

# Einführung in die angloamerikanische Rechtssprache = Introduction to Anglo-American Law & Language

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As time passes in a situation such as this, and the various courts of appeals come down differently on new issues of law raised by a Supreme Court decision, uncertainty creeps into the interpretation and application of federal law. It is in this type of situation that the U.S. Supreme Court will step in by granting a writ of certiorari in the next case raising the disputed issue. The Supreme Court's holding will then be final and bind all federal courts throughout the United States.

A simple majority (5 to 4) is sufficient for deciding a case. One member of the majority of Supreme Court justices will write the **majority opinion**, and as many justices who agree in both the **holding** and the reasons for that holding will join in the opinion and sign their names to it. Some justices may agree with the holding but disagree on the reasons for it. If so, they may write a **concurring opinion**, spelling out their own reasons for the holding they reached as part of the majority. Justices who disagree with the holding may write a **dissenting opinion**. In some cases, the Supreme Court does not write any full opinion at all, but rather merely publishes its disposition of the case in a *per curiam* opinion, which is a short statement of the holding without any explanation of the reasons for it.

Perhaps because Supreme Court justices and other judges in the United States always sign their opinions, thus permitting lawyers to follow their general views on legal issues and prepare themselves for future argument, lawyers often know their names. Indeed, many people in the United States who have nothing to do with the legal profession know the names of particular justices and judges. That may be attributable to the fact that we have only nine Supreme Court justices, their appointments are usually surrounded by popular press coverage, and their appointment has political overtones because they are appointed by the President of the United States and approved by the Senate.

### Questions on the Text

- 1 Describe your own court system using the general terminology from this section. Does your system also have three tiers? Are your courts distinguished on the basis of the types of cases they hear? Does your system have courts of limited and general jurisdiction? Does it provide for trials *de novo* and for appeals? Is an appeal to your highest court a matter of right, or can the court refuse to hear the case as a matter of its own discretion?
- 2 Do you know the names of any of your higher court justices? Do you have only one highest court to hear appeals for all types of cases, or a number of higher courts? Do your justices serve life terms, or are they appointed for a limited term? How are they appointed? Are their appointments also politically influenced?

- 3** Is your judicial system, or legal system in general, divided into individual states which are members of a federal union? If so, do you have state, as opposed to federal, courts?

## Terminology

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<b>trial court</b>	first court to hear a case, considers both issues of fact and issues of law, convenes with one judge and possibly a jury ( <b>Tatsacheninstanz</b> )
<b>appellate court</b>	intermediate court; considers only issues of law on appeal, namely errors that it is claimed the trial court made in the law; convenes with a panel of judges (usually three) and no jury; also called the <b>court of appeals</b> (U.S.: <b>Revisionsgericht</b> [and not <b>Berufungsgericht!</b> ]; U.K.: <b>Berufungs- oder Revisionsgericht</b> )
<b>supreme court</b>	usually highest court in a court system; considers only issues of law on appeal; decision to hear a case is within the discretion of the court; convenes <i>en banc</i> ; usually has seven to nine judges ( <b>oberstes Revisionsgericht</b> )
<b>court of first impression</b>	term used to describe a trial court because it is the first court to hear a case ( <b>erstinstanzliches Gericht</b> )
<b>court of last resort</b>	final court in a hierarchy of courts to which a party can turn on appeal ( <b>letztinstanzliches Gericht</b> )
<b>court of record</b>	court that keeps a detailed protocol of exactly what happened in a case
<b>issue of fact</b>	question about what actually happened in a case ( <b>Tatfrage</b> )
<b>issue of law</b>	question about what law to apply in a case and how to interpret that law ( <b>Rechtsfrage</b> )
<b>original jurisdiction</b>	the power to hear a case as a trial court ( <b>Zuständigkeit als Tatsacheninstanz; Zuständigkeit in erster Instanz</b> )
<b>general jurisdiction</b>	power of a court to hear any type of case as a trial court, regardless of the subject matter or amount in controversy ( <b>unbeschränkte Zuständigkeit</b> )
<b>limited jurisdiction</b>	power of a court to hear a case as a trial court which is restricted according to subject matter of the case or the amount in controversy ( <b>beschränkte Zuständigkeit</b> )
<b>appellate jurisdiction</b>	power of a court to hear cases after they have been decided by a lower court; power of review of lower court decisions for errors of law ( <b>Zuständigkeit als Revisionsgericht</b> )
<b>exclusive jurisdiction</b>	power of a court alone to hear a case to the exclusion of all other courts ( <b>ausschließliche Zuständigkeit</b> )
<b>respondent</b>	party against whom an appeal to a supreme court has been taken by the <b>petitioner</b> via a <b>writ of certiorari</b> ( <b>Revisionsbeklagter</b> [Zivilrecht]; <b>Revisionsgegner</b> [Strafrecht]); also used to denote the defendant in certain administrative proceedings; (U.K.) term used to indicate person against whom appeal has been taken

