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# Overview Of Specialized Courts

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## Introduction

This Overview has two primary purposes. First, it provides judicial system officials with the arguments in favor of and in opposition to the creation of specialized courts. Second, it offers recommendations for consideration by judicial system officials when they are deliberating whether to establish specialized courts. This Overview also provides a review of types of specialized courts that have been established in court systems in some countries in Europe and the United States. This review should inform discussions by judicial leaders as to what specialized courts might be appropriate for their system.

Traditionally, specialization refers to specialized subject matter combined with subject-matter expertise. With reference to courts, it references courts that have limited and frequently exclusive jurisdiction in one or more specific fields of the law, for example, commercial courts, administrative courts, labor courts, and drug courts. Specialized courts are defined as tribunals of narrowly focused jurisdiction to which all cases that fall within that jurisdiction are routed. Judges who serve on a specialized court are considered specialists, even experts, in the fields of the law that fall within the court's jurisdiction. Such specialized court judges are to be contrasted with judges in general jurisdiction courts whose caseloads span broad areas of the law and who are considered generalists. Three of the primary benefits associated with the creation of specialized courts are (i) fostering improved decision-making by having experts decide complex cases; (ii) reducing pending case backlogs in generalist courts by shifting select categories of factually and/or legally complex cases to specialized courts more capable of dealing with them, thus generating fewer appeals; and (iii) decreasing the number of judge hours required to process complex cases by having legal and subject-matter experts adjudicate them.

Specialized courts are a feature of the judicial systems of many countries, although their jurisdiction and function vary, sometimes widely, from one to another. Such courts may be outgrowths of administrative agencies of the government and handle disputes that are generated by disagreements between officials in those agencies and private individuals or corporations whose interests are affected by the decisions made by those officials. For purposes of research and study, one of the richest sources of information about specialized courts is the United States with its dual system of courts, federal and state. Another rich source are the judicial systems of the countries of Western Europe and, in particular, the former Eastern European block, many of which have undergone transitions as their governments have moved from communist and socialist forms of rule to more democratic systems based on the rule of law. A brief overview of specialized courts in various judicial systems is attached to this Overview as an appendix.

## Section One: Arguments in Favor of Specialized Courts

By transferring the adjudication of particularly difficult or complex legal issues or factual disputes from the scope of general jurisdiction courts and concentrating their adjudication in a specialized court of limited jurisdiction, several desirable objectives are attained.

1. **Judicial System Efficiency:** When jurisdiction for a specialized field of the law is assigned to a special court, judges in the general jurisdiction courts no longer have to wrestle with, or expend the effort to remain current on, the issues in that field of the law. With responsibility for remaining current in fewer fields of the law, their research efficiency is increased. By contrast, their counterparts in the limited jurisdiction courts, who deal with those issues with much greater frequency, develop the expertise to adjudicate disputes that involve those issues more efficiently and expeditiously than their counterparts. Overall, the efficiency of the court system is enhanced. If a judicial system has the objective of maintaining high-quality and high-productivity generalist courts, an important consideration is whether to transfer jurisdiction over certain time-consuming, problematic, and complex areas in the law to specialized courts.

2. **Legal System Efficiency:** Lawyers who appear before a generalist judge, particularly in unusually complex cases involving subject matter or legal issues with which the generalist judge may be only marginally familiar, typically detail to excess all conceivably relevant and useful information on the record. They do so both to educate the judge and to lay the groundwork for an appeal if the judge's decision fails to grasp the nature of the dispute and the elements of the law that compel its resolution. The attorneys provide extensive background material and develop a comprehensive legal framework through numerous briefs and motions to ensure that the judge has access to as much information as possible that is favorable to their case. The costs to the litigants and to the judicial system typically are heavy as is the impact on public access to the courts because of expense. Specialized court judges, by contrast, typically do not need to be

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educated by the bar and, given their expertise, are much more capable of reducing the scope of the legal framework to the vital issues on which resolution of the case depends. Because the litigants have more confidence in the abilities and expertise of the specialized court judges, counsel feel less compelled to establish a comprehensive record, and cost and delay are commensurately reduced.

3. **Uniformity:** Specialized courts are desirable where there are compelling arguments or requirements for uniformity or consistency in applying the law. Uniformity in decision making leads to predictability, and a principal benefit of predictability is that it reduces the need for litigation, that it reduces the likelihood that prospective parties will find legal grounds for taking a dispute to court, that it builds the confidence both of the legal profession and the public in the court system. Where generalist judges might deal with particularly difficult or complex legal issues or highly sophisticated technical data only occasionally, each time having to refresh their familiarity with them and update themselves on recent developments, specialized court judges, who deal with those issues much more frequently, are constantly updating themselves on new developments and refining their expertise. The specialty judges, given their expertise, familiarity, and fewer numbers will produce decisions that are more uniform than a substantially larger number of less-expert generalist judges who populate the regional trial and appellate courts. Greater uniformity yields more consistent case law and, over time, less litigation. Less uniformity, a typical result of complex and narrowly focused jurisdiction being exercised by a number of regional generalist courts, leads to inefficiencies, has the potential to produce serious forum-shopping problems, undermines confidence in the courts, and results in a weaker jurisprudence.

4. **Expertise:** Generalist judges sometimes are referred to as novices at everything and experts at nothing. With caseloads that span a broad range of fields of the law, the likelihood of a generalist judge developing adequate technical expertise in any particular field of law or complex subject matter is remote. The legal issues and the factual disputes reflected in generalist judges' caseloads typically span a broad array of unrelated and often complex specialty areas in the law with which it is impossible to remain sufficiently conversant and current to capably adjudicate an occasional case. The result is that generalist judges require research assistance and must continually immerse themselves into the diverse areas of the law and sometimes technically difficult factual disputes that their caseloads reflect. In effect, they work on a broad array of legal areas all typically but master none, thereby producing decisions that, because they do not reflect in-depth expertise, run the risk of being lower in quality and more prone to generate appeals. Specialized courts, by contrast, whose judges have greater expertise and jurisdiction-specific experience, are likely to produce higher-quality decisions from which no appeal can or need be taken.

5. **Improved Case Management:** As court caseloads increase and trial-level judges become responsible for adjudicating an increasing number of cases, judges tend to adopt various administrative and procedural techniques to manage their workload. Such managerial techniques include setting and enforcing pretrial preparation deadlines; supervising disclosure of evidentiary materials and information, ruling on dispositive motions; requiring counsel to prepare succinct case summaries/outlines and proposed pretrial/trial schedules; brokering settlement proceedings; scheduling and conducting trials; instructing juries; etc. A trial judge with specialized expertise in the subject matter of the cases is in a better position to effectively impose and monitor such case management controls; the specialized judge would require less time to research and reflect on the fundamental issues of the case and, to that extent, can provide direction and guidance to the attorneys earlier in the life of the case than a generalist judge. Moreover, trial judges frequently make case-related determinations extemporaneously, with little time or support available to them for research, consultation, reflection, and articulating positions in carefully drafted opinions. In their frequent face-to-face interactions with attorneys, pro se litigants, jurors, and the public, general jurisdiction trial judges often rule orally on legal issues, relying on the knowledge and expertise they have built up over the years rather than a thorough review of the case law, applicable policy considerations, or briefs. In such settings, the specialized judge is much more able to employ specialized expertise and in-depth knowledge when ruling from the bench, thus function as a much more effective case manager. Moreover, because the cases tend to be similar, the procedural rules and requirements can be specifically designed to facilitate effective case management.

