An Introduction to Law for North Carolinians

Thomas H. Thornburg

Second Edition
2000

INSTITUTE of GOVERNMENT
The University of North Carolina at Chapel Hill

Established in 1931, the Institute of Government provides training, advisory, and research services to public officials and others interested in the operation of state and local government in North Carolina. A part of The University of North Carolina at Chapel Hill, the Institute also administers the university's Master of Public Administration Program.

Each year approximately 14,000 city, county, and state officials attend one or more of the 230 classes, seminars, and conferences offered by the Institute. Faculty members annually publish up to fifty books, bulletins, and other reference works related to state and local government. Each day that the General Assembly is in session, the Institute's *Daily Bulletin*, available in print and electronically, reports on the day's activities for members of the legislature and others who need to follow the course of legislation. An extensive Web site (http://ncinfo.iog.unc.edu/) provides access to publications and faculty research, course listings, program and service information, and links to other useful sites related to government.

Support for the Institute's operations comes from various sources, including state appropriations, local government membership dues, private contributions, publication sales, and service contracts. For more information about the Institute, visit the Web site or call (919) 966-5381.

Institute of Government
The University of North Carolina at Chapel Hill 27599-3330

First edition 1985, written by Michael Crowell and Margaret Taylor. Second edition 2000

This publication is printed on permanent, acid-free paper in compliance with the North Carolina General Statutes.
Printed in the United States of America

04 03 02 01 00 5 4 3 2 1

ISBN 1-56011-374-X

Printed on recycled paper

Contents

Preface

The work of the Institute of Government often requires teaching law to people who are not lawyers. All public officials must understand the particular laws with which they work. The people of North Carolina must understand and follow a wide variety of laws. But first, officials and the public may need basic information about the law–what it is, where it comes from, its many forms, and its applications and effects in operation. This small book was written to meet those needs.

This is a revision of the fine first edition published by the Institute of Government in 1985. It was written by Michael Crowell, a former Institute faculty member, and Margaret Taylor, a former Institute managing editor. The heart of the book remains unchanged; this edition includes several updates and an expanded discussion of some subjects. The Institute is indebted to Crowell and Taylor for creating this excellent resource.

I thank Michael Crowell and Institute faculty members Fleming Bell and Jim Drennan for reading this new edition in draft form. I also thank the Institute Publications Division for making this book possible.

Tom Thornburg

February 2000

What Is Law?

Although "the law" may seem to be abstract and far removed from everyday life, it actually is a framework for much of what you do. Perhaps you get a traffic ticket or want a local store to replace a defective toaster you purchased. Perhaps you have been called for jury duty or must testify as a witness to an accident. Perhaps you want to stop a road-widening project near your home, ponder the issues of prayer in school or abortion, or must see that the provisions of a will are carried out. And certainly every year you must file an income tax return. Each of these scenarios involves the law. What *is* law, and where does it come from? This book briefly answers those questions and explains what happens when an issue comes before the courts.

Law is the set of rules that guides our conduct in society and is enforceable through public agencies. Our relations with one another are governed by many rules of conduct–from important concepts of ethics and fair play to minor etiquette matters such as which fork to use and how to introduce strangers to one another. We obey these rules because we think they are right or simply because we desire the approval of others. If we do not follow these rules, others may treat us differently–from giving us a disapproving glare to completely ostracizing us. Generally, our government is not involved in expressing disapproval for disobedience of these kinds of rules.

Some rules of conduct, however, are considered so important that they are enforced through the government. Traditionally, the most serious breaches of society's rules are labeled *crimes*, and people who commit crimes may be arrested, prosecuted, and punished by officials paid by the government. Crimes are kinds of misconduct considered so harmful that the society employs public officers to try to prevent the misconduct and to punish those who engage in it. The prosecution of a crime is a lawsuit between the people of a state in their collective capacity (represented by a prosecutor and called *the State*) and the offender. Murder, rape, assault, theft, and fraud are categories of

misconduct that have been considered crimes for as long as there has been organized society. Serious crimes (for example, rape, burglary, theft of valuable property, and deadly assault) are called *felonies*; lesser crimes (for example, minor assaults, shoplifting, petty thefts, and traffic offenses) are called *misdemeanors*. Punishments are more severe for felonies than for misdemeanors.

The North Carolina General Assembly (the state legislature) has divided felonies into classes from A through I for punishment purposes. Class A is the most serious felony classification and incurs the harshest punishment. North Carolina's only Class A felony is first-degree murder. Class H and I felonies include offenses such as stealing a firearm and stealing an ATM card. Misdemeanors also are divided into classes for punishment purposes: A1, 1, 2, and 3. Class A1 misdemeanors, which are typically assaults, are the most serious.

In recent years the General Assembly has developed a new form of legal violation called an *infraction*. An infraction is a violation of law that the legislature wants to discourage but does not believe should be punished as a crime. Admitting to an infraction does not create a criminal record; usually the offender pays a fine of some sort. Most infractions involve motor vehicles, and common examples include speeding (at no more than fifteen miles per hour over the posted speed limit), failure to wear a seatbelt, illegal parking, and failure to display a current and valid vehicle inspection sticker. Failure to wear "hunter orange" while deer hunting is an example of an infraction that does not involve a motor vehicle.

