Law Made for You  When you sign a contract, drive a car, get married, or have a conflict with your neighbor, the law is there to bring about justice. This chapter will explain how civil and criminal laws work to protect you and resolve conflicts in everyday life.

To learn more about civil and criminal law and how they affect you, view the Democracy in Action Chapter 15 video lesson:

The Law and You

Chapter Overview  Visit the United States Government: Democracy in Action Web site at gov.glencoe.com and click on Chapter 15—Overview to preview chapter information.
The set of rules and standards by which a society governs itself is known as law. Law defines the individual’s rights and obligations and specifies the ways citizens and government relate to each other. Law serves several functions in our society. It is used to resolve conflict, protect rights, limit government, promote general welfare, set social goals, and control crime.

Laws affect nearly everything we do—the food we eat, how we drive our cars, how we buy and sell things, and even what happens when we are born and when we die. Laws establish “rules of the game” in business, in our personal lives, and in politics. They can also help us resolve and even avoid conflicts.

While so many laws might seem to limit our freedom, laws also guarantee our individual liberties. Indeed, the rule of law is the principle that both the government and its citizens should be subject to law, and that no person is above the law, regardless of his or her position. This principle is a hallmark of democratic societies because it means government decisions and actions should be made according to established laws rather than by arbitrary actions and decrees.

Early Systems of Law

The earliest known written laws or rules were based on practices in tribal societies. The most well-known of these was the Code of Hammurabi, a collection of laws assembled by Hammurabi, king of Babylonia from 1792 to 1750 B.C. This code was made up of 282 legal cases that spelled out relationships among individuals as well as punishments in areas that we would now call property law, family law, civil law, and criminal law.

Another early set of written laws that has influenced our legal system is the Ten Commandments.

See the following footnoted materials in the Reference Handbook:
found in the Bible. The Bible served as the source of law for the Hebrews living in ancient Palestine. According to Christians and Jews who believe in the Old Testament, Moses received the Commandments from God on Mount Sinai in the thirteenth century B.C. The Commandments proclaim moral rules instructing people on how they should behave toward one another. The Commandment “Thou shalt not steal” is reflected in our laws today.

Our Legal Heritage

The laws that govern our lives and protect our rights are commonly known as constitutional law, statutory law, administrative law, common law, and equity. These laws come from several sources including state and federal constitutions, lawmaking bodies, administrative agencies, and court decisions.

Constitutional Law The Constitution is the most fundamental and important source of law in the United States. The Constitution establishes our country as a representative democracy, outlines the structure of our government, and sets forth our basic rights. The Constitution applies to all Americans and is the supreme law of the land—the standard against which all other laws are judged. Both federal and state courts apply or use provisions of the U.S. Constitution to make decisions.

State constitutions were the first written constitutions in the United States. Eleven of the original 13 states adopted written constitutions between 1776 and 1780. These constitutions spell out governmental arrangements in the states and the rights of citizens that are protected from interference by state governments. Because state constitutions are easier to amend than the United States Constitution, they reflect shifting popular concerns more readily. State constitutions sometimes set forth rights not mentioned in the U.S. Constitution.

State courts decide cases involving state constitutions. State court systems usually adopt the U.S. Supreme Court’s rulings on the U.S. Constitution as a guide to interpreting their own constitutions, but they do not have to. Some state courts have ruled that their constitutions protect the right to privacy even though the U.S. Constitution does not. State court rulings on their own constitutions may be appealed to the U.S. Supreme Court if it is claimed that the state constitution or state court violates the U.S. Constitution. In the end, the U.S. Supreme Court has the final word on the meaning of the U.S. Constitution.

The term constitutional law applies to that branch of the law dealing with the formation, construction, and interpretation of constitutions. For the most part, cases involving constitutional law decide the limits of the government’s power and the rights of the individual. Day-to-day decisions by the president, Congress, and other public officials often involve interpreting the meaning of the Constitution and thus can shape constitutional law. However, the decisions of courts, especially the U.S. Supreme Court, are the main sources of information about the meaning and interpretation of the U.S. Constitution and state constitutions. Constitutional law cases may deal either with civil law or criminal law.
Statutory Law Another source of American law is statutory law. A statute is a law written by a legislative branch of government. The United States Congress, state legislatures, and local legislative bodies write thousands of these laws. Statutes passed by city councils are called ordinances.

Statutes may limit citizens’ behavior when, for instance, they set speed limits, specify rules for inspecting food products, or set the minimum age to obtain a work permit. Statutes are also the source of many of the rights and benefits we take for granted, such as the right to get a Social Security check, to enter a veterans’ hospital, to get a driver’s license, to check your credit record, or return merchandise you have bought but do not like.

Most decisions of federal courts deal with statutory law, and many of the cases decided by the Supreme Court are devoted to interpreting statutory laws. In most of these cases, the courts determine what a statute means or whether it deprives a person of a constitutional right when it is carried out.

Statutory law is sometimes called “Roman law” because it is based on an approach to making laws derived from the ancient Romans. The plebeians, or the common people, of Rome first demanded that the laws of Rome be written down so that everyone might know and understand them. In about 450 B.C. the government of Rome published its laws on 12 tablets. Over the next thousand years, as the Roman Empire spread across Europe to Egypt, Roman leaders kept adding to these written codes until Roman law became very complex. In the A.D. 530s the Roman emperor Justinian had scholars reorganize and simplify all the laws into a final Roman legal code called the Justinian Code.

This codification of all its written laws was one of Rome’s greatest contributions to civilization. Many countries today have legal systems based on written codes of law that contain ideas from the Justinian Code. The most important of these was the Napoleonic Code, created in 1804 by the French emperor Napoleon Bonaparte. Napoleon’s updated version of the Justinian Code is still in force in France today and became the model for the legal systems of many other European countries, parts of Africa, most of Latin America, and of Japan. In addition, both the state of Louisiana and the Canadian province of Quebec—once French colonies—have a system of laws based on the Napoleonic Code.

Administrative Law A significant feature of local, state, and national government in America today is the large number of administrative agencies that run government programs and provide services. These agencies range in size and power from the huge Social Security Administration to the Food and Nutrition Service. Administrative law spells out the authority and procedures to be followed by these agencies, as well as the rules and regulations issued by such agencies. Since the Great Depression in the 1930s, law in the United States has been increasingly made through administrative agencies. One legal scholar has stated, “Law promulgated by the agencies now occupies an importance equal to statutory law in regulating every aspect of American society.”

Many administrative law cases deal with problems of fairness and due process because most administrative agencies either regulate people’s behavior, or provide or deny government benefits such as welfare payments or medical insurance. Thus, disputes constantly arise over whether agencies have acted fairly and given people the opportunity to present facts relevant to their case.
**Common Law** The single most important basis of the American legal system is *common law*, also called case law. This is law made by judges in the process of resolving individual cases.