6. **Elimination of Conflicts and Forum Shopping:** Depending on how they are structured and how their decisions are appealed, specialized courts serve to reduce and even eliminate conflicts in the interpretation and application of the law in their field(s) of jurisdiction. Conflicts in law between generalist courts in different geographical regions of a country are common, and those conflicts promote forum shopping by litigants seeking a resolution that is favorable to them. Resolving such conflicts in law at higher-level appellate or second instance tribunals is costly both in time and in expense to the litigants as well as to the system. Transferring such jurisdiction from numerous generalist courts to a specialized court, which is much more likely to produce a consistent national body of law, can dramatically reduce or even eliminate these conflicts and the forum shopping that follows from them.

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7. **Increased System Flexibility:** Court systems typically have to deal with significant variations in caseload over time in particular fields of the law. They may experience, for example, an unexpected rash of administrative agency case filings that continues to grow over a multi-year period then, equally unexpectedly, begins to slow and finally diminishes to a trickle. Tasking the generalist courts with such fluctuating caseloads has the potential to wreak havoc on the timely and systematic resolution of their ongoing caseload; appointing additional new generalist judges may soften the impact of the workload increase, but what is to be done with the extra judges when the workload diminishes, particularly if they have lifetime tenure? Specialized courts can play a significant role in helping court systems to cope with such variations by handling those volatile areas, and the number of judges, who typically serve for limited rather than lifetime terms, can be adjusted to cope with the workload.

8. **Administrative Agency Review Mechanism:** When the power to review decisions of administrative agencies rests within the institutional structure of the agencies themselves, there may be cause for concern. Administrative agencies usually are responsible, under the oversight of a legislative body, for creating the rules under which they function. They also are responsible for enforcing adherence to those rules. When, in addition to these rule-making and rule-enforcing functions, they also have the authority to create internal agency boards to adjudicate disputes involving the application and enforcement of the rules they promulgate, they are open to the criticism that their own self-interest militates against their duty to ensure that such forums are impartial. To that extent, the interests of justice may dictate that there should be an independent tribunal with the authority to review agency actions and decisions. Having independent specialized administrative review tribunals with judges who understand and are familiar with the intricacies of the law and regulations that govern administrative agency activity and services are much better positioned to adjudicate appeals of agency decisions than are general-jurisdiction judges.

9. **Consistency of Administrative Agency Law:** As governments progress and expand, they create and empower administrative agencies of various types to provide services, regulate activity, protect resources, enforce laws, and otherwise conduct their business. As these agencies perform their designated functions and exercise their authority, they inevitably generate disputes which then must be resolved, usually by some internal agency dispute resolution process. One of the primary functions of administrative agencies is to produce a consistent interpretation of the federal statutes that set forth their jurisdiction. Where a legislative or parliamentary body deems it appropriate to subject agency decisions to an independent dispute review forum, in the absence of other, more compelling objectives, such reviews should be conducted by a single specialized forum rather than by a number of generalist regional courts (i) that are much more prone to issue varying and conflicting interpretations of the relevant statutes, thus confounding one of the primary objectives for establishing the agency and generating needless appeals, and (ii) whose case processing efficiency is likely to be congested and obstructed by the addition of narrowly focused and sometimes complex litigation.

## **Section Two: Arguments In Opposition To Specialized Courts**

1. **Inefficiency:** Specialization has the potential to produce inefficiencies as well as efficiencies. As the case law in the area of the specialized court's jurisdiction stabilizes and becomes more predictable, prospective litigants will be increasingly capable of assessing the relative odds of winning and losing. To the extent that a loss is fairly certain, attorneys may take the initiative to restructure the legal issues to fall within the jurisdiction of a different tribunal in which the odds are better, such as a regional general-jurisdiction court. The result of this forum shopping is adjudication on peripheral issues leading to the creation of what sometimes is referred to as "boundary law." The generalist court, in effect, expends judicial time and effort on issues that, were it not for the specialized court, would not have been raised. Another direction this inefficiency can take is when the specialized tribunal focuses too narrowly on particular issues in the case, and the litigants, acting in good faith, determine that they must pursue further litigation in other tribunals to seek resolution on broader issues in the case that the specialized court did not -- or would not -- consider. The result is that fully litigating the initial dispute can be a protracted and costly process, both to the litigants and to the court system, that may result in confusion, loss of rights, and more delay than having taken the matter to a generalist court for resolution in the first place would have entailed.

2. **Judicial Isolation:** Specialized court judges, by having to focus on a particular subset of legal issues at the cost of all others, are removed from the mainstream of legal thought. Such judges, as specialists, are not part of and do not easily fit in with the mainstream of generalist judges; as a separate and distinct group unto themselves, they risk developing a narrow, even one-sided view of the issues, compromising their objectivity, and evolving a jargon, thought patterns, and litigation biases that are unique and may be at odds with those of the law in general. There is little opportunity for the cross-pollination that fosters, tests, refines, and improves new ideas and novel approaches in interpreting and applying the law. Moreover, the narrowness of the work and the doctrinal isolation may make it difficult to attract the most talented and qualified jurists to specialized judicial careers. The desirable expertise and experience of a seasoned judge is adjudication that is based on broad rather than narrow exposure to the law.

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3. **Captives of Narrowly Focused Professional Groups:** Specialized court judges adjudicate cases in courts that are populated by specialized attorneys, members of a specialized bar, who regularly appear before them. With a largely one-dimensional docket of cases and a core group of highly experienced and expert-level attorneys who litigate them, judges become part of a specialized professional group that shares narrow interests which set it apart from other professional groups. Members of such groups often associate with each other. Judges may run the risk of developing a professional bias towards that core group and, thereby, compromise the court's neutrality. In effect, over time the court might slowly but inexorably be captured by its own specialized bar, resulting in the loss of confidence by the general bar and the public in the court's independence and objectivity.

4. **Public Access:** Specialized courts handle all litigation in a relatively narrow area of the law. The amount of litigation generated by that narrow area may necessitate, as is the case with most specialized courts, no more than a single court that, with a sufficient number of judges, can handle the relevant caseload for the entire country. By holding court only where the court is physically located, say a major metropolitan area, the expense and the burden of traveling on non-local litigants may have the potential to create a bias that favors larger and wealthier litigants or those litigants that are resident in the area and need not travel.

It also imposes an unfair burden on litigants who are located far from the court facility. The larger the physical geography of the country, the more this becomes an issue. For example, the U.S. Court of International Trade whose jurisdiction covers the entire United States is located in New York even though the international ports in California handle a higher trade volume. Alternatively, if the judges of the court are required to travel throughout the country and to conduct court in a variety of locations whose availability is subject to local space-available and scheduling contingencies and requirements, the status of the position may be lowered and draw less-qualified applicants. For example, judges of the U.S. Tax Court hear cases in some 80 cities throughout the United States which entails significant travel and having to conduct court in a variety of unfamiliar settings typically borrowed from resident generalist court judges. In addition, where the court functions essentially as a traveling tribunal, the administrative efficiency and quality of court operations may suffer.

5. : Creating specialized courts raises a number of due process issues. Where judicial appointments are subject to political influence, for example, a specialized interest group has little to gain by trying to sway the appointment of a particular candidate for appointment to a general jurisdiction court that hears a broad variety of types of cases. However, where a court's jurisdiction is specialized and narrow, the appeal to a well-heeled specialized interest group in having candidates friendly to its interests appointed to the court is much greater and may lead to intense lobbying on behalf of those candidates. Such lobbying is undertaken in the interest of a potential payback through favorable decisions in future cases. Moreover, where such specialized interest groups repeatedly appear before the judges of the specialized court, they gain an advantage over litigants who may appear with much less frequency. The due process considerations are compounded when these attorneys who appear in the court frequently are personally acquainted with the judges and the idiosyncrasies of the court's policies, rules, jurisdiction, and governing law; they have a distinct advantage over others who, for lack of experience and opportunity, lack such familiarity.