Illustration: An Infraction

On her way home from work, Wilson rushes down the freeway. A state trooper stops and tickets her for speeding sixty-four miles per hour in a fifty-five mile-per-hour zone. If found responsible, she will have to pay a fine and court costs. For this kind of offense, Wilson can waive a court appearance and trial (that is, choose not to go to court) and simply pay the fine and court costs.

Illustration: A Misdemeanor

Simpson and Smith, in a bar on a Friday night, begin to argue. Simpson punches Smith and gives him a black eye. The police arrest Simpson for simple assault, a misdemeanor carrying a punishment of up to sixty days in jail. The exact punishment depends on whether Simpson has any prior criminal record.

Illustration: A Felony

The next night at the same bar, Smith's friend Baxter encounters Simpson's brother, knocks him down, and stabs him with a knife, causing a deep wound. The police charge Baxter with assault with a deadly weapon inflicting serious injury. This is a felony carrying a punishment of up to seventy-four months in prison. Again, the exact punishment depends on whether Baxter has a prior criminal record.

Disagreements among people and some kinds of misconduct toward others are considered less threatening to society as a whole and are not labeled as crimes or infractions. Yet such matters are important enough that our society provides a government forum–the courts–for resolving them. These disputes are called *civil* lawsuits and are handled in civil court. Most incidents of unintended physical harm by one person to another (called *torts*) and most disagreements arising from business transactions (*contract* disputes) may be heard in civil court, and a decision is made there as to whether the person who has been sued has acted wrongly. Unlike crimes, these disputes are between individuals (sometimes corporate individuals). The government is not a "prosecutor" in these lawsuits–it merely provides a forum in which two parties can handle a dispute. A government body (for example, a town or a state) can be either a defendant or a party seeking relief in a civil lawsuit. The way in which civil cases are resolved is an important aspect of the "law" and helps determine our legal responsibilities to one another.

Illustration: A Tort

Reed runs his car through a stop sign and hits Jones, who is crossing the street. Jones's leg and arm are broken. Jones sues Reed for the tort of injuring her by negligent operation of the car. She requests that Reed pay her medical bills and compensate her for pain and suffering.

Illustration: A Contract

Bell agrees to paint Jackson's house for $2,500. Bell finishes the job, but Jackson refuses to pay more than $1,750. Bell sues Jackson for breaching their contract, asking that Jackson be ordered to pay the $2,500 agreed on.

Our society pays a great deal of attention to the law as it is used in our courts to deal with crime or resolve disagreements. Even so, law is probably more significant in our everyday lives as the set of rules that helps us shape our relationships with one another (through contracts, marriages, and wills, for example) and avoid conflicts and disagreements. In the second illustration on page 3, Bell made a contract with Jackson to paint Jackson's house for a set amount of money. Had both parties fulfilled their obligations, they would not have had to go to court. In this manner law defines the types of agreements we can make with each other; it also allows us to enforce the terms of these agreements through the courts when necessary.

Laws also describe rules government bodies may establish for regulating certain behavior and activities. These types of rules typically do not fall clearly into the categories of either criminal or civil law. They include such matters as regulation of food safety in supermarkets and restaurants, building codes, how subdivisions may be developed, air and water pollution, hunting, and marriage license requirements. Law also defines how government bodies and personnel should perform their responsibilities. For example, laws provide procedures for county commissions, city councils, and county boards of health as well as for clerks of court and other officials. Generally these kinds of law do not result in court cases. Offenders of such laws, however, may face criminal or civil sanctions. Government officials who fail to act lawfully may lose their jobs or be punished in some other manner.

Where Does Law Come From?

Understanding the law means understanding the various kinds of rules that guide our conduct and how society is empowered to enforce them, whether through criminal prosecution or civil lawsuits. The rules themselves may be found in a number of places: constitutions, statutes passed by legislative bodies, rules of administrative agencies, common law, and court opinions.

Constitutions

A *constitution* is the basic charter for a government; it describes that government and the relationships of its different parts to one another. A constitution also limits government powers and describes the basic rights of citizens with which the government cannot interfere. Both the United States and North Carolina have a constitution.

United States Constitution

The United States Constitution describes the three branches of our federal government (the President or executive branch, the Congress or legislative branch, and the Supreme Court or judicial branch), how officials in each branch are selected, and their powers. The Constitution also spells out certain fundamental rights of citizens: freedom of speech, freedom of religion, protection from unreasonable searches, rights of people accused of crimes, equal protection of the laws, and so forth. The United States Constitution, as interpreted by the courts, is the supreme law of the land–that is, no other federal, state, or local law can override it. Many lawsuits in federal and state courts are based on claims that a statute, regulation, or government action violates the federal Constitution.

North Carolina Constitution

Each state has a constitution describing its form of government. Most state constitutions are patterned after the federal Constitution and describe the executive, legislative, and judicial branches. The North Carolina Constitution resembles the federal Constitution. It explains how the Governor, other state officers, and the General Assembly are elected, and it sets forth their powers and duties. It also lists the rights of citizens under state law, rights that are similar to those described in the United States Constitution. The State Constitution also restricts the kinds of laws the General Assembly may pass. For example, it forbids the General Assembly from requiring that a person own real property (that is, land and whatever is built or growing on it) to vote. Laws passed by the General Assembly may be challenged in state court on grounds that they violate the State Constitution.

