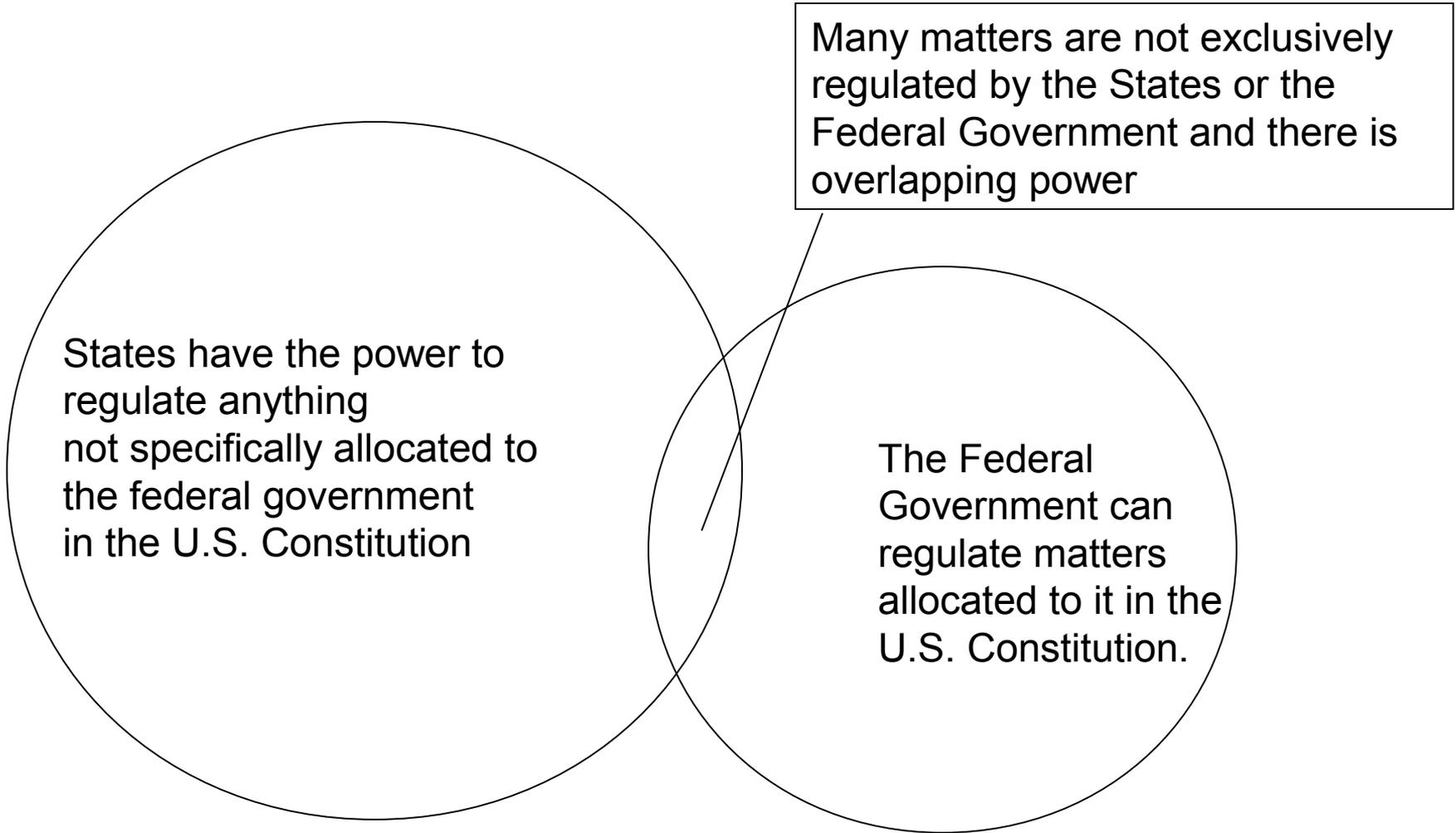


A Quick Guide to Courts in the United States

Richard M. Hunt

The Big Picture of Federal and State Power



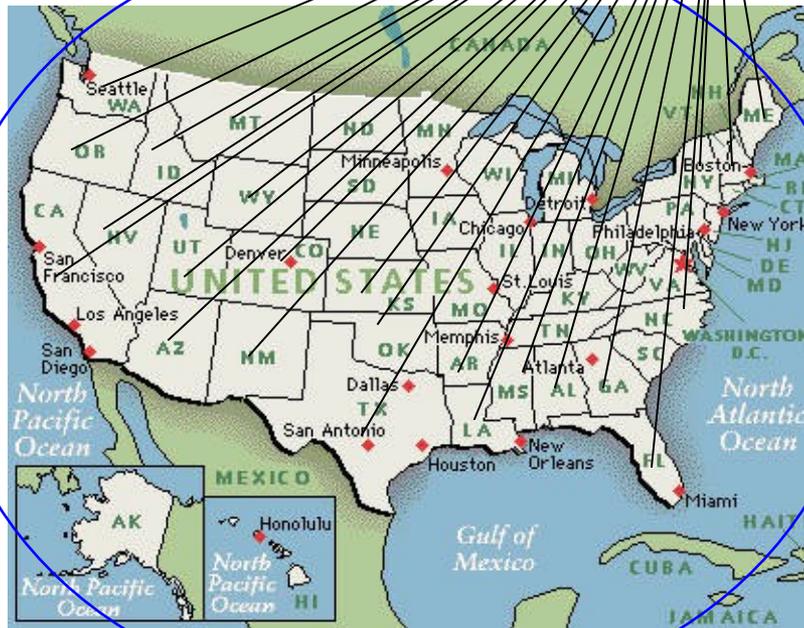
Some notes about State laws

- Every state has its own unique set of laws. These laws are more alike than different, particularly in matters concerning business, but when they are different the differences can be significant.
- States regulate matters of family law, property law, probate and estate law and commercial law. As a practical matter most business and personal disputes are decided under state laws.
- Much state law is “common law;” that is, laws that have been developed by the Courts and which have never been reduced to a single set of written rules.
- Because different states came from different legal traditions (those of Spain, France and England) there can be very significant differences concerning family law and real property law from state to state.