6. **Quality of Judges:** Like other professions, the judiciary has its own hierarchical order. Certain categories of judgeships are considered to be more prestigious than others. Generally, specialized judges are accorded less prestige and status than judges who are generalists. One primary reason is that while specialized judges are required to master dispute resolution in only a narrowly focused area of the law, generalist judges must demonstrate the mental dexterity and intellect to resolve disputes in a broad range of fields of the law. To that extent, the more specialized a court is, the less likely it may be to draw the best possible applicants for judgeships because service on such courts is considered to offer less professional stature than others with broader jurisdiction and, to that extent, more interesting and challenging work over an array of legal specialties. If the quality of the applicants is lower, the quality of the adjudication is likely to be lower. Although not experts, generalist judges who are more qualified over a broader range of legal specialties may produce a higher quality of adjudication.

### **Section Three: Recommendations on Creating Specialized Courts**

Where judicial system leaders are considering establishing specialized courts, some of the important considerations that should be included in their deliberations and planning process are as follows:

1. **Exercise Care in Selecting The Specialized Subject Matter:** The jurisdiction of a new specialized court should be selected with great care. The legal field should be one in which generalist court judges, in processing their varied caseload, are unlikely to achieve sufficient expertise and efficiency because of (i) the narrow and detailed complexity of the legal issues and/or factual matter or (ii) the number of disputes is so small that they would deal with them only

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infrequently. As a general rule, the more intricate and difficult the field of law, the more likely it is that the generalist judge will misapply the law, confuse rather than clarify the issues, and inadvertently encourage additional litigation.

The same holds true of the technical complexity of factual information typically associated with that field. The legal area also should be one that (i) can be technically and substantively separated from other areas of the law with relative ease, and (ii) has historically fostered and continues to foster sufficient litigation to justify the creation of a specialized tribunal. Areas of the law that involve narrow highly complex legal issues and/or highly technical factual disputes such as those that exist in the various professions in engineering, science, and medicine are ideal candidates. Ideally, the jurisdiction should be one in which the law is evolving, even if only gradually. Specialized judges function most effectively if they have a relatively constant supply of new cases that are generated by disputes in the developing area of the law that their jurisdiction covers. Possible areas for successful specialization include: taxation, bankruptcy, patents and trademarks, international trade and tariffs, old-age retirement/disability and related benefits, employee benefits, environmental and natural resources regulation, public land and water management, and insurance. The objective should be to segregate those cases that, relative to their importance, impose the greatest burdens on the productivity of the generalist courts.

In determining how many specialized courts to establish, legislative or parliamentary bodies should bear in mind the need to retain as the fundamental building block of their judicial systems the generalist trial or first-instance and intermediate appellate or second-instance courts. Creation of too many specialized courts may result in the depletion of the broad and rich jurisdiction of the generalist courts to a point at which the benefits such courts provide in bringing new ideas and insights into the evolution of the law may be diminished. Where the jurisdiction of the generalist courts is unduly narrowed and impoverished, the quality of candidates seeking appointment to those courts may decline. Moreover, the judicial system risks being held hostage by an assortment of powerful specialized jurisdiction courts, each with its own agenda, priorities, and advocacy groups.

2. **Isolate the Jurisdiction:** Wherever possible, the judges of a specialized court should have complete authority over the field(s) of law and subject matter(s) placed within their jurisdiction. They should not share the jurisdiction with judges -- generalist or specialized -- in other courts via some kind of concurrent jurisdiction arrangement. If possible, the jurisdiction should be defined to prohibit or strongly constrain litigants from embedding the specialized legal issues in more broadly focused cases whose other issues fall within the jurisdiction of other courts. Alternatively, the jurisdiction of the specialized court may provide, when the case involves additional other issues, that the court have case-wide jurisdiction to adjudicate all the issues raised in the case, including those that normally fall outside of its jurisdiction. This second alternative has the advantage of taking the expert judges out of their normally narrow focus and expanding their otherwise isolated horizon to consider other interests, thus giving them the benefit of percolation and cross-pollination from other fields of law. Failure to adopt one of these alternatives is likely to encourage attorneys to engage in forum shopping to locate the court that is most likely to issue a finding that is favorable to their case. Where attorneys have the option of forum shopping and litigating peripheral issues or boundary law, the advantages of creating specialized courts are compromised, if not forfeited. As a general rule, if the jurisdiction cannot be wholly transferred to the specialized court, then the jurisdiction should be left with the generalist courts.

3. **Define the Jurisdiction to Promote Judicial Interest:** If the jurisdiction of a specialized court is so narrowly drawn that judges continually hear and decide on a very narrow range of legal issues and factual disputes so that adjudicating cases becomes an almost mechanical process, the status and dignity of the court will suffer as will the quality of applicants for judgeships. The effects of a steady diet of the same menu of legal and factual subject matter linked with repetitive advocacy from the same group of attorneys create distinct vulnerabilities against which court systems and the legislative or parliamentary bodies that establish them must protect themselves. Moreover, the court may be in danger of being captured by its professional clientele. To protect against such risks, the jurisdiction of a specialized court might be broadened to include two or more distinct specialty areas of the law.

4. **Carefully Consider Lifetime Tenure:** In the United States, some specialized court judges have lifetime tenure, assuming general good behavior. Most others have limited fixed terms. Consideration of the benefits of lifetime tenure have prompted court systems in some countries to extend lifetime tenure to all judicial officers in all courts. Such blanket extension may not be wise, at least in the case of some categories of specialized courts. In determining whether to attach lifetime tenure to the conditions of appointment as a judge to a specialized court, it is important to assess the extent to which the court will become a temporary or permanent part of the judicial landscape. How likely is the limited jurisdiction and specialized subject matter to continue to foster litigation at a steady or increasing rate? Does the number of cases involving that field of law and subject matter fluctuate significantly over time? If it does, what will judges with lifetime tenure do during lean years? Is it possible that disputes in the subject matter, the number of which may have increased over a ten-year period, will begin to diminish and eventually disappear as the application of the law becomes so precise that attorneys will be able to assess with relative precision the merits of their cases and reach settlements instead? If so,

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strong consideration should be given to establishing judgeships with limited tenure and fixed terms of office. Where research indicates that the need for a specialized court is likely to exist for only a limited period of time, an alternative to appointing a group of new judges is to temporarily transfer or reassign generalist judges, who may have some expertise in the specialized jurisdiction, from their existing regional courts for indefinite terms of service on the specialized court.

5. **Carefully Consider the Need for a Specialized Court:** When consideration is being given to creating a specialized court, a number of institutional considerations should be reviewed. Can the jurisdiction be given to an administrative agency charged with resolving disputes in a more informal and less adversarial environment? Can an administrative board be established within the agency to hear and resolve disputes? There may be instances in which it is appropriate to place a specialized administrative court within the agency whose disputes it hears as is the case with many of the administrative courts that are located in a number of the departments or ministries of the Executive Branch of the U.S. Government. Facilities such as research libraries and secured databases could be shared by the court and the agency. Should the scope of the agency's authority be increased, the authority of the administrative court could simultaneously be increased to cover the broader jurisdiction. If the dispute resolution tribunal cannot be placed within the structure of an administrative agency, should a new specialized court be established as a permanent part of the existing judicial system? Is the area of the law that defines its jurisdiction likely to continue to generate litigation for the court to handle for the foreseeable future? Carefully structured statistical studies should be undertaken to determine what kind of workload the new court is likely to have before legislation creating it is drafted. Such courts need not always be permanent additions to an existing court system; as has been done on several occasions in the United States, specialized courts can be created for fixed periods of time by legislative action that includes sunset provisions. When the caseload reaches a low threshold, it may be more economical to transfer the specialized court's jurisdiction back to the generalist regional courts than to maintain a specialized court.