One of our most important rights, recognized in both the federal and state constitutions, is *due process*. No governmental body or official may deprive a citizen of "life, liberty, or property" without due process of law. What, exactly, is meant by "due process"? Perhaps the term is best summarized by saying that people have the right to expect that government will deal fairly with them. For example, legislation must not be capricious–there must be good reason for a law (such as one requiring a license to engage in certain occupations). To satisfy the due process requirement, laws also must be understandable to those they affect. Due process also requires that when deciding matters of life, liberty, or property (for example, when taking land for highways, committing patients to mental institutions, revoking driver's licenses, or denying welfare benefits), the government body or official must provide the affected person notice of the intended action, a chance to present his or her side, and an impartial hearing on the matter. The kind of notice and hearing considered fair depends on the type of case.

Government agencies are sometimes sued on the grounds that a particular agency action denied due process (that is, took place through an unfair procedure) to whoever brought the lawsuit. But before the court can consider a procedure's fairness, it must decide (1) whether the action can be labeled governmental (for example, if a private hospital accepts federal funds, does it then take on a government aspect and become subject to the due process rule?) and (2) whether the action would affect life, liberty, or property (for example, are employees deprived of property if they are fired?). If the action does not meet both of these conditions, it may not serve as the basis of a lawsuit alleging violation of due process.

Statutes

At each level of government–federal, state, and local–a *legislative body* has the power to pass laws. A discussion of each follows.

United States Congress

The legislative body at the federal level is Congress. The laws passed by Congress, collected in a set of books called the *United States Code*, apply throughout the country. Congress may pass laws only on subjects specifically permitted by the United States Constitution (for example, matters affecting interstate commerce). Since the early 1900s, congressional authority has been interpreted broadly. Still, each law passed by Congress must be tied to a constitutional provision authorizing it. These laws are subject to challenge and reversal in federal court on grounds that they go beyond the power granted to Congress or that they violate a person's constitutional rights.

Since the 1970s Congress has extended its regulatory power by requiring potential recipients of federal funds to accept certain rules in exchange for those funds. For example, laws prohibit employers who receive federal contracts from discriminating by race or sex when hiring and require schools that accept federal funds to provide the same education to disabled students as they do to others.

North Carolina General Assembly

The power of state legislatures is less restricted than that of Congress. The limits of a state legislature's authority are defined by the state constitution and also must be permissible within the framework of the United States Constitution and federal statutes and regulations. Although the General Assembly (the North Carolina legislature) is prohibited by the State Constitution from passing certain kinds of laws, it has general regulatory authority, called the *police power*, to deal with almost any subject that affects the people of North Carolina. Indeed, the General Assembly regulates North Carolinians' everyday conduct to a much greater extent than does Congress. The state legislature, for example, defines the crime of rape, sets the punishments for it, establishes and pays for the state court system, sets out how cases must be tried, regulates the kinds of questions victims may be asked on cross-examination, creates and funds victim assistance programs, provides prosecutors, determines training

requirements for law enforcement officers, decides whether doctors must report crimes to the police, says under what conditions abortions are permitted, and so on. The state legislature also sets up local governments; establishes property, sales, and income taxes; and specifies when citizens can sue for torts and contract disputes.

Each year the General Assembly meets for a period of months known as a *session*. The laws passed in each session of the General Assembly are printed in the *Session Laws,* and the laws affecting the whole state are published in a set of books called the *General Statutes* (abbreviated G.S.). The General Statutes contain nearly 200 chapters dealing with such diverse subjects as rules of evidence, liquor regulation, wills, licensing of occupations, juvenile delinquency, state holidays, election procedures, powers of local governments, operation of motor vehicles, schools, zoning, and pornography. A court may invalidate a state statute that violates a federal statute or the state or federal Constitution–for example, by impermissibly restricting the constitutional right to free speech.

Generally the states define crimes and how they are prosecuted within state borders. Since the 1970s, however, Congress has taken on a greater role in criminal law. Federally defined crimes are handled in the federal rather than the state court system and include certain kinds of drug trafficking and firearms offenses, organized crime offenses, and carjacking–all examples of activities that have attracted significant national attention at one time or another.

City Councils and Boards of County Commissioners

At the local level, city councils and boards of county commissioners may adopt laws, called *ordinances,* that apply only within their cities or counties. Generally these ordinances may deal only with subjects not already covered by state law, and violations carry only small penalties. One important role of local ordinances is to regulate, through zoning and other means, the kinds and location of development within the municipality or county. Other examples of ordinances include leash laws, parking laws, and restrictions on smoking in public places. If a local ordinance conflicts with state or federal statutes or the state or federal constitutions, a court can invalidate it.

Illustration: **Challenging a City Ordinance as Unconstitutional**

Smallville has a city ordinance requiring a person to obtain a $25 permit from the town manager before distributing handbills or advertising material. A candidate for town council sues the town, asking the court to declare the ordinance unconstitutional as a violation of that person's First Amendment right to free speech.

