Latin word meaning "to be informed of, or to be made certain in regard to". It is also the name given to certain appellate proceedings for re-examination of actions of a trial court, or inferior appeals court. The U.S. Supreme Court still uses the term certiorari in the context of appeals.

Petition for Writ of Certiorari. (informally called "Cert Petition.") A document which a losing party files with the Supreme Court asking the Supreme Court to review the decision of a lower court. It includes a list of the parties, a statement of the facts of the case, the legal questions presented for review, and arguments as to why the Court should grant the writ.

Writ of Certiorari. A decision by the Supreme Court to hear an appeal from a lower court.

Cert. Denied. The abbreviation used in legal citations to indicate that the Supreme Court denied a Petition for Writ of Certiorari in the case being cited.

Someone with a legal claim files a lawsuit in a trial court, such as a U.S. District Court, which receives evidence, and decides the facts and law. Someone who is dissatisfied with a legal decision of the trial court can appeal. In the federal system, this appeal usually would be to the U.S. Court of Appeals, which is required to consider and rule on all properly presented appeals. The highest federal court in the U.S. is the Supreme Court. Someone who is dissatisfied with the ruling of the Court of Appeals can request the U.S. Supreme Court to review the decision of the Court of Appeals. This request is named a Petition for Writ of Certiorari. The Supreme Court can refuse to take the case. In fact, the Court receives thousands of "Cert Petitions" per year, and denies all but about one hundred. If the Court accepts the case, it grants a Writ of Certiorari.

"Review on writ of certiorari is not a matter of right, but a judicial discretion. A petition for writ of certiorari will be granted only for compelling reasons." Rule 10, Rules of the U.S. Supreme Court.

The U.S. Supreme Court's certiorari process is covered in Rules 10-16, Rules of the U.S. Supreme Court.

The effect of denial of certiorari by the U.S. Supreme Court is often debated. The decision of the Court of Appeals is unaffected. However, the decision does not necessarily reflect agreement with the decision of the lower court.

What is a court order?

A court order is a legal document or proclamation in which a court orders a person to perform a specific act, prohibits him from performing an act, sets a court date, or legally establishes something. For example, a court order may require an individual to pay a specific amount of money to another party. A court order may also prohibit a person from doing something, such as walking across another party's property. Some court orders are used to set a date specifying when parties involved in a case are expected to appear in court. Other court orders may establish the relationship between parties in a case.

In many cases, court orders are given in writing and signed by a judge. In some places, however, a judge's signature isn't enough; an order has to be notarized to make it official. There are even cases in which a court order is given orally in open court. In such a case, the order may be recorded in the court's transcripts but not given to the parties in writing.

Depending on the type of case, a person may suffer penalties for failing to follow the instructions in a court order. For example, a person may lose a case by default if he fails to show up in court at the date and time specified in a court order. If a defendant fails to appear for his trial, he may be arrested and put in jail.

What is a summary judgment?

A procedural device used during civil litigation to promptly and expeditiously dispose of a case without a trial. It is used when there is no dispute as to the material facts of the case and a party is entitled to judgment as a Matter of Law.

Any party may move for summary judgment; it is not uncommon for both parties to seek it. A judge may also determine on her own initiative that summary judgment is appropriate. Unlike with pretrial motions to dismiss, information such as affidavits, interrogatories, depositions, and admissions may be considered on a motion for summary judgment. Any evidence that would be admissible at trial under the rules of evidence may support a motion for summary judgment. Usually a court will hold oral arguments on a summary judgment motion, although it may decide the motion on the parties' briefs and supporting documentation alone.

The purpose of summary judgment is to avoid unnecessary trials. It may also simplify a trial, as when partial summary judgment dispenses with certain issues or claims. For example, a court might grant partial summary judgment in a personal injury case on the issue of liability. A trial would still be necessary to determine the amount of damages.

Two criteria must be met before summary judgment may be properly granted: (1) there must be no genuine issues of material fact, and (2) the Movant must be entitled to judgment as a matter of law. A genuine issue implies that certain facts are disputed. Usually a party opposing summary judgment must introduce evidence that contradicts the moving party's version of the facts. Moreover, the facts in dispute must be central to