6. **Minimize the Potential for Reduced Judicial Stature and Importance:** Specialized court judges typically are viewed by the legal and judicial professions as lower in status and importance than generalist court judges. To improve the status of such judgeships, legislative bodies should establish salary levels, benefits, and other trappings of office for specialized judges of particularly important specialized courts that equal or approximate those of generalist judges. In the federal system of the United States, for example, judges in one of the specialized courts have the same constitutional status as the judges of the general jurisdiction trial and appellate courts, including lifetime appointment and guarantees against diminished compensation while in office. Moreover, the specialized judges should have similar resources: adequate physical facilities, functional libraries, qualified support staff, and modern equipment. On the other hand, however, some categories of specialized judges, because they exercise limited judicial authority and thereby occupy less-responsible positions whose functions may be partially perfunctory, clearly should not be placed on an equal monetary and benefits status with general jurisdiction judges.

7. **Constrain the Tendency Toward Isolation:** Specialized judges tend to come from relatively narrow and even isolated segments of the legal profession and, to that extent, are less likely to have been exposed to a wide range of legal issues. Once they have been appointed as judges, their focus on a relatively narrow jurisdiction is likely to exacerbate their isolation. Some advocates of specialized courts suggest that one way of restricting this tendency toward isolation is to have judges hear cases in panels of three that are based on a rotation so that the composition of each panel changes with each new case, as is done in the Federal Republic of Germany. Assuming not all judges on the court are of the same mind set, this rotation of judges into panels whose composition is constantly changing is likely to hinder this tendency to isolationism. Another alternative is to have individual generalist court judges occasionally sit on these panels and, alternatively, to have individual specialized court judges sit on generalist court panels. Such "exchanges" could promote cross-fertilization in a manner that is beneficial to the adjudication process and, in addition, is likely to be personally rewarding and invigorating for both categories of judges. Such exchanges should be considered only after the specialized court judges have achieved full competence and are considered fully qualified and competent in their respective specialties.

Still another alternative is to broaden the jurisdiction to include more than one narrowly focused field of the law. A specialized court might have jurisdiction in two or three narrow but related fields of law. Such mixed jurisdiction, although specialized, provides for some cross-pollination and, in addition, increases the level of challenge and interest to the judges. It also makes them less likely to be held hostage by a particular specialized group of attorneys.

8. **Determine the Appropriate Organizational Hierarchy:** Legislators should carefully consider whether to create specialized courts at the trial or the appellate level. Where adjudication of complex subject matter requires specialized expertise, such expertise should be located at the fact-finding or trial level. Specialized courts may well function best, in the overall scheme of things, at the first-instance level where (i) judges with the required subject-matter expertise are capable of analyzing complex technical matters, and (ii) appeals are not automatic but must be based on allegations of

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serious error by the first-instance court. To minimize the problems associated with capture and isolationism, review of the decisions of the specialized courts should fall within the jurisdiction of second instance or appellate generalist courts. Review of decisions by generalist judges, whose analyses are based on broad exposure to a broad range of fields of law and a wide variety of cases, will serve to check both capture and isolationism. Specialized judges, cognizant of the likelihood of generalist review, will be less likely to focus their analyses so narrowly that they are blind to the kinds of other considerations that second instance generalist courts will cite when remanding or reversing their decisions.

Alternatively, where the objective is to achieve a predictable body of stable and relatively uniform interpretation in a particular field of the law, and the law itself is particularly complex and technically difficult, requiring considerable judicial expertise to interpret and apply it, specialization may be more appropriate at the appellate level. Decisions issued by lower generalist courts that span the spectrum can be reversed and/or remanded to create greater coherence and consistency. Moreover, the appellate court, where appropriate, can inject doctrinal innovations in its effort to fashion a uniform body of law. This can be of significant advantage to an overburdened supreme court.

9. **Make Access as Convenient as Possible to All Prospective Litigants:** Where the jurisdiction of a newly created specialized court is drawn from the jurisdiction of numerous generalist courts, it is important to consider the issue of access. If generalist courts are located in each political or geographical region of a country, making it relatively easy for anyone to file and litigate a case, creating single specialized court in the country's capital city to handle a particularly complex field of law may limit the access of some litigants who are located some distance from the court to the advantage of those who reside in or close to that city. The specialized court should be located as centrally as possible to all major population centers. Where the litigation handled by the court typically involves private citizens against the government or major corporations, consideration may be given to holding court at different locations throughout the country to level the playing field. For example, an annual cycle of tax court sessions might be held in generalist courthouses located throughout the country, affording average citizens the opportunity to seek redress without being compelled to incur the burden of unnecessary travel and subsistence costs.

## APPENDIX

### Specialized Courts in the United States and Select European Countries

**THE UNITED STATES:** The United States is a federation that comprises fifty states. The federation, as a whole, is governed by a national or federal government. In addition, each state has the authority under the Constitution to establish its own governmental structures. By limiting the powers of the federal government, the Constitution anticipates that the national government and the individual governments of each state will work together and complement each other in the effort to make and enforce laws. Each state has a constitution that sets forth the structures of government for that state, and because state governments, to a greater or lesser degree, are modeled on the national government, all state constitutions provide, as does the United States Constitution, for tribunals or courts in which the constitution and laws of that state are interpreted and applied.

Conceived broadly, then, the United States has two major court systems: the system of national or federal courts and the system of state courts. This notion of a political federation with dual court systems is not distinct to the United States. The fledgling Republic of Bosnia and Herzegovina, for example, anticipates a system of federation courts with limited national jurisdiction as well as a system of regional or cantonal courts that have jurisdiction only in their respective cantons. Some of the other countries in Central and Eastern Europe follow the same model as do some in the Middle East, for example the United Arab Emirates.<sup>2</sup> By contrast, India comprises a federation of states, but its Constitution of 1950 provides for a single judicial system built around a unified and integrated hierarchy of courts.<sup>3</sup>

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<sup>2</sup> A Constitution for the United Arab Emirates was adopted at independence on 2 December 1971, when the country was formed from seven member Emirates. The Constitution became permanent in 1996. The federal court system described in the Constitution applies to all Emirates except Dubai and Ras Al Khaimah, which are not fully integrated into the federal judicial system. All Emirates have secular courts to rule about criminal, civil, and commercial matters, and Islamic courts to review family and religious disputes. The Federal Judiciary includes the Supreme Court and the Courts of First Instance.

<sup>3</sup> See <http://lawmin.nic.in/coi/coiason29july08.pdf> for the current version as modified up through 1 December 2007. Also, go to <http://www.indiancourts.nic.in/sitesmain.htm> for more information on the court systems of India.

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There is a third hybrid system of courts in the United States; these are the tribal courts created by various tribes of American Indians or Native Americans.<sup>4</sup> All three of these systems -- federal, state, and tribal -- bear brief mention in order to establish a context within which specialized courts can be better understood.

A. **Specialized Federal Courts:** From the viewpoints of their creation and functions, there are two major categories of courts in the federal system: the constitutional courts<sup>5</sup> and what we might refer to as the legislative courts.<sup>6</sup> Authority for creating the constitutional courts is provided for in Article III of the Constitution; authority for the legislative courts is provided in Article I, Section 8, Clause 9, which extends to the Legislative Branch "the power to constitute tribunals inferior to the Supreme Court." Whereas Article III makes special provisions for protecting the independence of judges of the constitutional courts in the areas of compensation and tenure in office, Article I contains no such protections for judges of the legislative courts; neither, however, does it prohibit them. In some instances, as described below, Congress has converted the status of legislative courts to constitutional courts; in one instance, a court was shifted from legislative to constitutional, then back to legislative status. Historically, efforts to convert specialized courts from legislative to constitutional status have engendered lengthy and acrimonious debate in the Congress.