Administrative Law

By passing statutes a legislature, be it Congress or the General Assembly or your city council, sets policy. Yet wise legislators know that they cannot anticipate all the questions that might arise from the implementation of the laws they create. They realize that many details of administering the law are best left to those charged with administration. Thus the General Assembly may pass a law requiring a person to have a license to sell real estate and specifying the qualifications for such a license. But it will create a licensing board to administer this new law. The board in turn will adopt *administrative rules* (also called regulations) that prescribe the forms for applying for the license, indicate times when the qualifying test will be given, and describe the procedure for filing a complaint about a licensed realtor.

Congress creates federal agencies, such as the Department of Agriculture and the Department of Transportation. Rules adopted by these agencies are published under fifty separate titles in the several hundred volumes of the *Code of Federal Regulations* (abbreviated C.F.R.). Proposals for adding or changing regulations are published in the daily *Federal Register* (abbreviated Fed. Reg.), usually with requests for comments. Sometimes public hearings must be held before regulations are changed or added.

The North Carolina General Assembly creates state agencies. These include, for example, the Department of Transportation and the Department of Health and Human Resources. Rules of North Carolina state agencies become part of the *North Carolina Administrative Code* (abbreviated N.C.A.C.). The process for creating rules is similar to that used by federal government agencies. Notice is published in the *North Carolina Register*, comment from the public is requested, and a public hearing is sometimes required before a rule can be created or changed.

One question of law that sometimes arises in connection with administrative rules is whether a legislative body has been precise enough in

its *delegation of authority* to the administrative agency. The legislature is the body authorized by our constitution to set policy, and it may not delegate this authority to any other person or agency. The legislature must give agencies clear instructions on how to administer the law, and agencies may adopt only rules authorized by the legislature. Opponents of controversial rules sometimes argue that particular regulations exceed the authority granted to the agency. Regulations and rules are often very specific and may define the law in much greater detail than do the statutes on which they are based.

The legislature that creates an agency usually states the penalty for violating agency rules. Penalties can include disqualification from the activity regulated by the agency (for example, loss of license to sell alcohol or of funds to subsidize daycare), fines, or requirements to repair something damaged in the course of a violation.

Common Law

Common law is this country's oldest form of law, derived from usages and customs of ancient times. It is the backdrop against which most of our laws have been, and will be, created. Basically, when we speak of common law in the United States, we are referring to a collection of legal principles and rules developed in English courts and legislative bodies over many centuries. English colonists transported common law principles to this country, and these principles formed the foundation of our young legal system. As a democratic form of government developed on both the federal and state levels, we replaced much of the common law with constitutions and statutes. Some statutes simply restate common law principles. Additionally, courts have modified the common law with interpretations of how these provisions should be understood alongside other forms of law. Generally, in North Carolina, common law is binding until expressly abandoned by statute or court decision (G.S. 4-1).

Numerous topics of law are not addressed fully by our constitutions or statutes. Common law can provide guidance in these gray areas. For example, a statute making a particular activity a crime usually lists all the *elements* (or facts) that must be claimed to exist before a suspect can be charged with that crime. But if the statute does not define those elements completely, courts will look to common law for further clarification. For example, North Carolina's statute on burglary (G.S. 14-51) says only that there are two kinds of burglary. If the house broken into is

occupied (that is, someone is inside), the burglary is classified as first-degree; otherwise, it is second-degree. But what, exactly, is meant by the term "burglary"? Common law, as stated in and interpreted by court opinions, assigns a precise meaning to the term: A person may not be convicted of the crime of burglary unless (1) the structure broken into was a dwelling house (a structure where people regularly sleep), (2) the breaking and entering was done with intent to commit a felony inside the structure, and (3) the breaking and entering took place at night. We also rely very heavily on common law for definitions of offenses such as "attempting" a crime, "conspiracy," and "murder." Common law definitions and court decisions revising common law determine in part how such crimes are charged and prosecuted. Common law plays a fundamental role in civil as well as criminal matters, defining many of the terms used in contract and tort law. For example, the regulations and definitions used in deeds (written contracts transferring property ownership) are taken from common law. The common law is used every day to supplement our constitutions and statutes in our criminal and civil courtrooms.

Court Decisions

Criminal prosecutions occur when it seems likely that a person has violated a criminal statute. Civil lawsuits occur when one person is harmed by the actions of another. This harm can take many different forms. For example, one person may have been injured or his or her property damaged by another, and the two cannot agree on who should pay for the damage. Perhaps a contract is unclear and the two parties are disputing how much is owed. Or, an employee is fired and he or she believes racial or sexual discrimination or some other constitutionally impermissible reason motivated the termination.

In most trials it is clear what provisions of the law should be applied; the job of the judge or jury is to determine which of two different versions of the same events is true. In some cases the judge may have to decide certain questions of law. For example, a statute may be vague and its application to a particular situation questionable. Or two statutes, both of which seem applicable to the situation, may conflict. Or questions may arise as to what the legislature intended when it passed a relevant statute or as to whether the statute is constitutional. The trial may be only the first step in the judicial process. Each person convicted of a crime has the right to *appeal*, and the losing party in a civil lawsuit

may appeal the judgment. Appeals are based on matters of law only. An appellate court does not retry a case; it accepts the facts as found by the trial court and decides only whether the law was applied correctly.