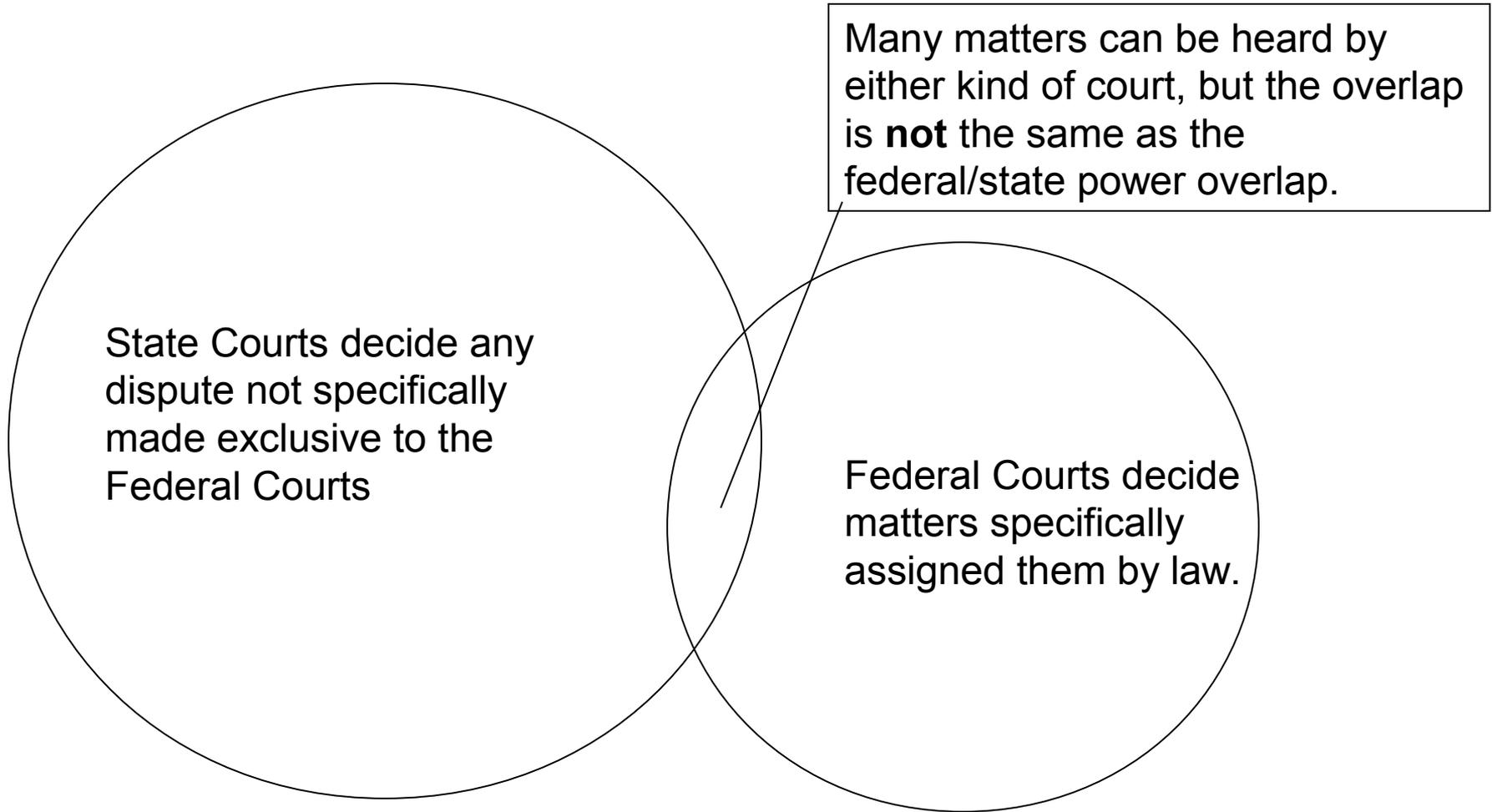
The Big Picture of Courts in the United States

Federal Courts established under the U.S. Constitution

50 individual state court systems established by the constitutions of the individual states



Which court decides which dispute?



Some disputes usually decided by State Courts

- Family law matters
- Estate and probate matters
- Disputes about ownership of land
- Most business and commercial disputes
- Torts – accidental injuries to persons and property.
- Any violation of a state law.

Disputes exclusively decided by Federal Courts

- Admiralty
- Bankruptcy and insolvency
- Suits between two states
- Suits against foreign states
- Patent, trademark and copyright disputes
- Suits arising out of federal law unless Congress specifically provides that state courts may hear them.
- Suits between foreign ambassadors and other high ranking officials.

**Cases about state law that
Federal Courts will hear:
“diversity jurisdiction”**

- Cases between citizens of different states (with limits)
- Cases between citizens of a state and citizens of a foreign state.
- Suit against the citizen of a state by a foreign state.

Why diversity jurisdiction is important to non-U.S. clients

- State Court judges are elected and subject to local political pressures. Federal judges are appointed by the President and serve for life. Most lawyers agree that foreign clients are likely to be treated more fairly in a Federal Court.
- Each Federal District Court draws its jurors from its entire district. State Courts draw jurors from a single county. Federal jurors are therefore less local and less biased in favor of a “local” business that may not be local to them.