In the federal court system, the legislative courts generally are considered as specialized federal courts. Unlike the constitutional courts, which include the 94 federal district courts and the twelve circuit courts of appeals and which are tasked with exclusively judicial functions, the legislative courts, in addition to their judicial functions, also are commissioned with assisting the Legislative Branch to administer specified congressional statutes. Some of the

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<sup>4</sup> See <http://www.ntjrc.org/tribalcourts/default.asp> the website of the National American Court Judges' Association National Tribal Justice Resource Center which contains a rich assortment of information on the Native American tribal courts.

<sup>5</sup> For additional information on the federal courts of the United States, go to [www.uscourts.gov/links.html](http://www.uscourts.gov/links.html)

<sup>6</sup> The explanation below is extracted from <http://www.answers.com/topic/legislative-court> The term legislative court was coined in 1828 by Chief Justice John Marshall, who wrote the opinion in *American Insurance Co. v. Canter*, 26 U.S. (1 Pet.) 516, 7 L. Ed. 242 (1828). In *Canter*, the High Court ruled that the U.S. Congress had the power to establish a federal court in the U.S. territory of Florida. Marshall held that Congress had this power under Article I, Section 8, Clause 9, of the U.S. Constitution. Marshall called courts created under this provision "legislative courts, created in virtue of the general right of sovereignty, which exists in the government."

On the federal level, the congressional authority to create courts is found in two parts of the U.S. Constitution. Under Article III, Section 1, "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." Article III, Section 1, also provides that the judges in the Supreme Court and in the inferior courts will not have their pay diminished and will hold their office during good behavior. This section establishes an independent judiciary that cannot be influenced by threats of pay cuts or of removal without cause. Article III courts are called constitutional courts.

Article I, Section 8, Clause 9, confers on Congress the power to "constitute Tribunals inferior to the supreme Court." This authority is not encumbered by a clause requiring lifetime tenure and pay protection, so judges sitting on Article I courts do not have lifetime tenure, and Congress may reduce their salaries. Article I courts are called legislative courts.

According to the U.S. Supreme Court, under Article I, the Framers of the Constitution intended to give Congress the authority to create a special forum to hear matters concerning congressional powers, and to further the congressional powers over U.S. territories under Article IV, Section 3. This authority allowed the government to create special courts that can quickly resolve cases that concern the government. This is considered a benefit to society at large because it facilitates the efficient functioning of government.

The distinction between legislative courts and constitutional courts lies in the degree to which those courts are controlled by the legislature. Control of the judiciary by the legislature is forbidden under the separation-of-powers doctrine. This doctrine states that the three branches of government — executive, legislative, and judicial — have separate-but-equal powers. Legislative courts challenge this doctrine because the pay rates and job security of their judges are controlled by a legislature.

The U.S. Supreme Court has identified three situations in which Congress may create legislative courts. First, Congress may create legislative courts in U.S. territories. This is because Congress has an interest in exercising the general powers of government in U.S. territories that do not have their own government. Such legislative courts exist in Guam, the U.S. Virgin Islands, and the Northern Mariana Islands. The local courts of the District of Columbia are also considered legislative courts.

Second, Congress may create legislative courts to hear military cases. This is because Congress has traditionally maintained extraordinary control over military matters. The U.S. Court of Military Appeals is such a legislative court.

Third, Congress may create legislative courts to hear cases involving public rights. Generally, these are rights that have historically been determined exclusively by the legislative or executive branch. The government is always a party in such cases, and such cases generally involve matters of government administration. On the federal level, the only Article I court established under the public rights doctrine is the U.S. Tax Court. This court hears cases involving federal taxes, brought by or against the Internal Revenue Service or another federal agency.

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legislative courts were established as permanent additions to the federal system. Others, by contrast, were created to respond to temporary needs and, once those needs were determined to have been met, were dissolved.

**Legislative Courts in the U.S.** Examples of legislative courts of the United States are as follows:

1. **U.S. Tax Court:** Originally, this court was a part of the Legislative Branch under the Internal Revenue Service (IRS) and was converted into a legislative court by the Congress in 1969 under its constitutional power to levy taxes. Tax law is a particularly complex and specialized field within the broad framework of the legal system, and the Tax Court was created in good part to relieve the generalist courts of the burden of the time-consuming litigation that tax law spawns. Its jurisdiction comprises the review of IRS assessments that have been challenged by the taxpayers who are subject to them. As a result, the United States Commissioner of Internal Revenue is always the defendant in Tax Court cases. The court consists of 19 judges, including a chief judge, who are appointed by the President with the advice and consent of the Senate for fifteen-year terms of office. Ten other special trial judges hear small tax cases in which the tax being contested is less than \$5,000. The court is organized into subdivisions, each of which is headed by a judge. Each trial session is conducted by a single judge or by one of five commissioners who are appointed by the chief judge.<sup>7</sup>

2. **U.S. Court Of Appeals For The Armed Forces:** Growing dissatisfaction following World War II with the system of military courts in the armed forces of the United States, a system which vested significant trial or first instance and appellate or second instance judicial power in successively higher ranks of commanding officers, prompted the Congress in 1950 revised the Uniform Code of Military Justice. Revisions to the code included the authority for a new court, the U.S. Military Court of Appeals. The revised code expanded the rights of accused military personnel and provided them with the option of appealing to a bona fide civilian appellate tribunal. Contrast this appellate tribunal with the military appeals process in the Republic of Bulgaria, for example, where all such petitions are adjudicated in second instance or intermediate appeals military courts. Although appeals of military cases in the third instance or final appeal are heard by the Supreme Court, they are heard by the military division of that court whose judges are military officers and who wear military uniforms in formal court proceedings.

Since the enactment of those amendments to the Code of Military Justice, the rights of accused military personnel have continued to be expanded and now fall more in line with the rights afforded civilian defendants. For example, in 1965, the Constitution's Sixth Amendment's right to trained counsel was deemed to apply to military personnel, and in 1967, the Fifth Amendment protections implicit in the Supreme Court's historic *Miranda v. Arizona* decision were extended to officers and enlisted men of the armed services.

The U.S. Court of Appeals for the Armed Forces is staffed by three judges who must be appointed as civilians but may hold a reserve commission in any of the armed forces of the United States. They are nominated by the President and confirmed by the Senate to staggered fifteen-year terms. Once appointed, they are eligible for reappointment to a second term. The President's authority includes appointing the chief judge and, upon notice and hearing, removing a judge from office only for neglect of duty, malfeasance in office, or mental or physical disability. No more than two of the three may be members of the same political party. As of the early 1990s, more than half of the appeals heard by the court resulted in reversals of lower military court decisions.