State Courts

North Carolina has several types of trial courts. *Magistrates* decide *small claims* (civil actions involving a total monetary value of no more than $4,000); accept guilty pleas in, and sometimes preside over trial of, worthless check cases involving $2,000 or less; and accept guilty pleas for other minor traffic, alcohol, boating, and fish and wildlife offenses. *District courts*, presided over by *district court judges*, hear most civil cases involving up to $10,000, domestic relations matters (divorce, custody/support of children, and division of marital property), cases involving juveniles, involuntary commitment of mentally ill persons, and most criminal misdemeanors and infractions. District court judges also may accept guilty pleas to the lowest classes of felonies (Classes H and I) when all parties agree. *Superior courts*, presided over by *superior court judges*, hear trials of civil actions involving more than $10,000, felonies, and criminal cases appealed from the district court. In superior court a jury always decides whether a person is guilty of criminal charges. The judge determines the sentence, or punishment, except in cases where the defendant may receive the death penalty. A person can be punished with the death penalty only if found guilty of first-degree murder, in which case a jury decides whether the punishment is death or life imprisonment.

Illustration: A Case before the Small Claims Court

Walker buys a new winter coat for $350 from a local store. The first time she wears the coat, the zipper rips out. She returns to the store and asks for a refund or exchange, but the manager refuses. Walker sues the store for $350. The lawsuit is assigned to a small claims court presided over by a magistrate.

Illustration: A Case before the District Court

Allen loses control of his truck on a wet road and runs into Ferguson's car. The accident causes approximately $6,000 in damage. Ferguson sues Allen. Since the amount of damage at issue is less than $10,000, the trial is in district court.

Illustration: A Case before the Superior Court

> Watts is caught breaking into Perry's house one night while Perry is asleep inside. Apparently Watts is attempting to steal jewelry. Watts is charged with first-degree burglary. He pleads not guilty. Because burglary is a felony, the trial is in superior court before a jury.

North Carolina has two appellate courts. Most appeals go first to the *Court of Appeals*. The North Carolina Court of Appeals has twelve judges, but panels of three judges hear each case. If the decision of these three judges is not unanimous, the losing side may appeal to the *State Supreme Court,* which usually chooses which cases it will hear. Some trial decisions, such as a death sentence, are appealed directly to the North Carolina Supreme Court, but most cases go to the Court of Appeals first.

Unlike trial court decisions, appellate court decisions are published—in the *Court of Appeals Reports* or the *North Carolina Reports* (reports of the State Supreme Court) as appropriate. An appellate court decision includes a statement of what the court decided and discusses reasons for the decision. Individual decisions are known as *opinions,* and the collected, published decisions are called *case law*. Published decisions help judges follow the general rule that cases in which the facts are basically the same should be decided the same. The decisions of appellate courts guide lawyers in arguing cases and trial judges in handling later similar cases. Appellate courts are expected to reach the same results in subsequent similar cases. A court's published opinion is the *precedent* that an appellate court will follow in later cases unless strong reasons are given for overruling the previous decision. A lawyer working in an appellate trial often will center his or her arguments on the extent to which the case resembles or differs from previous cases or how current circumstances justify creating a new rule of law for a case with facts like the one being heard.

In North Carolina the State Supreme Court is the highest court, and its decisions are binding on the Court of Appeals and all state trial courts. Court of Appeals decisions are binding on the trial courts as well. Generally a decision of one trial judge does not dictate what the decisions of other trial judges must be.

Each state has a system of trial and appellate courts. Appellate court decisions in other states are not binding on North Carolina courts, but they may be valuable sources to consult when subjects arise that have not yet been addressed in North Carolina.

Federal Courts

Some cases in North Carolina are heard not in state but in federal court, and the decisions of federal trial courts in this state and of the federal appellate courts, especially the United States Supreme Court, may determine what law is applied in North Carolina.

The federal trial court is called the *federal district court*. Each state has at least one federal judicial district. North Carolina has three–the western, middle, and eastern districts. Each district has several federal district court judges. Federal district courts hear disputes between citizens of different states and lawsuits that claim violations of the United States Constitution or of statutes passed by Congress. For example, a suit that claims a violation of the federal Voting Rights Act or the Americans with Disabilities Act would be heard in a federal district court rather than a state court.

Although some federal district court decisions may be appealed directly to the United States Supreme Court, most appeals must go first to the appropriate United States *Circuit Court of Appeals*. The nation is divided into twelve regional judicial circuits. North Carolina–along with South Carolina, Virginia, Maryland, and West Virginia–is part of the Fourth Circuit. Decisions of the Fourth Circuit Court of Appeals are binding in all five of those states. While the decisions of one federal circuit court are not binding elsewhere in the nation, the decisions of the other circuit courts may be instructive on questions that have yet to come before the Fourth Circuit Court of Appeals. The federal courts of appeal are strictly appellate courts; they do not hold trials but rather hear only appeals on questions of law.