Common law originated in England. In the eleventh century English monarchs sent judges across the land to hold trials and administer the law. Judges began to record the facts of the cases and their decisions in yearbooks. Over time, judges began to compare the facts and rulings from earlier cases to new cases. When a new case was similar to cases already decided and in the books, the judges followed the earlier ruling, or *precedent*. This was the origin of *stare decisis* (literally, “let the decision stand”), a basic principle used by the U.S. Supreme Court today. In cases without precedent, judges decided using common sense and customs, creating precedent for future cases.

**Common Law in America** The English colonists used common law in America. Legal training in the colonies was greatly assisted by the publication between 1765 and 1769 of William Blackstone’s four-volume compilation of the vast body of English common law, *Commentaries on the Laws of England*. Thomas Jefferson studied the *Commentaries* as a young lawyer, as did other legal scholars. After the Revolution, Americans had to choose what parts of English law would remain in force. While many states attempted to resist the influence of English law, common law remained in force throughout the nation. For example, the Delaware constitution of 1776 provided that “The common law of England as well as so much of the statute law. . . shall remain in force.” State constitutions today and the federal Constitution are worded in legal terms reflecting English common law. The practice of common law continues across the United States today, except in Louisiana, where legal procedures based on the Napoleonic Code persist.

**Equity** *Equity* is a system of rules by which disputes are resolved on the grounds of fairness. The principle of equity developed in medieval times as a rival to common law. The office of a royal official, the chancellor, became a court. This court, which represented the king’s conscience, developed the theory of equity. Its remedies were much different from those of common law. An equity court could require an action beyond the payment of money or even stop a wrong before it occurred. For example, an equity court could issue an injunction (see page 433) to prevent an action such as a neighbor building a fence across your property. In nineteenth-century America equity and common law merged. Today a single court can administer both systems.

---

**Choosing a Lawyer**

Being sued or having to sign a document you do not completely understand—these are just two reasons that you might need a lawyer. Some lawyers are general practitioners. Others specialize in certain areas, such as personal injury, divorce, or criminal law. Look for an attorney who handles the kind of problem you have.

The best way to find a lawyer is to talk with relatives and friends who have used lawyers. If their legal problems were similar to yours, see if they would recommend their lawyer. Another good source is the Martindale-Hubbell Law Directory, found in every courthouse library. This book lists nearly every lawyer in the United States by specialty. Your county bar association can also refer you to a competent attorney. The attorney referral services listed in the Yellow Pages are usually businesses that some attorneys pay for referrals.

If possible, talk with two or more attorneys before hiring your attorney. Many offer a first meeting for free.

**Participating IN GOVERNMENT ACTIVITY**

**Make a List** Create an imaginary situation which would require you to hire a lawyer. Prepare a list of topics and questions that you would want to discuss during your first meeting with a lawyer.
Legal System Principles

Four basic principles underlie the operation of both federal and state courts and the actions of the thousands of men and women who serve in the American legal system. These principles include equal justice under the law, due process of law, the adversary system of justice, and the presumption of innocence.

Equal Justice Under the Law The phrase “equal justice under the law” refers to the goal of the American court system to treat all persons alike. It means that every person, regardless of wealth, social status, ethnic group, gender, or age, is entitled to the full protection of the law. The equal justice principle grants all Americans rights, such as the right to a trial by a jury of one’s peers. The Fifth through the Eighth Amendments to the Constitution spell out these specific guarantees.

Due Process of Law Closely related to the principle of equal justice is the principle of due process of law. Due process has both a substantive part and a procedural part. Substantive due process is a kind of shorthand for certain rights, some that are specified in the Constitution (like free speech) and some that are not specified (like the right of privacy in making personal decisions). The Fifth and Fourteenth Amendments contain the due process principle.

Examples of laws that the Supreme Court has found to violate substantive due process include: (1) a law that limits dwellings to single families, thus preventing grandparents from living with their grandchildren; (2) a school board regulation that prevents a female teacher from returning to work sooner than three months after the birth of her child; and (3) a law that requires all children to attend public schools and does not permit them to attend private schools.

Cases about the way a law is administered involve procedural due process. Procedural due process prohibits arbitrary enforcement of the law. It also provides safeguards intended to ensure that constitutional and statutory rights are protected by law enforcement. At the most basic level, procedural due process requires (1) notice to a person...
that he or she has done something wrong and that the government intends to take specific action that will affect the person, and (2) giving the affected person the right to respond or be heard concerning the accusation of wrongdoing.

**The Adversary System**  American courts operate according to the adversary system of justice. Under the current *adversary system*, the courtroom is a kind of arena in which lawyers for the opposing sides try to present their strongest cases. The lawyer for each side is generally expected to do all that is legally permissible to advance the cause of his or her client. The judge in the court has an impartial role and should be as fair to both sides as possible, especially in implementing the essence of the law.

Some observers of the judicial system have attacked the adversary system. They have claimed that it encourages lawyers to ignore evidence not favorable to their sides and to be more concerned about victory than justice. Supporters of the adversary system, on the other hand, maintain that the system is the best way to bring out the facts of a case.

**Presumption of Innocence**  In the United States system of justice, the government’s police power is balanced against the presumption that a person, although accused, is innocent until proven guilty. The notion of *presumed innocence* is not mentioned in the Constitution, but it is deeply rooted in the English legal heritage. The burden of proving an accusation against a defendant falls on the prosecution. The defendant does not have to prove his or her innocence. Unless the prosecution succeeds in proving the accusation, the court must declare the defendant not guilty.

**Protecting all Americans**  This police officer reads a suspect his rights. Proper procedures must be followed when police arrest and the courts try suspected offenders. **Why should the rights of people who may be criminals be protected?**

---

**Checking for Understanding**

1. **Main Idea**  In a graphic organizer, identify the major sources of American law and the key principles of the American legal system.

2. **Define**  Law, constitutional law, statute, ordinance, statutory law, administrative law, common law, equity, due process, substantive due process, procedural due process, adversary system, presumed innocence.

3. **Identify**  Code of Hammurabi, Justinian Code, precedent, “equal justice under the law.”

---

**Critical Thinking**

4. **Identifying Alternatives**  Permitting rental agencies to refuse to rent apartments to families with children would violate what kind of due process?

---

**Concepts IN ACTION**

**Civic Participation**  Laws affect nearly everything people do. Laws change to meet the needs of the times. Work with a partner to either brainstorm new laws or identify laws that should be repealed. Create and present a skit showing a situation that requires a new law to be established or an existing law to be repealed.
Thompson v. Oklahoma, 1988

Nearly every state treats people under the age of 16 as minors. Minors, for instance, cannot drive or get married without their parents’ consent, nor can they vote or serve on a jury. Can a person convicted of committing murder when he was 15 years old be given the death penalty? The Court answered this question in the case of Thompson v. Oklahoma.