Prior to 1983, litigants had no avenue of direct appeal from decisions of the U.S. Court of Military Appeals. However, under the 1983 amendments to the Uniform Code of Military Justice, parties now are authorized to petition the Supreme Court to review decisions of the Court of Appeals for the Armed Forces through discretionary writs of certiorari.<sup>8</sup>

3. **U.S. Court Of Appeals For Veterans Claims:** This specialized court was established by the Congress in 1988 as a tribunal with national intermediate appellate jurisdiction over a very specialized field of law that deals with veterans of the armed services of the United States. Congress authorized this new court to exercise exclusive jurisdiction to review decisions by the Board of Veterans Appeals, an administrative agency of the Department of Veterans Affairs, which is responsible for reviewing agency decisions in disputes between veterans of the armed services and the department. It falls under the category of an intermediate federal court of appeals because its decisions are subject to review by the U.S. Court of Appeals for the Federal Circuit.<sup>9</sup>

4. **Bankruptcy Courts:** Unlike the other specialized legislative courts discussed above that consist primarily of a single court, there are ninety four federal bankruptcy or insolvency courts. They are located in the judicial districts of

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<sup>7</sup> For more information about the Tax Court, go to <http://www.ustaxcourt.gov/index.htm>

<sup>8</sup> For more information on the U.S. Court of Appeals for the Armed Forces, go to <http://www.armfor.uscourts.gov/>

<sup>9</sup> For more information on the Court of Appeals for Veterans Claims, go to <http://www.vetapp.uscourts.gov/>

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the United States, and they draw their authority by delegation directly from the Article III judges of the district courts. The courts of bankruptcy were created pursuant to the Bankruptcy Act of 1898 which specified that the courts consist of district judges sitting with Article I judicial officers known as “referees.” Although the referees were authorized to handle matters in bankruptcy referred to them by the district judges, other powers were reserved to the district judges to whom the referees remained subordinate. The Bankruptcy Reform Act of 1978 established in each judicial district a new court of record, the United States Bankruptcy Court, which was to come into existence on April 1, 1984. The legislation engendered much controversy; some advocates wanted to convert the bankruptcy court judges from Article I legislative status to Article III constitutional status. Others argued for continuing Article I status with fifteen-year terms of service. The Bankruptcy Amendments and Federal Judgeship Act of 1984 modified the 1978 Bankruptcy Reform Act in several ways. First, it curtailed the authority of bankruptcy judges and left bankruptcy courts subordinate to the district courts as adjuncts of them. Second, it granted authority to the federal circuit courts of appeals, intermediate appellate courts located in each of the twelve judicial circuits or regions of the United States, to appoint bankruptcy judges for the districts within their circuits. The 1978 legislation, by contrast, anticipated presidential appointment. One reason for not granting bankruptcy judges constitutional status and, thereby, lifetime appointment, was concern that the sometimes large fluctuations in bankruptcy caseloads, dependent as they are on economic cycles that affect employment, consumer spending, and business activity, would result in lean times during which there would be more judges than cases to keep them productively occupied.

Bankruptcy courts handle all matters regarding bankruptcies, both individual and corporate; their authority to do so is delegated or referred to them by the district courts. Individual litigants, whether persons or corporations, can petition the district courts to remove the reference from the bankruptcy court back to the district court in their particular cases. Decisions by bankruptcy judges also can be appealed to the district courts and, from there, to the circuit courts of appeals. Recently, the Judicial Conference of the United States authorized the creation of bankruptcy appellate panels (BAPs) in the judicial circuits contingent upon circuit approval. These panels, comprised of groups of three bankruptcy judges, hear appeals where the litigants consent from decisions by individual bankruptcy judges.<sup>10</sup>

### **Constitutional Courts in the U.S.**

Several of the legislative courts originally created by the Congress under the authority of Article 1 of the Constitution subsequently were converted by the Congress in the 1950s to constitutional courts. Notwithstanding that conversion, they still perform specific quasi-legislative and quasi-administrative functions. The most important of these are as follows:

1. **U.S. Court Of Federal Claims:** Originally created in 1855, the Court of Federal Claims comprised seven judges who, with the assistance of 15 commissioners, were tasked with adjudicating claims for damages suits brought by citizens against the United States for a variety of reasons but primarily public contracts. In effect, the court was created to provide, within narrowly defined limits, an avenue whereby affected persons could sue the federal government. The court was granted original jurisdiction in all contractual, tax, injury, and other non-tort claims against the government. Given the large number of these kinds of complaints and the time required for adjudicating them, creation of the Court of Federal Claims shifted a significant caseload burden from the regional federal trial or first-instance courts of general jurisdiction to its own docket. Its jurisdiction extends to all fifty states as well as all territories and possessions of the United States. Decisions of the Court of Federal Claims are subject to review by the U.S. Court of Appeals for the Federal Circuit and may be further subject to discretionary review by the U.S. Supreme Court in certain instances.

The court was converted from a legislative to a constitutional court by the Congress in the 1950s. In 1982, Congress converted it back to the status of a legislative court, changed its name from the U.S. Court of Claims to the U.S. Claims Court, restructured its judicial apparatus, and made some slight modifications to its jurisdiction. Ten years later, in 1992, the court was renamed the U.S. Court of Federal Claims. Today, the court retains most of the jurisdiction of the original U.S. Court of Claims. The court has 16 judges who are appointed by the President with the advice and consent of the Senate for fifteen-year terms.<sup>11</sup>

2. **U.S. Court Of Appeals For The Federal Circuit:** Congress established the U.S. Court of Customs and Patent Appeals in 1910 in the interests of providing a tribunal for the resolution of disputes under its powers to regulate commerce, to levy taxes, and to promote the progress of science, technology, and the arts. Its functions were to review (i) decisions of the Customs Court regarding duties imposed on and classification of imported goods; (ii) decisions of the Patent Office regarding decisions on patents and trademarks; and (iii) decisions of the Tariff Commission relating to import practices.

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<sup>10</sup> For additional information on the U.S. bankruptcy courts, go to <http://www.uscourts.gov/bankruptcycourts.html>

<sup>11</sup> For additional information on the U.S. Court of Federal Claims, including its history and evolving jurisdiction, go to [http://www.uscfc.uscourts.gov/sites/default/files/court\\_info/Court\\_History\\_Brochure.pdf](http://www.uscfc.uscourts.gov/sites/default/files/court_info/Court_History_Brochure.pdf)

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In the 1950s, the status of this court was converted by the Congress from legislative to constitutional. Thirty years later, more significant changes were in store. The 1982 reorganization of the U.S. Court of Claims also affected the U.S. Court of Customs and Patent Appeals by eliminating it as a separate court and consolidating its jurisdiction, together with the trial jurisdiction of the U.S. Court of Claims into a new intermediate federal appellate tribunal, the U.S. Court of Appeals for the Federal Circuit, an Article III constitutional court. Comprising 12 judges, this court hears appeals from (i) all federal trial courts of general jurisdiction, including patent appeals, in suits filed against the government for damages or refunds of federal taxes, (ii) the Court of International Trade, (iii) the Patents and Trademark Office, (iv) the Merit Systems Protection Board, and (v) other agency review cases. Its rulings are binding on some 115 federal courts, boards, Executive Branch Departments, and independent federal agencies. Although the Supreme Court can be petitioned by writ of certiorari to review the decisions of this court, it essentially functions as the final court of appeal in the significant areas of its jurisdiction. It often is referred to as "... the business court of the United States."<sup>12</sup>

3. **U.S. Court Of International Trade:** The U.S. Customs Court was established by the Congress in 1926 under its commerce and taxing powers. In 1980, its name was changed to the U.S. Court of International Trade. The court's jurisdiction encompasses review of congressional enactments, agency rulings, and appraisals by federal treasury or customs authorities related to imported goods. The judges of the court sit in three divisions of three judges each in its New York headquarters as well as all other ports of entry in the continental United States, the territories, and the insular possessions. The right to bring suit in this court is applicable in virtually all legal disputes between an importer-taxpayer and the U.S. Government.