Cases under federal law that State Courts may hear

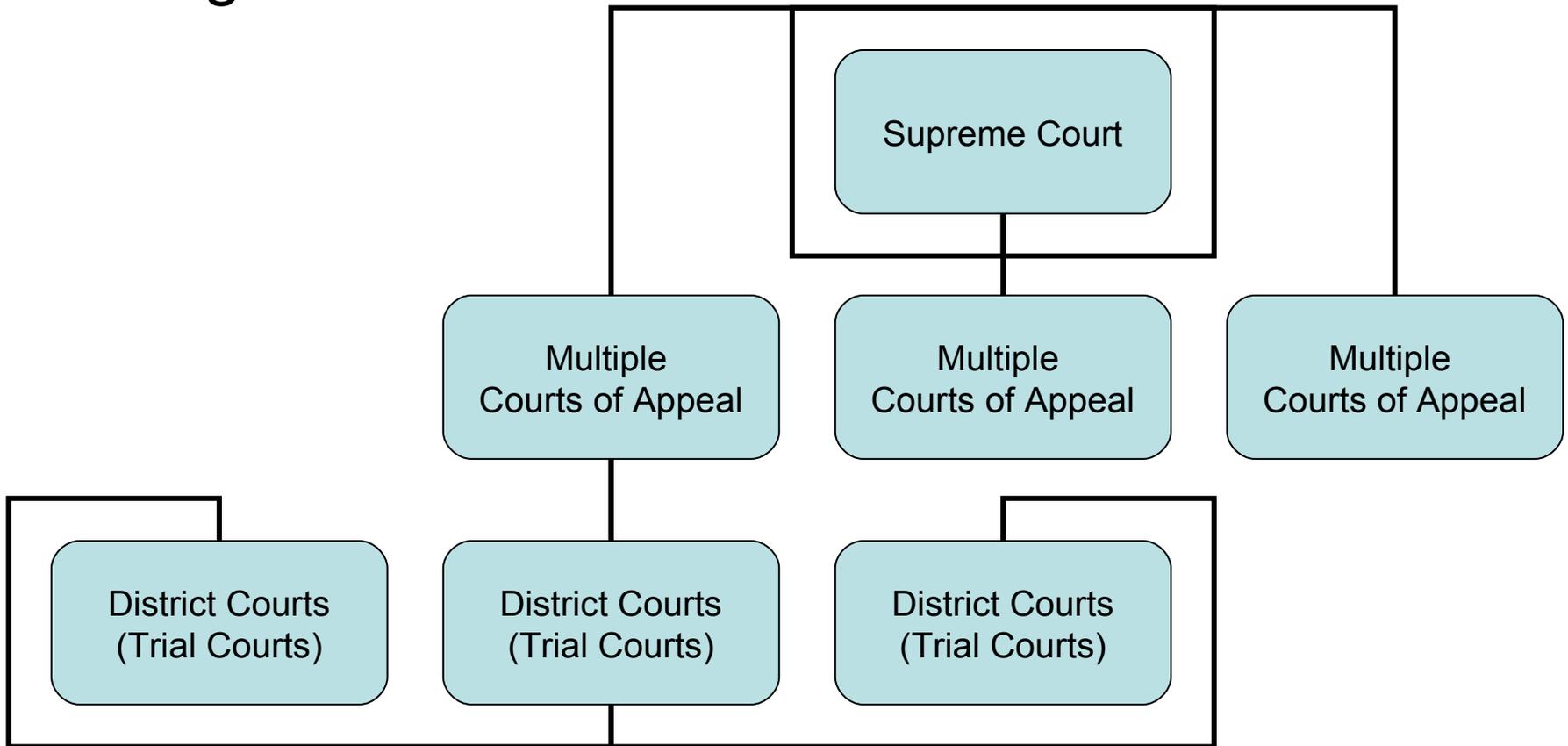
- Cases under laws that Congress says state courts may enforce.

Citizenship and personal jurisdiction

- The power of a court to compel an individual or business to appear is called “personal jurisdiction.”
- Citizenship is the primary basis for personal jurisdiction. Citizens of the United States are also citizens of a State.
- A business entity is considered to be a citizen of its state of incorporation and of the state in which it has its principal place of business.
- State Courts may also exercise personal jurisdiction over anyone physically present in the state, and over anyone who has some substantial relationship to the state, even if not a citizen. Foreign businesses that do business with U.S. customers may be subject to the jurisdiction of a State Court even though they have no office in the U.S.