Background of the Case

In January 1983, 15-year-old William Wayne Thompson, along with three older persons, actively participated in the brutal murder of his former brother-in-law. Because Thompson was a “child” under Oklahoma law, the district attorney filed a petition requesting that Thompson be tried as an adult. Each of the four was found guilty and sentenced to death. Thompson’s sentence was appealed on the grounds that his execution would violate the Eighth Amendment’s ban on “cruel and unusual punishments” because he was only 15 years old at the time of his offense. An appeals court upheld the conviction and sentence.

The Constitutional Issue

Because the Constitution provides no clear guidance as to the meaning of “cruel and unusual punishments” for minors, the Court would interpret the meaning of the Constitution in terms of whether it thought American society would consider such punishment acceptable to standards of common decency. Would modern society approve of the death penalty for a minor who committed murder?

The Court found that 14 states did not authorize capital punishment at all, and 19 others that approved the death penalty, including Oklahoma, set no minimum age. However, there were 18 states that had set a minimum age of 16 in death penalty cases. Further, the American Bar Association had formally expressed its opposition to the death penalty for minors.

The Court also considered the verdicts of juries in relevant cases. The justices found that about 18 to 20 people under the age of 16 had been executed in the United States up to 1948, but that no such executions had taken place since that time. In a recent period, from 1982 to 1986, 1,393 persons had been sentenced to death, but only 5 were younger than 16 at the time of their offense.

Debating the Case

Questions to Consider

1. Does the evidence suggest that Americans accept the death penalty for minors?
2. Are the differences between minors and older persons significant enough to justify holding minors to a different legal standard than adults?
3. Does the constitutional ban on “cruel and unusual punishments” prohibit the death penalty for people under age 16 at the time of their crime?

You Be the Judge

The question confronting the Court was “whether the youth of the defendant . . . is a sufficient reason for denying the State the power to sentence him to death.” Did the evidence from existing state laws, the behavior of juries toward minors, and the very nature of childhood provide sufficient reason to sentence people to death for crimes they committed as minors?
Civil law concerns disputes among two or more individuals or between individuals and the government. Civil cases arise because one party believes it has suffered an injury at the hands of another party or wants to prevent a harmful action from taking place.

**Types of Civil Law**

Civil law touches nearly every phase of daily life—from buying a house to getting married. About 90 percent of the cases heard in state courts concern civil laws. Four of the most important branches, or types, of civil law deal with contracts, property, family relations, and civil wrongs causing physical injury or injury to property, called torts.

**Contracts** A contract is a set of voluntary promises, enforceable by the law, between parties who agree to do or not do something. We enter into contracts all the time: when we join a health club, buy a car with credit, get married, or agree to do a job for someone. In an expressed contract the terms are specifically stated by the parties, usually in writing. An implied contract is one in which the terms are not expressly stated but can be inferred from the actions of the people involved and the circumstances.

A valid contract has several characteristics. All parties to a contract must be mentally competent and in most cases must be legal age adults. The contract cannot involve doing or selling anything illegal. The contract’s elements must include an offer, acceptance, and in most cases a consideration.

An offer is a promise that something will or will not happen. For instance, the auto shop says it will repair your smashed bumper for $500. One party to a contract must then accept the offer made by the other party. If you agree in writing or orally to have the bumper fixed,
this constitutes the acceptance. Finally, the parties must give some type of consideration. They must give, exchange, perform, or promise each other something of value, such as a refinshed bumper in return for $500. A very large number of civil suits involve disagreements over contracts.

**Property Law** An important type of civil law deals with the use and ownership of property. The ability of private individuals to own, buy, and sell property is one feature of a democratic society. **Real property** has been defined by the courts to be land and whatever is attached to or growing on it, such as houses and trees. **Personal property** includes movable things like clothes or jewelry as well as intangible items like stocks, bonds, copyrights, or patents.

Many kinds of legal disputes arise over using, owning, buying, and selling property. Owners of buildings, for example, may fail to repair them or may try to discriminate against others when renting or selling. For many Americans, buying a house is the biggest financial investment they will ever make. This usually involves obtaining a mortgage—a loan to pay for the house—as well as a deed, title, and insurance. Both state governments and the federal government have passed many laws dealing with real property. For example, the federal **Fair Housing Act** aims to protect people against discrimination on the basis of race, religion, color, national origin, or gender when they try to buy the home they want or obtain a loan.

**Family Law** Another branch of civil law deals with the relationships among family members. This includes marriage, divorce, and parent-child relationships, including child custody issues.

In seventeenth-century England family law was strongly influenced by religious law. In the United States there was no established state religion, so family law developed outside the church. Each state developed its individual family law. For example, in America marriage became a civil contract. Two forms of marriage existed in nineteenth-century America—the civil ceremony and the common-law marriage. Because many people lived outside the cities and there was a shortage of clergy, many marriages were simple makeshift ceremonies without official sanction. The law nevertheless tended to recognize these common-law marriages as valid.

Today marriage is a civil contract entered into by both parties. Divorce legally ends a marriage and leaves both parties free to remarry. Legal disputes involving such domestic relations account
for a large number of civil cases in state courts. Family law is changing rapidly as the meaning of family changes in American society.

**Torts or Civil Wrongs** A tort is any wrongful act, other than breach of contract, for which the injured party has the right to sue for damages in a civil court. Those responsible for damage caused to someone’s property, such as breaking a window, or for injury to someone caused by negligence, such as failing to clear ice from the sidewalk, may be sued by the party suffering the damage or injury. Further, the wronged party may sometimes seek punitive damages—additional money—as a way to punish the party causing the injury.

Tort law was an insignificant branch of law before the Industrial Revolution. Almost every leading case in the late 1800s was connected with railroads. Courts hesitated to award damages to injured workers because they feared such awards would hurt business enterprises. By the 1900s, however, the state and federal governments began to issue safety regulations for industry, and courts established a doctrine of liability for industrial hazards. Today, some would argue that courts are more likely to favor workers claiming injury.

There are two major categories of torts. An intentional tort involves a deliberate act that results in harm to a person or property. The person committing the act may have obviously sought to hurt someone, for instance, by hitting them or spreading lies about them. Assault and battery and defamation of character are examples. Or, the person may be liable for doing harm even if his or her actions, such as playing a practical joke that unintentionally results in an injury, seemed innocent at the time.

Negligence is another kind of tort involving careless or reckless behavior. A person is negligent when he or she fails to do something a reasonable person would have done, or does something a prudent person would not have done. Leaving a sharp kitchen knife where small children could easily reach it and not having the brakes checked on an old car with high mileage are examples of negligence that could result in legal liability if someone is injured.
Steps in a Civil Case

Civil cases are called lawsuits. The plaintiff is the person who brings charges in a lawsuit, called the complaint. The person against whom the suit is brought is the defendant. The plaintiff in a civil suit usually seeks damages, an award of money from the defendant. If the court decides in favor of the plaintiff, the defendant must pay the damages to the plaintiff. Usually the defendant is also required to pay court costs. If the court decides in favor of the defendant, the plaintiff must pay all the court costs and of course receives nothing from the defendant.