As noted above, in addition to these permanent courts, on occasion the Congress has created specialized courts with temporary status; that is, the legislation creating them specifically provides for their expiration. One of these is the Emergency Court of Appeals which the Congress created pursuant to the Emergency Price Controls Act of 1942; the Act's express purpose was to impose price controls during World War II to stabilize the domestic economy. It provided that regulations, orders, and price schedules of the Office of Price Administration -- again, an administrative agency -- could be challenged only within thirty days and only in the Emergency Court of Appeals. Under the statute, no other court would have the jurisdiction to review the court's decisions. Another example is the Temporary Emergency Court of Appeals which was created by the Congress in 1971 to hear cases arising under the Economic Stabilization Act of 1970 (ESA). The ESA authorized the President of the United States to issue rules and regulations designed to stabilize wages, prices, rents, interest rates, corporate dividends, and related transactions by imposing strict controls in an era of rampant inflation. The Congress vested the court with exclusive jurisdiction to hear appeals from decisions by the generalist district courts in matters arising under the act. Although the President's authority to impose the control mechanisms expired in 1974, the Temporary Emergency Court of Appeals survived due to another national economic emergency in the area of energy which prompted Congress to enact the Emergency Petroleum Allocation Act. Under its provisions, the President had temporary authority to deal with shortages in crude and fuel oil supplies as well as refined petroleum products. The act incorporated provisions of the Economic Stabilization Act for judicial review by the Temporary Emergency Court of Appeals. The court remains in existence today, but its operations entail relatively little in the way of costs. Because it was created as a temporary specialized court, Congress deemed it unnecessary to provide for the appointment of new judgeships. Rather, judges designated to serve on the court are selected from among the sitting judges on the regional generalist federal district and circuit courts. They are appointed to this temporary tribunal for limited terms by the Chief Justice of the U.S. Supreme Court who also designates the chief or presiding judge. The court is based in Washington, D.C., but its judges also hear cases as appropriate in St. Paul, Atlanta, San Francisco, Denver, and other places designated by its chief judge.<sup>13</sup>

#### **Specialized State Courts:**

The state courts function as the primary tribunals for most of the legal business conducted in the United States, exercising a jurisdiction that is much more broad than that of the generalist federal courts. Because each state maintains its own court system, and because there are no national standards that govern either the creation or function of state court systems, their quality, jurisdiction, sophistication, and constitution vary significantly. To the extent that state court systems feature specialized courts, most such courts are subsets of the general jurisdiction courts. Among the states there exists a great variety of such courts. Moreover, specialized jurisdiction over relatively minor matters may result in jointly locating specialized state courts with county and municipal courts of limited jurisdiction. Examples of specialized state courts include the following general categories and jurisdictions:

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<sup>12</sup> For additional information on the U.S. Court of Appeals for the Federal Circuit, go to <http://www.ca9c.uscourts.gov/about.html>

<sup>13</sup> For additional information about the U.S. Court of International Trade, go to <http://www.cit.uscourts.gov/informational/about.htm>

2. **FAMILY COURTS:** The jurisdiction and name of these specialized courts varies significantly from one state to another; they may handle domestic relations, adoptions, paternity suits, guardianship of minors, domestic violence, and/or juvenile crime.<sup>14</sup>
3. **ENVIRONMENTAL COURTS:** This type of court reviews administrative agency decisions relating to violations of environmental regulations and laws.
4. **PROBATE COURTS:** Probate courts handle cases involving the disposition of estates, sometime including adoption and juvenile matters.
5. **TAX COURTS:** These courts handle cases involving state and local tax matters.
6. **WORKERS' COMPENSATION COURTS:** These courts adjudicate disputes between individuals and workers' compensation agencies.
7. **WATER COURTS:** These courts adjudicate real property rights in disputes involving existing water rights.
8. **LAND COURTS:** These courts handle disputes involving real property rights with specific emphasis on land-related transactions.
9. **ADMINISTRATIVE COURTS:** These courts handle appeals of state and local administrative agency decisions. Again, the names of the courts that perform these functions vary from one state to another.
10. **SMALL CLAIMS COURTS:** These courts handle disputes that involve small claims whose value does not exceed certain set dollar thresholds. Generally, the rules of procedure are relaxed and the costs are lower to encourage the disputants to resolve their conflicting claims.<sup>15</sup>
11. **JUVENILE COURTS:** In these courts, crimes committed by youths below the statutory legal age are adjudicated according to more lenient and rehabilitation-oriented standards and punishments than exist for adults.<sup>16</sup>

Two important examples of specialized courts in state court systems that have drawn wide attention are the drug courts and the business/commercial courts.

1. **Drug Courts:** A recent specialized subset of general criminal jurisdiction courts is the drug court movement that began in Florida in 1989 with creation of the first drug court in Florida's Eleventh Judicial Circuit. The movement grew out of frustration with traditional law enforcement and corrections policies that were not having the positive impact on drug supply and demand that the proponents of the "War Against Drugs" had hoped. Those aging policies called for judges to refer certain categories of drug offenders to out-treatment programs as a condition of probation. In effect, once the judge passed sentence, there was no further contact between the offender and the judge. The new drug court approach calls for judges to work with prosecutors, defense counsel, and treatment specialists as a team to select the appropriate treatment approach, monitor progress by having offenders appear in court, and assist offenders with related problems such as housing and employment that may hinder treatment progress. Failure to abide by the conditions leads to escalating sanctions. Between 1991 and 1993, more than 20 jurisdiction in other states implemented drug courts. The success and growth in number of these courts prompted the Congress to include federal government financial support for local and state drug courts in the 1994 Violent Crime and Law Enforcement Act. Federal grants to establish drug courts are made through and administered by the U.S. Department of Justice Office of Justice Programs.<sup>17</sup>

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<sup>14</sup> For links to family court systems in a number of the states, go to <http://www.ncsconline.org/wc/CourTopics/StateLinks.asp?id=28&topic=FamJus>

<sup>15</sup> For resources relating to small claims courts, go to <http://www.ncsconline.org/wc/courttopics/ResourceGuide.asp?topic=SmaCla>

<sup>16</sup> For resources relating to juvenile courts and justice, go to <http://www.ncsconline.org/wc/courttopics/ResourceGuide.asp?topic=JuvJus>

<sup>17</sup> For information and resources on drug courts, go to <http://www.ncsconline.org/wc/courttopics/ResourceGuide.asp?topic=DrugCt>

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2. **Business/Commercial Courts:** For over two hundred years, the State of Delaware has had a specialized court of equity, the Court of Chancery, whose jurisdiction over time has evolved to a point at which it specifically excludes criminal and tort cases -- cases that are responsible for major backlogs in other judicial systems. Although its workload includes cases involving trusts and estates, fiduciary duties, guardianships, and civil rights actions seeking only injunctive relief, the Court of Chancery docket also includes corporate governance issues. Corporate cases often involve demands for the kind of relief -- accountings, appointments of receivers, and orders to transfer corporate shares -- that traditionally were available only at equity. Moreover, because Delaware procedure treats class actions and shareholder derivative actions as equitable in nature, Chancery Court hears all corporate cases structured along those lines. The success of this court in business-related litigation, the increasing complexity of the commercial world, and growth in the creation and use of complex financial instruments and transactions has prompted a number of states to establish new specialized courts. These new courts generally fall into two categories. Some states have created new limited jurisdiction business or commercial courts at the exclusion of other case types.<sup>18</sup>

- New York has established a new Commercial Division in the state court system to handle complex business litigation with locations in Erie, Monroe, Nassau, New York, and Westchester Counties.
- Maryland created a Business and Technology Case Management Program.
- Nevada established a Business Court Division in its Eighth Judicial District.
- North Carolina formed a special Business Court.
- Officials in Orange County, Florida, established a Business Court Subdivision of the Civil Division of the Superior Court.

Other states have created chancery courts or divisions with jurisdiction over equity case types, which may include many business cases types. Although these courts also handle non-business disputes, most of the complex disputes that require and receive significant judicial attention in these courts are business cases.

- Delaware established the Court of Chancery.
- Illinois created the Cook County Chancery Division.
- New Jersey created the Chancery Division of the Superior Court and established locations in several counties.

Still other states have created special complex litigation courts whose jurisdiction is not limited to commercial matters but extends complex dispute resolution in multiple areas of the law.