The highest appellate court in the federal system is the *United States Supreme Court*. The Supreme Court is not required to hear many cases; almost always it may choose whether to take an appeal. A request to the Court to hear an appeal is called a *petition for certiorari*, and the preliminary decision that the justices make is whether to hear the case–that is, whether to "grant cert" or "deny cert."

When a state court decision concerns matters of federal law–for example, whether an officer's search of luggage in an automobile without a search warrant violated the Fourth Amendment's prohibition against unreasonable searches–the decision may be appealed to the federal courts. Although there are various means for taking an issue from a state trial court to a lower federal court, generally cases that start in state court go through the state appellate process to the state supreme court;

issues that are based on federal law can then be appealed to the United States Supreme Court.

U.S. Supreme Court decisions are binding on all courts throughout the country. In addition, federal appellate courts below the Supreme Court may decide cases that will affect North Carolinians in certain circumstances. However, North Carolina's state trial and appellate courts are not bound to follow the decisions of federal appellate courts (other than the Supreme Court). They are bound to follow North Carolina Supreme Court or Court of Appeals decisions if these courts have published an opinion on the issue being heard.

The various federal courts also publish decisions. U.S. Supreme Court opinions appear in several reporters, though the *United States Reports* is the primary publication. Decisions of U.S. Circuit Courts of Appeals appear in the *Federal Reporter*, and federal district court decisions are published in the *Federal Supplement*.

The Difficulty of Knowing "the Law"

The discussion so far has shown how difficult it is to say what, exactly, "the law" is. Sometimes the answer to a question of law is clear-cut–a single statute, regulation, or court decision deals specifically with the issue. Often, however, several different statutes, regulations, and decisions may apply but are not consistent with each other. Sometimes a legislative body or a court has not yet addressed the issue, and determining the likely answer means reasoning from a large body of closely related "law."

Trial of a Case in North Carolina

A criminal case begins when a person is charged with a crime. Although police officers may initiate criminal proceedings, no person can be held for more than a short time unless an independent judicial official (usually a magistrate) has determined that there is *probable cause* for the criminal charge (that is, good reason to believe the charge is true). In most cases, a person who knows of a crime–usually a police officer–tells the facts to a magistrate, who then decides whether to issue an arrest warrant. Sometimes an officer may arrest a suspect without a warrant, but the officer must take the person before a magistrate or other judicial official as soon as possible. This judicial official then decides whether probable cause exists to arrest the suspect. If the official finds no probable cause, the person must be released. If the crime is a felony, the facts must be presented to a *grand jury* before a trial can be held. A grand jury consists of eighteen people. Their names are drawn from the same pool of possible jurors from which juries for trials (described below) are drawn. Grand jurors serve for twelve months, but their service is staggered so that half of the grand jury is replaced every six months. The grand jury listens to evidence presented by a prosecutor. If it determines that there is probable cause (that is, that the person accused probably committed the alleged crime), it issues an *indictment* to bring the person to trial. The district attorney or an assistant district attorney will prosecute the crime for the State. The person charged with the crime is a *defendant*.

There is no similar screening process for civil cases. A person who wants to sue someone (the *plaintiff*) may do so by filing a complaint with the clerk of court and paying the necessary fees for beginning the case. If the person being sued (the defendant) thinks the lawsuit is frivolous–that is, without merit–he or she may ask a judge to dismiss the case without trial. North Carolina law provides no way to assure that there is merit to a suit before it is filed. (In some cases, however, if a judge determines that a plaintiff has brought a frivolous lawsuit, the plaintiff may be required to pay the other party's legal expenses.)

Pretrial Procedure

Most cases never reach trial. Often in a criminal case, the defendant pleads guilty to the charged crime or to a lesser offense. Most civil cases are settled before a trial begins. The laws on pretrial procedure are designed to encourage settlements that avoid the expense of a trial.

After the defendant is charged in a criminal case, a magistrate or judge will determine what conditions, if any, should be imposed to assure that the defendant will be available for trial–for example, the posting of bond. A judicial official also must determine whether the defendant is too poor to hire a lawyer. In many, but not all, criminal cases, such defendants (called *indigents*) will be entitled to have a lawyer appointed to represent them. This a right based in the Sixth Amendment of the United States Constitution. Generally, in North Carolina a poor criminal defendant facing imprisonment or a fine of more than $500 will be appointed a lawyer paid by the state. In some parts of the state, a *public defender* will represent such people. Public defenders are lawyers paid by the state specifically to represent very poor criminal defendants. In parts of the state where there are no public defenders, the state appoints and pays private lawyers to represent indigents. If an indigent defendant is found not guilty, the state will bear all of the expense of the defendant's lawyer; if the defendant is convicted, however, he or she may be required to reimburse the state for this expense.

After a complaint is filed in a civil case, it will be delivered to the person being sued. The defendant then will usually file an answer to the complaint with the court where the complaint was made. Except in small claims cases, failure to answer a complaint will lead to a *default judgment* against the defendant (in other words, the plaintiff automatically wins the case).