In some lawsuits involving equity, the plaintiff may ask the court to issue an injunction, a court order that forbids a defendant to take or continue a certain action. For example, suppose a company plans to build a factory in the middle of a residential area. Citizens believe that the factory would pollute the air. They take the factory owner to court and argue that residents would suffer serious health problems if the factory is constructed. If the citizens win this suit in equity, the judge issues an injunction ordering the company not to build its factory.

Lawsuits are the ultimate method to settle such disputes. However, lawsuits can be time-consuming and expensive with no guarantee that the winner will readily collect any damages that may have been awarded. Lawsuits follow certain steps.

Hiring a Lawyer

To start a lawsuit, a person almost always needs a lawyer. Lawyers may work for a contingency fee, typically one-fifth to one-half of the total money won in the lawsuit, or they will work for an hourly fee. If the plaintiff and attorney agree to a contingency fee, no fee is paid if the plaintiff loses the case. The plaintiff, however, pays for the costs of the suit such as copying charges, or fees for investigators or special experts.

Filing the Complaint

Most suits go to state courts unless they involve the Constitution or a federal statute or regulation. The plaintiff sets forth the charges against the defendant in a complaint, a legal document filed with the court that has jurisdiction over the problem. The complaint tells the defendant what is at issue—that is, what the defendant allegedly did wrong—so that a defense can be mounted. The defendant receives a summons, an official notice of the lawsuit that includes the date, time, and place of the initial court appearance. The defendant’s lawyer may file a motion to dismiss, asking the court to end the suit. If the court denies this motion, the defendant must then file an answer, or formal response to the charges in the complaint, within a certain time, usually 10 to 60 days. Failure to answer means victory by default for the plaintiff. The defendant may also respond by filing a counterclaim, or lawsuit against the plaintiff in which the defendant asserts that the plaintiff also did something wrong.

Pretrial Discovery

The next step, called discovery, occurs when both sides prepare for trial by checking facts and gathering evidence to support their case. The attorneys and private investigators in major cases may interview witnesses, examine records and photos, and file motions against the other side. This phase can be very expensive as well as time-consuming. In complicated cases discovery may take months or even years.

Suing for Damages

Lawsuits in America

Lawsuits involving major sums of money often go to civil court where a jury hears them. Do you think that justice would be better served by relying more or less on juries? Explain your answer.
Resolution Without Trial Ninety percent of all civil lawsuits are settled before trial through one of several techniques. Either party in a lawsuit may propose a settlement at any time, including during the trial. This often happens during the discovery phase as costs mount and people become more willing to compromise. Judges may encourage people to settle by calling a pretrial conference where the parties talk things over. The court may also require or encourage the parties to settle their dispute outside of court.

During mediation each side is given the opportunity to explain its side of the dispute and must listen to the other side. A trained mediator conducts the sessions by acting as a neutral party and promoting open communication. The mediator does not decide the issue; the parties themselves do that with the mediator’s help. The parties may also agree to submit their dispute to arbitration. This process is conducted by a professional arbitrator who acts somewhat like a judge by reviewing evidence and deciding how the problem will be settled. The arbitrator’s decision is usually binding on all parties.

Trial If all else fails, lawsuits eventually go to trial, although the courts are so crowded this may take years. Civil trials, like criminal trials, may be heard by a judge only or by a jury of 6 to 12 people. The plaintiff presents its side first, followed by the defendant. Both sides then summarize their cases, and the judge or jury renders a verdict.

The Award Because of the merging of common law and equity, courts have many options in resolving cases, and judges have more power to adjust decisions made by juries. When the plaintiff wins, the court awards damages, injunctive relief, or both. Injunctive relief, stemming from equity, is a court order to prevent a future act. The damages award may be more or less than the plaintiff requested. Occasionally the judge modifies a jury’s award if it seems out of line. Even after the award, the case may not be over. The loser may appeal or refuse to pay damages. If the defendant refuses to pay, the plaintiff must get a court order to enforce the payment of damages in one of several ways, such as taking money out of the defendant’s paycheck or seizing and selling the defendant’s assets.

Small Claims Court Most states today have provided an alternative to the lengthy trial process by creating small claims courts. These courts hear civil cases commonly dealing with collecting small debts,
property damage, landlord-tenant disputes, small business problems, and the like. Cases are usually heard by a judge and involve claims ranging up to a maximum of $1,000 to $5,000, depending on the state. Plaintiffs with larger claims can waive the amount of their claim that exceeds the dollar limit and still use these courts, but they cannot recover more than the limit.

Most of these courts have simple forms to complete in order to file a complaint. The forms ask for the defendant’s name and address, a description of the dispute, and the amount of damages requested. The defendant is given two to four weeks to respond, and a date for the case is set. No lawyers are required because the idea is to provide ordinary people with a simple and inexpensive means of resolving their disputes. These courts usually charge a $10 to $50 filing fee. Plaintiffs bring evidence of their claim to court and are asked to explain their case in nonlegal terms. The evidence may include testimony from witnesses or their affidavits, written statements to verify or prove statements of fact that have been signed by the witness under oath before a magistrate or notary.

A judge typically hears the case and gives a decision that is legally binding. When a defendant fails to appear for the hearing, the plaintiff usually wins a default judgment for the amount of the claim. Winning is no guarantee of collecting. If the defendant is unwilling or unable to pay, the plaintiff obtains a written order from the court and then turns the order, along with other information about the defendant, over to the police or sheriff to enforce collection. Usually such judgments are good for five years and may be renewed.

Minor Lawsuits  Small claims courts, such as this one, conduct proceedings in everyday language and avoid technical legal terms. Almost every state has a court that handles small claims. What kinds of cases are heard in small claims courts?

Checking for Understanding

1. **Main Idea** Use a graphic organizer like the one to show the five steps in a civil lawsuit.

2. **Define** civil law, contract, expressed contract, implied contract, real property, personal property, mortgage, tort, plaintiff, defendant, injunction, complaint, summons, answer, discovery, mediation, affidavit.

3. **Identify** Fair Housing Act.

4. What do four of the most important branches of civil law deal with?

5. What is the difference between intentional tort and negligence tort?

Critical Thinking

6. **Drawing Conclusions** In your opinion should mediation and arbitration be used to settle most civil lawsuits in order to prevent overburdening the court system?

**Concepts IN ACTION**

**Political Processes** Interview relatives or a neighbor who has been involved in a lawsuit or in small claims court. Find out the nature of the dispute and the way the lawsuit was resolved. Make sure you get the individual’s permission before discussing the case in class. Present a brief documentary of your findings to the class.
Understanding Cause and Effect

Understanding cause and effect involves considering how or why an event occurred. A cause is the action or situation that produces an event. An effect is the result or consequence of an action or situation.