justice	judge, usually used for judges on a supreme court ( <b>Richter</b> )
<i>en banc</i>	as a whole court, describes method of hearing cases whereby all judges on the court convene together rather than in panels or groups of judges
juvenile court	court of limited jurisdiction with the power to hear only cases involving <b>minors</b> (those under eighteen years of age) and usually relating to juvenile delinquency problems ( <b>Jugendgericht</b> )
trial <i>de novo</i>	a second trial held by a court of general jurisdiction of a case already decided by a trial court of limited jurisdiction ( <b>Verfahren in der Berufungsinstanz</b> ); (U.K.) also called “ <b>appeal on points of fact</b> ”
reporter	collection of complete decisions of a court or courts (see Appendix II for a list of reporters in the U.S. and U.K.) ( <b>Entscheidungssammlung</b> )
U.S. District Court	trial court in the U.S. federal court system ( <b>Bundesbezirksgericht</b> )
U.S. Court of Appeals	intermediate appellate court in the U.S. federal court system ( <b>Bundesrevisionsgericht</b> )
U.S. Supreme Court	highest court in the U.S. federal court system (combination of all the <b>oberste Bundesgerichte</b> and the <b>Bundesverfassungsgericht</b> )
U.S. Court of Federal Claims	trial court in the U.S. federal court system with jurisdiction over some claims because of their subject matter, such as claims against the United States
Court of International Trade	trial court in the U.S. federal system with jurisdiction over claims relating to tariffs and trade, imports, embargoes and other quantitative restrictions on imports
district	an area of a state over which a U.S. District Court has jurisdiction; each state comprises at least one and currently at most four districts ( <b>Gerichtsbezirk eines erstinstanzlichen Gerichts</b> )
circuit	an area including a number of districts over which a U.S. Court of Appeals has jurisdiction to hear appeals from its district courts; there are 13 circuits: 11 numbered circuits, which cover the 50 states and the U.S. territories; the D.C. Circuit, and the Federal Circuit ( <b>Gerichtsbezirk eines Berufungsgerichts</b> )
majority opinion	the written decision of the simple majority of judges who hear an appeal; the majority opinion contains the holding of the case and the reasons for that holding; it is the majority opinion that is decisive for the precedent of the case ( <b>Mehrheitsvotum</b> )
concurring opinion	the opinion of one or more judges who agree on the holding but not on the reasons for that holding ( <b>Sondervotum, das eine in der Begründung abweichende Meinung eines Richters enthält</b> )
dissenting opinion	the opinion of one or more judges in the minority of the court of judges hearing an appeal who do not agree on the holding the majority reached in the case ( <b>Sondervotum, das eine im Ergebnis abweichende Meinung eines Richters enthält</b> )
<i>per curiam</i> opinion	decision of the court, indicates a decision containing only the holding of the case without any lengthy discussion of the reasons for that holding