In both criminal and civil cases, there is an opportunity for *discovery* before a trial. That is, the defendant's lawyer in a criminal case and the lawyers for either side in a civil case may ask the other side to reveal most of its evidence. If requested, the lawyers must provide certain documents to the other side and make potential witnesses available to answer questions. These questions may be submitted as written *interrogatories*, or the witnesses may be *deposed* (questioned) in person by the other side's lawyers. The purpose of discovery is to reveal evidence to the other side before trial in order to reduce surprise at trial and to increase the likelihood of a settlement out of court.

Motions to the court before trial may largely determine how a case is resolved. For example, in a criminal case, the defendant's lawyer may

ask the judge to bar the State from presenting certain evidence at trial because the search warrant used to seize the evidence was not written as the law requires. Lawyers in civil cases also may make motions seeking to limit the kind of evidence permitted at trial. In addition, motions may be made for such purposes as moving the location of a trial, requiring the other party to introduce documents, or delaying some parts of the proceedings.

In many civil cases there is a *pretrial conference* at which the lawyers for both sides discuss the case with the judge. Often the judge will use the conference to urge the parties to resolve the matter before trial. If a trial is still necessary, the lawyers then will be required to stipulate some of the evidence–that is, to agree on the evidence that is not in dispute so that it need not be introduced at trial. Today, before civil cases can be presented in superior court, *mediation* is used in an attempt to settle the parties' differences. In mediation, a neutral third person brings the parties in the lawsuit together to help them work toward a resolution of their dispute that would avoid a trial.

Trial Procedure

Trial procedure is essentially the same in both criminal and civil cases. The case may be heard by a judge alone or by a *jury*. In criminal cases, the defendant is entitled to a jury. In North Carolina the defendant in a misdemeanor case is tried first by a district court judge without a jury; if convicted, the defendant may appeal for a new trial before a jury in superior court. In civil cases, the two sides may agree to have the judge decide the case without a jury. This course is more likely when the case involves very technical issues.

Pools of jurors are created by calling in individuals from the list of potential jurors in the county–a list produced from voter registration records, driver's license records, and occasionally other sources. The people whose names are in the pool must appear at the courtroom at a designated time. At the start of a trial, twelve people are chosen from the pool by random lot and become the tentative jury. (In a civil case, the two sides may agree to a smaller jury.)

The judge and the lawyers from both sides then question the jurors to determine if they have any biases in the case. Jurors may be challenged by either party in two ways. A lawyer may ask the judge to excuse a juror *for cause*–that is, because there is good reason to believe that the person could not give an impartial verdict. For example, the juror

might know one of the parties in the case or might have concluded beforehand, from having read newspaper stories or watched television news, how a case should be decided. In addition, each side may use *peremptory challenges*. That is, it may excuse a set number of jurors without stating its reasons for doing so. The parties in a case may not, however, use peremptory challenges to discriminate on the basis of a juror's race or gender. If jurors are excused, replacements are called from the pool so that the jury is maintained at its proper size.

***Illustration*: Challenges to Jurors**

A middle-aged businessman is being tried for raping a young woman. The prosecutor asks the judge to excuse one juror for cause because the juror is a former employee of the defendant. The judge agrees. Both the prosecutor and the defense attorney then use peremptory challenges to excuse people they believe will be unduly sympathetic to the other side. The defense attorney also excuses a juror who says his niece was raped several years ago.

When the lawyers for both sides are satisfied with the jurors or have used all their peremptory challenges, the trial begins. Usually when the case opens, both lawyers briefly explain to the jurors what the case is about and what they expect the evidence to show–although this is done less often in criminal cases than in civil. Next comes the introduction of evidence. The side that brought the case–the State (represented by the *district attorney*) in a criminal case, the plaintiff in a civil case–produces its evidence first. That evidence usually will include witnesses who testify under oath as to what they know about the case. It may also include physical objects (for example, the gun used to commit the murder or a patient's X-rays) as well as photographs, charts, or maps to illustrate the testimony. Generally a witness must identify each piece of physical evidence to establish its connection to the case. Each witness who testifies for one side may be *cross-examined* by the other side's lawyer. Usually the purpose of cross-examination is not to prove that the witness is lying but to bring out additional facts or to show that the witness has a poor memory or had no chance to observe what he or she testified to.

After the State or the plaintiff has finished introducing evidence, the defendant usually will ask the judge to dismiss the case because this evidence, even if taken as true, does not prove the case. Typically the judge refuses to dismiss, and the defendant then must decide whether to

offer evidence as well. The defendant is not required to introduce any evidence (the burden is on the other side to prove the case it brought) but often will do so in order to create doubt about the testimony given by the State's or the plaintiff's witnesses. A defendant in a criminal case cannot be required to testify; if the defendant does so, the State may on cross-examination ask about his or her prior criminal record–information that otherwise could be presented in court only in limited circumstances. If the defendant presents evidence, the State or the plaintiff may follow with additional evidence to rebut the defendant's presentation but may not introduce any new subjects.

After all the evidence has been presented, the lawyers for both sides make closing arguments to the jury. Using *jury instructions*, the judge will explain to the jury the law it must apply to the case. These jury instructions are critical to the jury's decision, and both attorneys will tell the judge out of the jury's hearing what instructions they think the judge should give. A common claim on appeal is that the judge did not properly explain to the jury the law that should have been applied in a particular case.