Learning the Skill

To identify cause-and-effect relationships, follow these steps:
1. Identify two or more events or developments.
2. Decide whether one event caused the other.
   Look for “clue words” such as because, led to, brought about, produced, as a result of, so that, since, and therefore.
3. Identify the outcomes of events.
   Making a graphic organizer can aid in understanding cause and effect. Read the passage below and examine the graphic organizer that follows.

<table>
<thead>
<tr>
<th>Causes</th>
<th>Effects</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crackdown on truancy</td>
<td>A drop in crime</td>
</tr>
<tr>
<td>Poor school attendance</td>
<td>Increased potential to commit crime</td>
</tr>
</tbody>
</table>

Practicing the Skill

On a separate piece of paper, make a cause-and-effect diagram for each statement below.
1. Under Hammurabi’s code a son found guilty of striking his father had his hand cut off.
2. As Roman law became more complex, the task of interpreting it fell to a group of highly skilled lawyers called jurisprudentes. Since that time, the science of law has been known as jurisprudence.
3. Congress and state legislatures pass thousands of laws every year, and as the number of laws grows, more and more aspects of life become regulated by government.

Application Activity

Read an account of a recent criminal or civil trial in your community as reported in a local newspaper. Determine at least one cause and one effect of that event. Show the cause-and-effect relationship in a chart.

Concern has been raised over a disturbing issue—the chronic truancy of students who have been convicted of crimes. Truancy appears to have a direct impact on the crime rate. Many cities reported a drop of 50 percent or more in shoplifting, daytime burglaries and other crimes in the wake of crackdowns on truants. In addition, virtually all of the youths accused of violent crimes had poor school attendance, according to one judge.
In criminal law cases, the government charges someone with a crime and is always the prosecution. The defendant is the person accused of a crime. A crime is an act that breaks a criminal law and causes injury or harm to people or to society in general. Not doing something may also be considered a crime. For example, in some states it is a crime for doctors who suspect that one of their young patients is being abused to fail to report the case to the authorities.

By far, most crimes committed in the United States break state laws and are tried in state courts. In recent years, however, there have been an increasing number of federal criminal cases. A federal criminal case might involve such crimes as tax fraud, counterfeiting, selling narcotics, mail fraud, kidnapping, and driving a stolen car across state lines. If a criminal court finds a person guilty, the judge may order the defendant to serve a term in prison, to pay a fine, or both.

The criminal justice system is the system of state and federal courts, judges, lawyers, police, and prisons that has the responsibility for enforcing criminal law. There is a separate juvenile justice system with special rules and procedures for handling cases dealing with juveniles, who in most states are people under the age of 18.

Types of Crime

State governments have jurisdiction over most crimes. Each state has its own penal code, written laws that spell out what constitutes a crime and the punishments that go with it. Crimes may be classified as petty offenses, misdemeanors, or felonies.

Petty Offenses Minor crimes such as parking illegally, littering, disturbing the peace, minor trespassing, and driving beyond the speed limit are petty offenses. When people commit a petty offense, they often receive a ticket, or citation, rather than being arrested.
If they do not challenge the citation, they may only have to pay a fine. Ignoring a petty offense, such as not paying a fine, may itself constitute a more serious crime.

**Misdemeanors** More serious crimes like vandalism, simple assault, stealing inexpensive items, writing bad checks for modest amounts, being drunk and disorderly, and so on are **misdemeanors**. A person found guilty of a misdemeanor may be fined or sentenced to jail, usually for one year or less.

**Felonies** Serious crimes such as burglary, kidnapping, arson, rape, fraud, forgery, manslaughter, or murder are considered **felonies**. These crimes are punishable by imprisonment for a year or more. In the case of murder, the punishment could be death. People convicted of felonies may also lose certain civil rights such as the right to vote, possess a firearm, or serve on a jury. Further, they may lose employment opportunities in some careers such as the military, law, teaching, or law enforcement. Misdemeanors may sometimes be treated as felonies.

Drunk driving, for instance, is often a misdemeanor. However, if a person has been arrested for drunk driving and has been convicted of the same offense before, that person may be charged with a felony.

**Steps in Criminal Cases**

There are several steps which nearly every criminal case follows, although the exact procedures often vary from state to state. At each step defendants are entitled to the protections of due process guaranteed in the Bill of Rights. The prosecutor, a government lawyer with the responsibility for bringing and proving criminal charges against a defendant, must prove beyond a reasonable doubt to a judge or jury that the defendant violated the law.

**Investigation and Arrest** Criminal cases may begin when police believe a crime has been committed and start an investigation to gather enough evidence to convince a judge to give them a warrant to arrest someone. A valid **arrest warrant**

**Comparing Governments**

<table>
<thead>
<tr>
<th>Country</th>
<th>Total</th>
<th>Murder</th>
<th>Assault</th>
<th>Burglary</th>
<th>Auto Theft</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia</td>
<td>7,001</td>
<td>3.6</td>
<td>713.7</td>
<td>2,338.4</td>
<td>706.2</td>
</tr>
<tr>
<td>France</td>
<td>6,096</td>
<td>3.7</td>
<td>148.4</td>
<td>676.9</td>
<td>546.2</td>
</tr>
<tr>
<td>Canada</td>
<td>8,453</td>
<td>4.3</td>
<td>142.3</td>
<td>1,155.7</td>
<td>547.2</td>
</tr>
<tr>
<td>Colombia</td>
<td>790</td>
<td>56.3</td>
<td>61.8</td>
<td>57.9</td>
<td>75.3</td>
</tr>
<tr>
<td>Israel</td>
<td>5,017</td>
<td>2.4</td>
<td>463.0</td>
<td>1,122.3</td>
<td>694.1</td>
</tr>
<tr>
<td>Japan</td>
<td>1,671</td>
<td>1.1</td>
<td>15.4</td>
<td>187.9</td>
<td>28.4</td>
</tr>
<tr>
<td>The Netherlands</td>
<td>7,808</td>
<td>10.9</td>
<td>242.8</td>
<td>3,100.4</td>
<td>239.0</td>
</tr>
<tr>
<td>United States</td>
<td>5,374</td>
<td>9.0</td>
<td>430.2</td>
<td>1,041.8</td>
<td>591.2</td>
</tr>
</tbody>
</table>


**Critical Thinking**

Crime rates in countries around the world often vary dramatically. According to the information above, in which country is it the safest to live? Why?
must list the suspect’s name and the alleged crime. An arrest may occur without a warrant if the police catch someone in the act of committing a crime or, in some cases, if they have reasonable suspicion to believe that a person has broken the law.