<b>chief justice</b>	the head judge of a supreme court ( <b>Gerichtspräsident</b> )
<b>associate justices</b>	all judges on a court of appeals other than the head judge ( <b>beisitzende Richter</b> )
<b>United States Code</b>	multi-volume collection of the laws of the United States; abbreviated U.S.C.; also comes in an annotated edition: <b>United States Code Annotated (U.S.C.A.)</b> which includes comments on the legal history of the section, relevant scholarly articles and case decisions relating to the various legal provisions
<b>direct appeal</b>	appeal from the decision of a trial court to a supreme court without first appealing to the intermediate court of appeals ( <b>Sprungrevision</b> )
<b>copyright</b>	intellectual property right protecting an author's ownership of his or her own creations from unauthorized use ( <b>Urheberrecht</b> )
<b>patent</b>	intellectual property right protecting an individual's inventions from unauthorized use ( <b>Patent</b> )
<b>infringement</b>	violation, usually of s.o.'s rights ( <b>Verletzung, Rechtsverletzung</b> )
<b>administrative court</b>	court with jurisdiction over cases arising under public law, executive orders or regulations; most common law systems do not have separate courts for administrative matters ( <b>Verwaltungsgericht</b> )
<b>labor court</b>	court with jurisdiction over disputes arising between employer and employee within the employment relationship ( <b>Arbeitsgericht</b> )

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Vocabulary  
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<b>affiliation</b>	membership
<b>alien</b>	foreign resident
<b>auxiliary</b>	in addition to s.th., not main part of s.th. but in support of it
<b>decree</b>	formal order
<b>to ordain</b>	to establish by law or decree
<b>repugnant</b>	conflicting, offensive
<b>tier</b>	level
<b>verbatim</b>	word-for-word repetition of what someone said

### III. State Courts: Organization

Most states in the United States also have a three-tiered court system of trial courts of general jurisdiction, intermediate courts of appeals and supreme courts. Many also have some inferior courts of limited jurisdiction and a few have only a trial court and one appellate court, usually then called the supreme court, without any intermediate court of appeals. Indeed, the court structures of the individual states, and particularly the names given to these courts, vary dras-

tically. Consequently, this section will indicate the general judicial scheme in the states without going into extensive details on any particular state.

*Read the following description of the state courts:*

**a) Trial Courts**

**(1) Courts of Limited Jurisdiction.** Most states have courts of limited jurisdiction, i.e. courts that are authorized to hear and determine cases involving a relatively small amount in controversy and (ordinarily) simple issues. (...)

5 The names and authority of courts of limited jurisdiction vary from state to state. Most states still have courts known as justice courts, some have a court analogous to the municipal court, and many have a court of limited jurisdiction known as the “county” court (...)

10 All states have what are called “small claims courts” although they are typically not a separate court. Rather, the term usually refers to a simplified form of procedure available in courts of limited jurisdiction, such as the justice or municipal court, for the trial of cases involving a relatively small amount, the precise amount varying from state to state.

**(2) Courts of General Jurisdiction.** All states have trial courts, usually organized  
15 along county lines, for hearing cases of all types, unlimited by subject matter or amount in controversy. Such a court is referred to as a trial court of general jurisdiction. The court of general jurisdiction is known by different names in different states: in California it is the Superior Court; in New York, it is the Supreme Court; in many states it is the Circuit Court; in other states it is known as the District  
20 Court, the County Court, the Court of Common Pleas.

The hearing of cases in trial courts, whether of limited or general jurisdiction, is ordinarily conducted by a single judge. The trial bench in urban areas usually has more than one judge, and in such courts different judges may be called upon seriatim to hear various phases of a particular case. Thus one judge may pass upon preliminary pleading questions, another on questions arising in discovery matters, and yet another preside at trial. But at any hearing only one judge ordinarily sits and decides. This is to be contrasted with the practice in continental civil procedure, where many hearings (at least in trial courts of general jurisdiction) are before a panel of three judges.

30 States also have specialized types of “courts,” such as the “probate” court, the “domestic relations” court and others. In some states, these are separate courts staffed by separate judges. Thus, in New York there is a separate tribunal known as the Surrogate’s Court which has probate jurisdiction, i.e., authority to hear matters pertaining to decedents’ estates. In many states, however, the terms “probate court” or “domestic relations court” do not refer to separate courts but to specialized procedures applied in the court of general jurisdiction to these particular types  
35 of cases.