Illustration: The Judge's Instructions to the Jury in a Case Involving Assault Inflicting Serious Injury

> Now I charge that for you to find the defendant guilty of assault inflicting serious injury, the State must prove two things beyond a reasonable doubt:
>
> First, that the defendant assaulted Wilbur Creecy by intentionally and without justification and excuse hitting him with his fists.
>
> And second, that the defendant inflicted serious injury upon Wilbur Creecy.

For the defendant to be found guilty in a criminal case, the twelve jurors must agree unanimously that the State has proven all the elements of the crime charged *beyond a reasonable doubt*. In a civil case, the two sides may agree to abide by a verdict that is less than unanimous. The plaintiff in a civil case is not required to convince the jurors beyond a reasonable doubt. Instead, the jurors must be persuaded by a *preponderance of the evidence*–that is, they must conclude that the plaintiff's version of events is more likely to be correct than the defendant's.

When the jury agrees on a verdict, the judge enters judgment for the winning side. If the jury cannot agree on a verdict, a *mistrial* is called–

the case is concluded without a decision. If a mistrial is called, a case usually may be tried again.

A defendant who is found guilty in a criminal case may be imprisoned, fined, or put on probation, depending on the sentence that applies to that crime. The range of possible sentences for various classes of criminal offenses in North Carolina is set out in the General Statutes. In a civil case, judgment for the plaintiff usually means that the defendant will be ordered to pay the plaintiff a specified sum of money in compensation (called *damages*). Or, instead of paying money to the plaintiff, the defendant may be ordered to perform a specific act, such as returning property or complying with a law.

Sometimes a civil trial is divided into two parts. First, the jury decides if the defendant is responsible for the injury or harm to the plaintiff. Second, if the jury finds that the defendant is indeed responsible, separate evidence is introduced so that the jury can decide the amount of damages the defendant should pay the plaintiff or what other action the defendant might be required to take.

As described earlier, each defendant found guilty of a crime is entitled to appeal. The losing party in a civil case also may appeal. However, appellate courts consider only whether the law was applied correctly to the case; they do not hear new evidence. Sometimes an appeal is based in part on the argument that the jury should not have heard certain evidence or, alternatively, that the judge did not allow presentation of certain evidence that the jury should have heard. The decision to appeal must be made within a certain period of time. Generally in a civil case, judgment does not take effect until after the appeal.

Testifying in Court

Kinds of Witnesses

Most witnesses are called to testify only about the facts of a case. For example, a witness might have seen the suspect robbing the convenience store, or may own the car that was hit, or perhaps talked with the patient before the operation, or examined the child who was beaten. The jury–or judge if there is no jury–will decide what conclusions to draw from the witnesses' testimony.

Sometimes, however, the interpretation of facts requires technical expertise, and the jury needs help in making its conclusions. The jury may be aided by an expert's opinion about the cause of death, the

source of a stain, whether a hair sample provides a DNA match with a defendant, or whether a bullet was fired from a particular gun. Many *expert witnesses* are medical professionals. Experts may be asked to testify about tests or investigations they made before the trial, or a lawyer may ask an expert to give an opinion about the conclusion to be drawn from a specific set of facts described by the lawyer. Before an expert witness may state an opinion, the lawyer must convince the judge that the question requires expert testimony and that this particular witness is qualified to be considered an expert. From answers to questions about the witness's education and experience, the judge will rule whether the witness may be considered an expert.

Privileged Relationships

Sometimes a person who has information about a case may not be required, or even permitted, to testify about what he or she knows. This is because a *privileged relationship* exists, such as the one between doctor and patient, attorney and client, or husband and wife. If the law recognizes a relationship as privileged, the information exchanged between the two parties is considered confidential and may not be revealed in court.

Epilogue

Many people find the law mysterious and the workings of courts and lawyers confusing and intimidating. Part of the mission of the Institute of Government is to provide the people of North Carolina with information that will help them understand and fulfill their obligations, rights, and opportunities in the state. We hope this book promotes that mission by making the legal system easier to understand and by instilling in its readers more confidence to deal with the problems and issues of law that face you every day.

Many other publications on general legal topics, particularly criminal law and procedure and local government law, are available from the Institute of Government. Examples of basic Institute texts in criminal law and procedure include *North Carolina Crimes: A Guidebook on the Elements of Crime* and *Arrest, Search, and Investigation in North Carolina*. In the local government area, Institute titles that may be of general interest include: *County Government in North Carolina*, *Municipal Government in North Carolina*, *Open Meetings and Local Governments in North Carolina: Some Questions and Answers*, and *Public Records Law for North Carolina Local Governments*. Information about these publications and a catalog of titles are available from the Institute of Government's Publications Sales Office [(919) 966-4119].

A great deal of information about the Institute and its work can be found on the Institute's web site, http://ncinfo.iog.unc.edu. This site also links to other Internet sites about law and government in North Carolina, such as sites for the state's executive, judicial, and legislative branches of government.

Page 24 is blank

Page 25 is blank

Page 26 is blank