The arrested person is taken to a police station where the charges are recorded or “booked.” At this point the suspect may be fingerprinted, photographed, or put in a lineup to be identified by witnesses. Police may (often with a court order) administer a blood test, or take a handwriting sample. These procedures do not violate a person’s constitutional rights, and lawyers do not have to be present. However, suspects have the right to ask for a lawyer before answering questions.

Initial Appearance Whenever someone is arrested, he or she must be brought before a judge as quickly as possible, usually within 24 hours, to be formally charged with a crime. The judge explains the charges to the defendant and reads the person’s rights. If the charge is a misdemeanor, the defendant may plead guilty and the judge will decide on a penalty. If the defendant pleads not guilty, a date is set for a trial.

When the crime is a felony, the defendant usually is not asked to enter a plea. Rather, the judge sets a date for a preliminary hearing, and a process aimed at determining the merits of the charges begins. The judge may also decide whether the suspect will be released or “held to answer.” A suspect may be released on his or her “own recognizance” if the judge thinks the person is a good risk to return to court for trial, or the judge may require bail, a sum of money the accused leaves with the court until he or she returns for trial. According to the Eighth Amendment, the amount of bail required should fit the severity of the charge but cannot be excessive. In some cases bail may be denied, as when a defendant is likely to flee.

Preliminary Hearing or Grand Jury The next step in the criminal justice process also varies from state to state and between state and the federal governments. In federal courts and in many state courts, cases will go to a grand jury, a group of citizens who review the prosecution’s allegations in
Mary Ellen Beaver has developed a reputation that has earned her the nickname “Fighting Grandma.” Since 1969 Beaver has been working hard to help migrant workers understand their legal rights and improve their working conditions.

Beaver, now in her sixties, began her campaign after seeing groups of poorly dressed tomato pickers pass by her Pennsylvania farm each day in run-down buses. “I was outraged. They had no rights and were being exploited,” she said.

Beaver collected clothing to take to the workers and organized a group of churches to help provide support. Her work helped to convince Pennsylvania legislators to pass the state’s 1978 Farm Labor Law. She also created a support group for workers called Friends of Farm Workers. For her dedication and hard work, she earned a humanitarian medal from Pope John Paul II in 1984.

Other states have benefited from Beaver’s efforts. After leaving Pennsylvania she worked with the Neighborhood Legal Assistance Program in South Carolina to monitor migrant working conditions in the state’s peach orchards. She also worked for the Florida Rural Legal Services, which provides legal support to Florida’s migrant workers. In a lawsuit filed against a sugarcane company, Florida cane workers were awarded $51 million in back wages.

Beaver says the reward for her work is “when a worker comes up to me and says, ‘No one has ever treated me with respect before.'”

order to determine if there is enough evidence to “hand up” an indictment, or formal criminal charge.

Grand jury hearings are conducted in secret and may consider types of evidence not allowed in trials. Defendants are not entitled to have an attorney represent them, although their attorney may be able to observe the proceedings.

If a preliminary hearing is used instead of a grand jury indictment, the prosecution presents its case to a judge. The defendant’s lawyer may also present certain kinds of evidence on behalf of the defendant. If the judge believes there is a probable cause to believe the defendant committed the crime, the case moves to the next stage. If the judge decides the government does not have enough evidence, the charges are dropped. In some states the prosecuting attorney is allowed to try to obtain a grand jury indictment if a judge dismisses a case at the preliminary hearing.

Convening a grand jury is time-consuming and expensive. Today, in misdemeanor cases and in many felony cases, courts use an information rather than a grand jury indictment. An information is a sworn statement by the prosecution asserting that there is sufficient evidence to go to trial. Because grand juries most often follow the recommendations of the prosecution, many people believe that a grand jury is an unnecessary expense.

**Plea Bargaining** In about 90 percent of all criminal cases, the process comes to an end with a guilty plea because of plea bargaining. In this pretrial process the prosecutor, defense lawyer, and police work out an agreement through which the defendant pleads guilty to a lesser crime (or fewer crimes) in return for the government not
prosecuting the more serious (or additional) crime with which the defendant was originally charged. In many courts the judge also participates in the process, especially if the length of the sentence is part of the negotiation. Plea bargaining has become very widely used as a way to handle the tremendous volume of criminal cases the courts must process every year.

Supporters of the process claim it is efficient and saves the state the cost of a trial in situations where guilt is obvious, as well as those where the government’s case may have weaknesses. Some opponents argue “copping a plea” allows criminals to get off lightly. Others say that it encourages people to give up their rights to a fair trial. The Supreme Court in several decisions has approved the process as constitutional. In Santobello v. New York\(^1\) (1971) the Court said plea bargaining was “an essential component of the administration of justice. Properly administered, it is to be encouraged.”

Arraignment and Pleas After the indictment by a grand jury, a preliminary hearing, or an information, the next step is the arraignment. At the arraignment the judge reads the formal charge against the defendant in an open courtroom. The defendant is represented by an attorney. During this process the judge may ask the defendant questions to ensure the person understands the charges and the process. A copy of the charges is given to the defendant, and the judge asks if the defendant pleads guilty or not guilty.

The defendant then enters one of four pleas responding to the charges. It could be: (1) not guilty, (2) not guilty by reason of insanity, (3) guilty or, in some states, (4) no contest (nolo contendere). By pleading nolo contendere the defendant indirectly admits guilt by saying, “I will not contest it;” however, this does not go on the records as a guilty plea. If the defendant pleads guilty or nolo contendere, he or she has given up the right to a defense, the judge then decides a punishment, and the defendant may be sent to prison immediately. If the plea is not guilty, there must be a trial, and a court date is set.

\\footnote{See the following footnoted materials in the Reference Handbook: \\
The Trial

The Sixth Amendment guarantees that defendants should not have to wait a long time before their trial starts. However, the courts are so crowded that long delays are common. Defendants accused of a felony have a right to choose between a jury trial or one heard only by a judge, known as a bench trial. In a bench trial the judge hears all the evidence and determines guilt or innocence. Experience has shown that judges are more likely to find defendants guilty than are juries. A jury is a group of citizens who hear evidence during a trial in order to decide guilt or innocence. The prosecuting and defense attorneys select jurors from a large pool of residents within the court’s jurisdiction. Both sides try to avoid jurors who might be unfavorable to their side.

When the jury and alternate jurors have been selected, the prosecution presents its case against the defendant. Witnesses are called, and evidence is presented. The defense attorney has the right to cross-examine prosecution witnesses, and at any time either side can object to statements or actions by the other side. Next, the defense has its turn and may call witnesses. The prosecuting attorney has the right to cross-examine them. Under the Fifth Amendment defendants do not have to testify, and refusal to testify cannot be taken as an admission of guilt. The attorneys for both sides then present closing arguments that summarize the cases and respond to the opposition’s case.