**b) Appellate Courts.**

**(1) Appeals from Courts of Limited Jurisdiction.** Most states permit appeal of the  
40 determinations made by courts of limited jurisdiction. In some states, the mode of appeal is by trial de novo in the court of general jurisdiction, so that a litigant dissatisfied with the result of the disposition by the inferior court may request that the case be retried in the court of general jurisdiction. Retrial is usually limited to the issues framed in the lower court, but additional evidence as well as additional argu-  
45 ment may be presented. In other states, the mode of appeal is strictly review. That is, the record of the proceedings in the inferior court is presented to the court of general jurisdiction for consideration of the correctness of the disposition of the case as

it was presented below. In some states, the appeal to the court of general jurisdiction is the final appeal and no further review may be obtained. In others the disposition of the court of general jurisdiction may itself be reviewed by further appeal (...)

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(2) **Appeals from Courts of General Jurisdiction.** All states permit appellate review of the disposition of cases in courts of general jurisdiction. In a few very small states there is a single appellate court, the state supreme court, that hears appeals from the trial courts of general jurisdiction. Most states, however, have intermediate appellate courts to which appeals are taken before they may be taken to the state supreme court. The subject matter jurisdiction of intermediate appellate courts varies from state to state. The typical pattern is that all types of appeals from the trial courts are taken to the intermediate appellate court; further appellate review in the state supreme court is obtainable only in the discretion of the supreme court or upon special request of the intermediate appellate court. The procedural device for such further review may be simply an “appeal”; more often it is known as certiorari.

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The highest appellate court of a state consists of several judges, the number varying from state to state but typically being seven, as in California, Illinois and New York. The intermediate appellate courts usually consist of a number of judges who sit in panels of three. In the New York Appellate Division five judges sit on any particular appeal.

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G. C. Hazard, Jr., W. A. Fletcher, S. McG. Bundy, A. D. Bradt, Pleading and Procedure: Cases and Materials, 11th ed., The Foundation Press, Inc.: Westbury, New York (2015) 14–15

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Analysis

As you can see from the above text, it is almost impossible to say anything generally true of all of the state court systems. Indeed, most lawyers in the United States will be familiar only with the court system in the state or states within which they are licensed to practice law and with the federal system. One aspect of the individual state court systems particularly worthy of notice for the non-U.S. lawyer is the review procedure for decisions reached by trial courts of limited jurisdiction. As you read, (lines 40–45), the trial *de novo* is one method of review. This is truly a new trial of the case, and is a rather unusual procedure in the United States, albeit not so unusual in other nations. In Germany, the corresponding procedure is the *Berufung*, also a new trial of a case already decided by a lower trial court. But in a civil law dispute in Germany, for example, one may have a trial *de novo* from the decision of a court of limited jurisdiction, the *Amtsgericht*, or from the decision of a court of general jurisdiction, the *Landgericht*. In Austria and Switzerland, it is also possible to appeal against a judgment of the court of first instance, in Austria the *Bezirksgericht* und *Landesgericht*, irrespective of the specific jurisdiction which has rendered it. In the United States, a party may not have a trial *de novo* from the decision of a court of general jurisdiction. Perhaps the reason for this difference is that most cases brought before a trial court of general jurisdiction in the United States are cases for which the right to trial by jury is ensured.



Once a jury has reached a verdict in a case, a trial *de novo* following that verdict would require either a new jury trial or a hearing by a judge or panel of judges. A new jury trial presumably would be a waste of time and money, because there is no reason to assume that the second jury will do a better job than the first. A second trial by a judge or panel of judges would contradict the right to trial by jury, because it would permit professional judges to cancel the effectiveness of the jury verdict. A trial *de novo* might fit nicely into the judicial framework of continental European nations which do not use lay juries. It is only compatible with a common law system regarding the decisions of courts of limited jurisdiction where the right to trial by jury most likely is not guaranteed because of the relative insignificance of the case.

In lines 22–27, the text discusses the various duties a trial judge has in a case and points out that different judges may fulfill these individual duties in any particular case, the duties being passing on **preliminary pleading** questions, on questions arising in **discovery** matters and **presiding at trial**. **Preliminary pleading** matters relate to the various documents the parties may file before the trial actually begins, such as the plaintiff's **complaint**, which is the document initiating the lawsuit, the defendant's **answer**, which is his response to the plaintiff's claims in the complaint, the plaintiff's **reply**, a response to the answer, and others. **Discovery** is the term used to describe the evidence gathering phase, which extends from the time the plaintiff files the complaint to the beginning of the trial. According to the text, various judges may be involved in different phases of one and the same trial, but at each phase only one judge will make the decisions.