Court Organization

- State and Federal Courts are similarly organized.



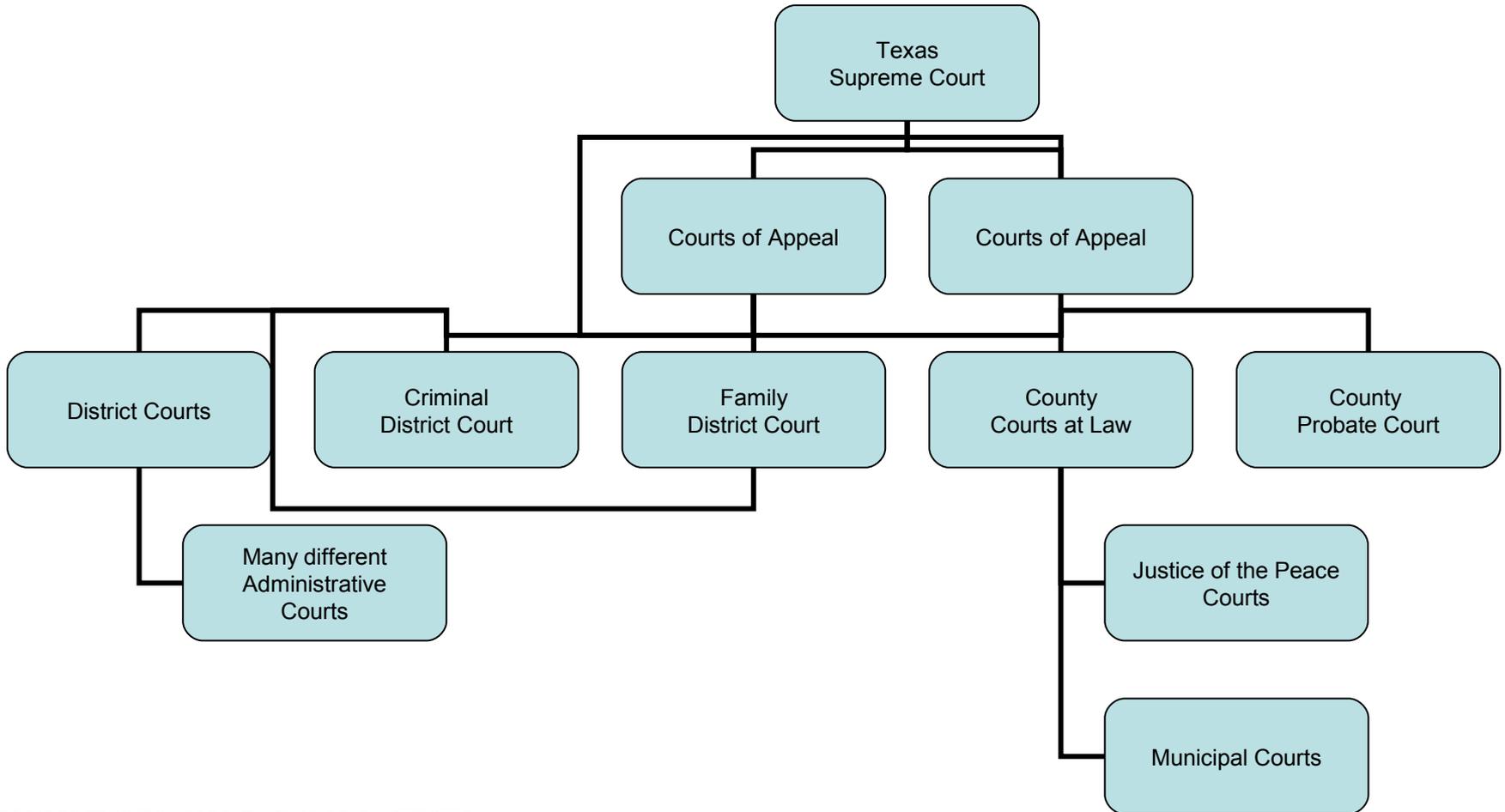
But there are complications

- Both the Federal System and individual State Systems may have specialized courts that hear only particular kinds of matters. For the State Courts these are different in every State.
- Both the Federal System and individual State Systems take appeals from administrative agency decisions in some cases.
- Most State Court systems include one or two lower levels of county courts, justice of the peace courts or city courts that decide small matters and minor crimes.
- States with small populations may only have two levels of courts.