The Decision

After closing arguments the judge gives the jury a set of instructions on proper legal procedures for the case, and explains the law that the jury is required to apply to the facts brought out at trial. The jury members then go to a jury room to decide if the defendant is guilty or not guilty. The jury selects a foreperson to lead their discussions and serve as their spokesperson. Jury deliberations are secret and have no set time.

See the following footnoted materials in the Reference Handbook:
limit. During its deliberations the jury may ask questions of the judge or ask to review evidence. To decide that a person is guilty, the jury must find the evidence convincing “beyond a reasonable doubt.” Nearly all criminal cases require a unanimous vote for a verdict, or decision, of guilty. If the jury cannot agree on a verdict, a situation known as a hung jury, the court usually declares a mistrial. A new trial with another jury may be scheduled later.

**Sentencing**  When the verdict is “not guilty,” the defendant is released immediately and with very few exceptions cannot be tried again for the same crime. If the verdict is “guilty,” the judge usually determines the sentence, the punishment to be imposed on the offender. Sentences may require time in prison, the payment of a fine, or a number of hours of community service. In a few states jurors may play a role in sentencing, particularly in cases in which the death penalty is a possible sentence. Today, victims of the crime are often allowed to make statements about the sentence, and judges may take those statements into account. The law usually sets minimum and maximum penalties for various crimes, and the judge chooses a punishment from within those ranges. With a serious crime the judge may hold hearings in order to consider how the defendant’s background and other circumstances of the crime might affect the sentence. This type of hearing is constitutionally required in death penalty cases. People convicted of misdemeanors and felonies have the right to appeal their cases to a higher court, although this right to appeal is not a constitutional one.

**Hearing Cases** Bertina Lampkin is a supervising judge in Cook County, Illinois, assigned to Night Narcotics Court. She claims, “I don’t think there is a better job. I love to hear the arguments.” Lampkin takes the bench at 4 P.M., sometimes working until 1 A.M. Why do you think court is held at night?

In the 1990s, many citizens became frustrated with both the short sentences given for serious crimes and the number of repeat offenders. Beginning with Washington in 1993, many states passed a “three-strikes law” requiring individuals convicted of three serious offenses to be sentenced to 25 years to life in prison. Three-strikes laws are controversial. Opponents argue that they are unfair, but supporters note that states with three-strikes laws have experienced a dramatic drop in serious crime.

### Section 3 Assessment

#### Critical Thinking

5. **Demonstrating Reasoned Judgment** Do you think people charged with violent crimes should be allowed to raise bail? Why?

#### Concepts In Action

**Political Processes** Create a political cartoon that illustrates the way the criminal justice system tries to balance the rights of the accused against the rights of society.

#### Checking for Understanding

1. **Main Idea** Use a Venn diagram like the one here to show the differences and similarities between the steps in criminal and civil lawsuits.

2. **Define** criminal law, criminal justice system, petty offense, misdemeanor, felony, arrest warrant, grand jury, indictment, information, plea bargaining, jury, verdict, hung jury, sentence.

3. **Identify** Sixth Amendment, Fifth Amendment.

4. **Identify** three classifications of crimes.
The following excerpt from *Time* profiles a sketch artist who uses psychology to help witnesses recall the faces of criminals.

**Jeanne Boylan** was working in a small Oregon sheriff’s office in 1973 when she began to wonder why the police sketches she saw didn’t match descriptions she had heard from the victims. There’s a better way, she thought. And there was. Today Boylan is acclaimed for developing a technique so accurate that an FBI agent who has worked with her likens the results to “something drawn from a photograph.”

The self-described “facial-identification specialist” has drawn more than 7,000 faces in her career. Her secret? A diligent reading—and application—of memory science.

Most sketch artists ask witnesses to examine drawings or photographs meant to jog their memories. But that process can muddy fragile recollections. “Human memories are very malleable, especially at the height of emotion,” Boylan says. “Ask, ‘Did he have a moustache?’ Well, he does now, because you’re implanting that image.” Boylan’s interviews are long chats about other topics, with only occasional questions related to the pad she holds just out of sight. “The assumption is that this work is about art,” says Boylan, “but it’s about the complexity of memory.

“My ultimate dream of dreams would be to see this job done by trained psychologists.”

— From *Time*,
March 19, 2001
Setting Up the Workshop

1. Select volunteers to play the following roles in the courtroom trial:
   - defendant
   - judge
   - bailiff
   - three-member prosecution attorney team
   - three-member defense attorney team
   - witnesses
   - jury

2. Gather props to use in court to represent the evidence that exists in the case. You will also need paper and pencils to take notes.

3. Rearrange the classroom to make it resemble a courtroom.

Gathering the Facts of the Case

Your trial is based on the following incident:

On the evening of December 22, a person wearing a ski mask and carrying a gun robbed a convenience store. The person entered the store at approximately 1 A.M. when only the clerk and one other customer were present. The suspect held the gun on the clerk and demanded the contents of the cash register. The clerk gave him $78 in cash, and the suspect left the store without noticing the customer hiding in the rear of the store. According to the clerk, the suspect drove off in a light-colored pickup truck. The clerk was able to provide a partial license plate number.

At 1:05 A.M. the clerk called 911 to report the crime. A police cruiser responded to take information from the clerk (Sara Mason) and the customer (Jason Allen) and to gather evidence. Ten minutes later a second cruiser responded.

The second officer reported he had just pulled someone over in a light-colored truck for speeding. The partial license plate number given by the clerk matched some of the numbers on that vehicle’s plate.

The vehicle’s owner (Thomas Cole) was arrested at his residence later that evening. Police questioned and later charged him in the robbery of the convenience store.

The Plea

Based on evidence presented to the grand jury, the defendant was indicted and pleaded not guilty at his arraignment. According to his statement to the police, he had lent his truck to a friend (Todd Elright) for the evening.

Pre-Trial Preparation

As a class, discuss the details of the crime as they are presented in Step 1. Decide what additional details are needed to try the case effectively. Create those details to share with the prosecution and defense teams. Members of the prosecution and defense teams should take notes during the discussion to use in preparing their cases for trial. You may want to address the following topics:

1. Who were the witnesses to the crime?
2. What physical description of the suspect did the witnesses provide?
3. Does the friend who supposedly borrowed the pickup truck exist? If so, was he contacted, and did he make a statement to the police?

4. What physical evidence is available to present in the trial? Were there articles of clothing, a weapon, or fingerprints found?

5. Was the stolen money recovered?

**Attorney Preparation**

Members of the prosecution and defense teams should work separately to prepare their individual strategies for trying their cases. The burden of proof falls on the prosecution team; however, each side will need to be prepared to do the following:

1. share its witness list and evidence list with the opposing team,
2. present an opening statement when the trial begins,
3. call witnesses to the stand and ask them questions,
4. present physical evidence to the court,
5. deliver a closing statement to convince the jury of the guilt or innocence of the defendant.

