

US Civil System

- begins with the filing of a complaint which triggers an answer and then discovery (requests for documents, interrogatories, depositions, etc.) followed by a trial with either a jury or judge deciding the facts of the matter. Relevant law is also at issue and those points are argued to and decided by the judge (these legal issues can be the subject of an appeal).
- the system features high costs as both sides must engage lawyers. The party with the deeper pockets has a decided advantage unless the fact pattern, the wealth of the other party, and amount of damages at issue interest a contingent fee lawyer who then assumes the cost of litigation and takes a huge part of the eventual damage collection, if any.
- the principle features remembered by anyone who has endured this process: high cost, great time delays, pressure to settle regardless of fairness, and uncertain results if things go to trial. The final point is true because of the uneven skills of the various attorneys, the failure of the system to provided the "trier of fact" with a single, organized, balanced view of the facts and surrounding situation against which the competing arguments of the lawyers can be judged.

Continental Civil System

- a government lawyer (usually a young "judge in training") is assigned to every case and writes a full factual report on the matter
- this report is reviewed by a supervisor (usually an older judge) and once finalized, submitted to a three judge panel for a decision. This panel can order key witnesses to come before them for questioning.
- litigants can hire their own lawyers to submit additional questions to be answered or submit additional information for the panel to review (most litigants don't bother with getting a lawyer unless lots of money is at stake)
- system is paid for by charging each money damage award a three or five percent (3% to 5%) surcharge. This money is used to pay for the "judges in training" and the judges.
- cases are judged using general legal principles (not detail law augmented by finely reasoned legal precedents handed down by appeals courts) so the same facts in two separate cases involving different parties can in theory get different judgements

US Criminal System

- begins with an arrest and charge. The charge must be reviewed by either a grand jury or judge who, looking only at the prosecutor's facts decides a trial is warranted.
- the defendant must hire an attorney or be assigned a public defender. He is put in jail until he makes bail. If he is employed, his income ceases until he makes bail.
- the prosecuting attorney then enters into a plea bargaining process with the charged person. He will offer some lesser charge if the person "pleads", but a higher charge if they "take it to trial". If the charged person has lost his means of support because he is in jail, he loses focus on his guilt or innocence and will likely consider any offer if it gets him back to work. If the charged person has resources and has made bail, he is still motivated to plead to a reduced charge, even if he is innocent, because of the uncertainty associated with any trial. Prosecutors clear their case load by telling defendants " you plead to this lesser charge " or risk a much worse result going to trial on a greater charge.
- the actual trial on the criminal side are handled a bit more quickly than civil trial docket particularly if the defendant is in jail.
- again at trial both issues of law and fact are raised with issues involving law subject to appeal.

Continental Criminal System

- the prosecutor must pick the charge(s) they feel the defendant is guilty of and all subsequent court activity is focused on that charge whether the defendant confesses or not. Once the charge(s) are selected, the defendant must face the judge and have his charge(s) and underlying facts reviewed in detail. No plea bargaining is allowed.
- this system involves two trials. In the first trial, all facts (not just those that favor the prosecution) are presented to a panel of judges who must agree that the second trial should occur.
- the second trial is tried to a jury, but the presumption going into the second trial is that the defendant is guilty.
- however, the jury must ratify the judges' earlier decision or the defendant goes free.
- the defendant can hire his own attorney at these trials or be represented by a public defender.

US Appeal System

- the US Appeals courts are primarily there to address cases where the trial court misapplied the law to the case. Appeals courts can also throw out excessive damage awards, cases where the judge was obviously corrupt or incompetent, etc.
- the Appeals process is designed to make certain the "law" is being applied fairly and in a standardized fashion to all similar cases. The appeals courts also make certain greater principles of law are given greater precedence than lesser principles, so for instance the most important principles are those articulated by the US Supreme Court. Below this the ranking is generally as follows: lesser Federal courts, Federal Law enacted by Congress, Federal Regulation, the regulators' interpretations of these Federal regulation, the state Supreme Court interpretations, the lower state court rulings, the state laws, state regulations, and finally the state regulators' interpretations of state regulation.

- the existence of this appeals process and the fact that any case, civil or criminal, might need to go into this appeals process means that the lawyers in any case have to consider, in theory, all applicable "law" that might apply to their particular case from the beginning of the case. All the applicable points of "the law" should be raised at trial so these points might be appealed later if needs be.

- of course most cases don't go to appeal, but the possibility of appeal has to be in the minds of the lawyers and judge in every proceeding

Continental Appeals System

- The appeals system in the civil law system is not there to harmonize results or set precedents.
- this appeals system is there to reverse obvious errors of judgement, judicial malfeasance, excessive damage awards, etc.