It gets worse

- Whether specialized courts exist may depend on population and geography.
- For example, in Dallas, Texas the State District Courts are specialized into Family, Criminal, and General.
- In Freestone, Texas a single District Court hears Family, Criminal and General for three different counties.

Texas as an example



Juries

- In almost all lawsuits the parties have a right to a “trial by jury” in which a jury of between 6 and 12 individuals decides the facts on which the Court basis its judgment.
- Experienced lawyers do not agree about whether this is a good thing or a bad thing for particular businesses or kinds of case and argue about it all the time, but
- There is a consensus that juries favor local parties over foreign parties – and in some places “foreign” means the next county.

Trials

- In the U.S. there is a sharp distinction between the gathering of evidence and the presentation of evidence to the Court.
- Evidence gathering, called “discovery” is done entirely by the lawyers with little oversight by the judge.
- Presentation of the evidence to the Court (and jury) takes place during a trial that may last from a few hours to several months. Most trials last less than five days.
- What the Court hears during the trial becomes the exclusive basis for decision. Once the trial is over the Court will almost never consider new evidence, no matter how important it may be.
- Most evidence at trial is presented by witnesses who are questioned by the lawyers. The judge may ask questions but almost never does. The jury is not permitted to ask questions.
- Because the jury is not trained to evaluate different kinds of evidence, there are extensive rules about what they jury may or may not be told or shown, and what kinds of arguments the lawyers can make to them.
- In most trials, and in all trials by jury, the case is decided immediately after the presentation of evidence.

Discovery

- Businesses and lawyers from other countries often find the “discovery” process absurdly expensive and time consuming.
- So do businesses and lawyers in the U.S.
- Discovery can be usually be managed so that the costs are reasonable provided that the client is willing to devote internal resources to it and the lawyer is experienced.
- Because discovery can reach people and documents outside the U.S. lawyers from Europe whose clients are in litigation in the U.S. can be very helpful to their clients and U.S. counsel by becoming familiar with U.S. discovery and its requirements.

A few notes about lawyers and judges.

Why location matters

- Legal training consists of 3 years after graduation from university – it is not part of basic undergraduate studies. American law schools grant Juris Doctor degree (J.D.)
- There is no formal system for training judges. They are almost always lawyers, but there are no requirements beyond a law degree.
- State judges are often elected or appointed to short terms. It varies from state to state. The quality of judging can be very bad in some cases.
- Lawyers are “licensed” on a state by state basis. A Texas lawyer is not ordinarily authorized to practice law in a New York court and vice versa.
- Lawyers must separately apply to practice in the Federal Courts on a district by district basis, and are separately authorized by each Federal Court of Appeals and the United States Supreme Court. Once a lawyer is licensed by a State admission to the Federal Courts is relatively easy.
- Most courts have “local rules” regarding their policies and procedures. The local rules for Federal Courts in Dallas are quite different from those in Houston or New York.
- In short, if you are in a lawsuit you need a local lawyer.

About the author

- Richard Hunt is a shareholder in the law firm of Munsch Hardt Kopf & Harr P.C. He is certified as a specialist in Civil Trial Law by the Texas Board of Legal Specialization and sits on its examining committee. He represents a wide variety of U.S. and foreign businesses in all kinds of commercial disputes. For more, see www.munsch.com or email Richard at rhunt@munsch.com. Inquiries about this presentation or any aspect of U.S. law are welcome.