The State of New York is especially worthy of notice for the confusing names it has given its courts, confusing at least in light of the names most other states use for theirs. The trial court of general jurisdiction in New York is the "Supreme Court" (line 18), the intermediate appellate court is the "Appellate Division" (line 66).

The text refers to **subject matter jurisdiction** (line 71). This term will be discussed in the following sections, but it generally refers to the court's authority to hear a case raising a certain type of legal issue or issues. The term is contrasted with **personal jurisdiction**, or the authority of the court to decide a case involving a particular defendant. Accordingly, a California trial court, for example, may have **subject matter jurisdiction** over any civil law dispute regarding an amount in controversy of at least \$20,000 or over any criminal case for which the punishment threatened exceeds six months. Still this trial court may not have **personal jurisdiction** over a defendant residing in Nevada, for example. In order for a court to decide a case, it must have both jurisdiction over the subject matter of the dispute and over the person of the defendant.

## Terminology

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justice court, municipal court, county court	several names for a state trial court of limited jurisdiction ( <b>Gericht mit beschränkter Zuständigkeit</b> e.g. <b>Amtsgericht</b> ); as an adjective “municipal” is primarily used to mean city or town ( <b>Stadt</b> ); a “county” is a subdivision of a state ( <b>Verwaltungsbezirk</b> ); <b>county lines</b> refers to the borders of the county ( <b>Verwaltungsbezirksgrenzen</b> )
Superior Court, Circuit Court, District Court, County Court, Court of Common Pleas	several names for state trial courts of general jurisdiction ( <b>Landgericht</b> ); “circuit” and “district,” like “county” all refer to a geographical area, but “county” also designates a governmental unit in the sense of <b>Kreis</b> or <b>Landkreis</b> ; the <b>Court of Common Pleas</b> was the original name of the court that heard legal disputes arising between the King’s subjects; a <b>plea</b> ( <b>Gesuch</b> ), like <b>pleadings</b> ( <b>Schriftsätze</b> ), is a request addressed to a court in a formal document
administrative agency	a governmental body responsible for implementing legislation ( <b>Verwaltungsbehörde</b> )
concurrent jurisdiction	the power to decide a case as one of several courts with that same power over the subject matter of the case; a plaintiff may decide to initiate the lawsuit in any one of these several courts ( <b>konkurrierende Zuständigkeit</b> )
subject matter jurisdiction	authority of a court to decide a particular type of case according to the legal issues it raises and the amount in controversy ( <b>sachliche Zuständigkeit</b> )
personal jurisdiction	authority of a court to reach decisions binding on the defendant in the case ( <b>Gerichtshoheit über eine Person</b> )
to preside at trial	to act as the authority over a trial; to direct or control proceedings, as a judge ( <b>den Vorsitz führen</b> )
preliminary pleading	document filed with a court in preparation and initiation of a lawsuit; includes: <b>complaint</b> ( <b>Klageschrift</b> ), <b>answer</b> ( <b>Klageerwidernung</b> ), <b>reply</b> ( <b>Replik</b> )
discovery	also called <b>pretrial discovery</b> ; evidence gathering phase which extends from the filing of the complaint to the beginning of the trial; gives each party the right to evidence in the possession of the other party ( <b>Beweiserhebungsverfahren, in dem jede Partei ein Recht hat, Beweise durch Zeugenvernehmungen, Vorlage von Urkunden usw. zu erheben</b> )
probate court	special court, or special type of court procedure, for inheritance, and in some states also for family law problems, such as adoption of minor children ( <b>Nachlass- und Familiengericht</b> )
probate jurisdiction	the authority as a court to hear cases involving inheritance, and perhaps also family law problems ( <b>Zuständigkeit als Nachlass- und Familiengericht</b> )
domestic relations court	court with jurisdiction over family law issues ( <b>Familiengericht</b> )