**Conducting the Trial**

1. **Beginning the Proceedings** The bailiff, who is responsible for maintaining order in the courtroom, should announce that the trial is about to begin and order those present in the courtroom to rise as the judge enters. The judge will oversee the proceedings. The role of the judge will be to decide on the appropriateness of the actions of the attorneys and to respond to objections from both sides. To the best of his or her ability, the judge will need to make sure that the trial is carried out in a manner that is fair to both sides without infringing on the rights of the defendant.

2. **Presenting Their Cases** The trial should begin with an opening statement by the prosecution and defense teams. The prosecution will then present its case first by calling and questioning its witnesses. After the prosecution questions each witness, the defense has an opportunity to cross-examine each of the prosecution’s witnesses. After the prosecution rests, the defense presents its case by calling its own witnesses to the stand. The prosecution can also cross-examine the defense’s witnesses. The bailiff calls and swears in each witness before he or she begins testimony. After the defense rests, the prosecution and defense attorneys will present closing statements summarizing the case and urging a conclusion of guilt or innocence.
3. Reaching a Verdict  The judge will then charge the jury, or explain its responsibilities. The jury’s duty is to decide on the guilt or innocence of the defendant based on the evidence and whether he is guilty “beyond a reasonable doubt.” The jury will then adjourn to discuss the case. Jury members should elect a foreperson to lead the proceedings and to announce their verdict to the court.

4. Sentencing  Once the verdict has been announced, the judge will sentence the defendant if he is found guilty or dismiss him if the verdict is not guilty. If a unanimous verdict cannot be reached, the jury will be considered a hung jury.

Summary Activity

After the trial, members of your class may want to evaluate the effects of the trial’s outcome on those people who were involved in the crime. Write a paragraph explaining what your feelings might have been after the trial if you were:

- the convenience store clerk
- the defendant
- a member of the jury

Questions for Discussion

1. Do you think the trial was fair? Why or why not?
2. Does determining guilt “beyond a reasonable doubt” favor the defendant or the prosecution in this particular case?
3. Was there vital information that was knowingly withheld by either side that could have affected the jury’s decision? Explain.
4. Based on TIME’s excerpt, do you think Jeanne Boylan’s psychological approach to drawing sketches of criminals will help law-enforcement officials? How?
5. How might the outcome of the trial have changed if the case had been heard by a judge only, and not by a jury?
Assessment and Activities

GOVERNMENT Online

Self-Check Quiz Visit the United States Government: Democracy in Action Web site at gov.glencoe.com and click on Chapter 15—Self-Check Quizzes to prepare for the chapter test.

Reviewing Key Terms
On a separate sheet of paper, choose the letter of the term identified in each statement below.

a. administrative law  f. misdemeanor
b. verdict  g. common law
c. indictment  h. tort
d. contract  i. adversary system
e. statute  j. injunction

1. a minor or less serious crime  7. a law written by a legislative branch
2. the procedures of and rules issued by government agencies  8. a charge by a grand jury that a person committed a particular crime
3. any wrongful act, other than breach of contract, for which the injured party has the right to sue for damages in a civil court  9. a set of voluntary promises, enforceable by the law, between parties to do or not to do something
4. law made by judges in resolving individual cases  10. a court order that forbids a defendant to take or continue a certain action
5. a judicial system in which lawyers for the opposing sides present their cases in court
6. a decision of a jury in a criminal case

Recalling Facts

1. What two early systems of laws have influenced the development of the United States legal system?
2. In the United States, what is the standard against which all other laws are judged?
3. When does a court rule that a law violates substantive due process?
4. What two kinds of cases do courts in the American legal system hear?
5. Why has plea bargaining become widely used in criminal cases?

Understanding Concepts

1. Civic Participation How may the principle of “equal justice under law,” applied in federal court cases, benefit minorities, poor people, or young people?

Chapter Summary

Sources of Law

• Constitutional law studies and interprets the Constitution and resolves the tension between individual rights and government powers.
• Statutory law is created by a governing legislature.
• Administrative law governs the authority and procedures practiced by government agencies.
• Common law is the historical body of legal decisions that provide the basis for current and future decisions.
• Equity law is a system of legal actions based on the principle of fairness.

Kinds of Law

Civil Law

• Concerns disputes among two or more individuals or between individuals and the government
• Makes up 90 percent of the cases heard in state courts
• Deals with contracts, property law, family law, and torts

Criminal Law

• Concerns acts that cause injury or harm to people or to society in general
• The government charges someone with a crime and serves as the prosecution
• Includes petty offenses, misdemeanors, and felonies
2. Political Processes  How does the idea of “guilty beyond a reasonable doubt” protect the rights of defendants?

Critical Thinking
1. Making Comparisons  What is the difference between procedural due process and substantive due process?
2. Demonstrating Reasoned Judgment  Use a graphic organizer like the one below to identify reasons for and against plea bargaining.

<table>
<thead>
<tr>
<th>Plea Bargaining</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>For</td>
<td></td>
</tr>
<tr>
<td>Against</td>
<td></td>
</tr>
</tbody>
</table>

Analyzing Primary Sources
Hammurabi’s Code was the world’s first written code of law, compiled by the king of Babylonia in the 1700s B.C. The code formed the basis for many of the principles of the modern legal system. Read the excerpt and then answer the questions that follow.

“9. If any one lose an article, and find it in the possession of another: if the person in whose possession the thing is found say ‘A merchant sold it to me, I paid for it before witnesses,’ and if the owner of the thing say, ‘I will bring witnesses who know my property,’ then shall the purchaser bring the merchant who sold it to him, and the witnesses before whom he bought it, and the owner shall bring witnesses who can identify his property. The judge shall examine [the witnesses’] testimony. . . The merchant is then proved to be a thief and shall be put to death. The owner of the lost article receives his property, and he who bought it receives the money he paid from the estate of the merchant.”

1. How could this particular code be interpreted as a basis for modern U.S. trial procedures?
2. How do you think Hammurabi’s Code would treat the guilt or innocence of the accused? Is this similar to or different from American laws?

Interpreting Political Cartoons Activity
1. What is occurring in this cartoon?
2. How do you think the cartoonist feels about the reliability of witnesses’ testimonies during court trials?
3. Do you feel that the current trial system ensures justice? Explain.

“Do you swear to tell your version of the truth as you perceive it, clouded perhaps by the passage of time and preconceived notions?”

Applying Technology Skills
Using the Internet  Locate a Web site on the Internet that deals with criminal law. Find out about pending federal criminal cases and the issues involved in these cases. Write a short report summarizing the main issues of one case and share your findings with the class.

Participating in Local Government
The government must provide a lawyer for defendants in criminal cases who cannot afford one. This is not true of civil cases. Thus, many lawyers donate their time to help poor people with lawsuits. Find out about the work of a legal aid society in your community. Report your findings to the class.