- The Connecticut courts created a Complex Litigation Docket in New Britain, Norwich, Stamford, Tolland, and Waterbury Superior Courts.
- The California courts institutes the Complex Civil Litigation Divisions of Alameda, Contra Costa, Los Angeles, Orange, San Francisco, and Santa Clara Superior Courts.

### **Indian/Native American Courts:**

The legal relationship between the political structures of the United States and the Native American Indian tribes has a long and convoluted history. It can be defined according to several broad principles, one of which is that the various tribes are independent entities with inherent powers of self-government. Within the context of American Indian Law, the status of tribes recognized by the federal government as sovereign political entities empowers them to create their own governmental structures, including tribal courts in which tribal judges exercise various degrees of civil and criminal jurisdiction over individuals who reside within the official boundaries of their tribal lands. The structure of tribal court systems varies from one tribe to another as does the jurisdiction, type of law, relative legal sophistication by western standards, appeals process, and adjudicative procedure. Viewed strictly from the perspective of jurisdiction, these courts may not qualify technically as specialized courts. To the extent, however, that their existence is a function of an unusual political and ethnic relationship, that they have been granted their own sovereignty vis-à-vis the United States, the tribal courts offer an interesting functional counterpart to the prevailing and formal judicial landscape of the United States.<sup>19</sup>

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<sup>18</sup> For information and resources on business courts, go to <http://www.ncsconline.org/wc/CourTopics/ResourceGuide.asp?topic=SpecCt>

<sup>19</sup> For links providing additional information on the various Native American courts, go to <http://www.tribal-institute.org/lists/justice.htm>

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Perhaps the most sophisticated are the tribal courts of the Navajo Nation. Originally created in 1959, the Navajo Nation Judicial Branch was restructured in 1985. The Navajo Nation courts comprise a two-level court system. All cases originate in the one of the seven judicial district trial courts and can be appealed to the Navajo Nation Supreme Court in Window Rock, Arizona. Five of the seven districts also feature separate family courts. Currently, the Navajo Judiciary consists of 17 judges, 14 of whom are trial-level judges and three of whom are appellate judges who preside over cases heard in the Supreme Court. The Navajo courts currently handle over 90,000 cases per year.<sup>20</sup>

## Section Two: Specialized Courts In Select European Countries

Although the courts of the United States and those of the European countries classify most of their judgeships into the generalist category because they serve in what are generalist courts, there is an important distinction. In the federal courts of the United States, most judges truly function as generalists. The caseload of any particular judge -- whether trial-level or first-instance, intermediate appellate-level or second-instance, or supreme court -- will include a variety of cases whose legal issues range over a broad spectrum of legal fields and factual contexts. In contrast, in many, if not all, of the European court systems, western, central, and eastern, judges serving in the general jurisdiction courts are assigned to special subject-matter divisions within those courts. Cases are allocated among these divisions based on the particular field(s) of the law at issue; medical malpractice cases go to one division, maritime cases to another, product liability to yet another, and so on. This specialization exists at all levels of generalist courts: first-instance or trial-level, second-instance or intermediate appellate level, and even third-instance in the supreme courts of cassation. This system, which is in wide use in the European courts, permits judges to develop over the years the kinds of expertise in legal subspecialties that, in the United States, are expected of attorneys. The distinctions are critical. In one system, generalist attorneys rely on specialized judges for the legal expertise; in the other, generalist judges rely on specialized attorneys for the legal expertise.

Summarized below are the specialized courts in select countries of Western Europe and the United Kingdom.

**AUSTRIA:** Specialized labor courts and social courts have exclusive jurisdiction for all litigation resulting from employment and related relationships as well as for all litigation relating to pension and social security matters. The Commercial Court in Vienna has exclusive jurisdiction for all litigation based on violations of patent rights.<sup>21</sup>

**BELGIUM:** Specialized commercial courts have jurisdiction over commercial litigation in actions involving more than 50,000 francs. The labor courts deal with disputes involving employers, employees, and workmen. A specialized Arbitration Court has jurisdiction to resolve conflicts between (i) laws enacted by the National Parliament and decrees ratified by community or regional councils, (ii) between decrees enacted by various community or regional councils, and (iii) between such laws and decrees and select provisions of the constitution.<sup>22</sup>

**ENGLAND:** One of the oldest and most renowned commercial courts, the Commercial Court of the Royal Courts of Justice in London deals with complex cases arising out of business disputes, both national and international. There is particular emphasis on international trade, banking, commodities, and arbitration disputes. The Royal Courts of Justice include several affiliated courts, including the Admiralty Court, the Chancery Division, the London Mercantile Court, and the Construction and Technology Court. Plans now are underway to open in 2010 a new Business Court. The new Court will house a world class institution to match the UK's world-class reputation for business law which attracts cases from across the globe. The new 'super court' will provide 29 courtrooms, 12 hearing rooms (for related work such as bankruptcy hearings), 44 public consultation rooms, and improved waiting facilities for parties involved in proceedings. It will consolidate work carried out by the Chancery Division, the Commercial Court, and the Technology and Construction Court. It will deal with all business related jurisdictions of the Royal Courts of Justice such as patent issues, trademark disputes, technical construction cases, admiralty cases (arresting of ships) and international contract disputes. The Business Court will be located at the heart of legal London, and, administratively, will remain part of the Royal Courts of Justice Group.

**FINLAND:** Finland has a number of specialized courts that include the Court of the Realm, the Military Court, the Bishops Council (in ecclesiastical affairs), the General Court of Revision (in matters of government), the Land Division Court, the Insurance Council, the Supreme Court for Officials, and the Marketing Court.

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<sup>20</sup> For additional information and resources on the Judicial Branch of the Navajo Nation, go to <http://www.navajocourts.org/>

<sup>21</sup> For additional information on the Austrian courts and justice system, go to [http://www.justiz.gv.at/cms\\_upload/docs/Jus\\_ima\\_eng-09screen.pdf](http://www.justiz.gv.at/cms_upload/docs/Jus_ima_eng-09screen.pdf)

<sup>22</sup> For additional information on Belgian courts and justice, go to <http://www.belgium.be/en/justice/organisation/index.jsp>

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**FRANCE:** Most of the specialized courts in the French judicial system fall under the general category of administrative -- as opposed to judicial -- courts which are arranged in a hierarchical structure, the apex of which is the Council of State. The administrative courts hear matters involving government contracts, tort actions brought against the government, select taxation disputes, and appeals of decisions issued by administrative agencies. Although such actions typically involve disputes between the government and private individuals or corporations, some involve disputes between independent government departments. The jurisdictional distinctions between the administrative and the judicial courts are not as clean or precise as one might suspect. Special judicial tribunals exist for resolving labor, social security, and "rural" matters. Moreover, the judicial courts handle litigation involving indirect taxes, land condemnation, and municipal liability in cases involving riots or other public disturbances.

**GERMANY:** Roughly 25% of the judges in the German judicial system serve in specialized court systems for administrative law, tax and fiscal matters, labor and employment law, and social security. The labor courts have jurisdiction in disputes between employers and employees that stem from labor relations, questions of collective bargaining, and corporate co-determination to the extent that labor relations are involved. The administrative courts have jurisdiction over matters of administrative law such as zoning, immigration, state licenses -- including those under foreign trade regulation. The jurisdiction of the tax courts includes general tax matters and extends to customs duties and other taxes involving international and foreign trade. The social courts exercise jurisdiction in disputes that fall under social legislation such as social security and mandatory public health care. The courts of the former German Democratic Republic have been abolished and replaced by courts that fall within the judicial system hierarchy and jurisdictional order of the Federal Republic of Germany. As do a number of other countries throughout Western, Central, and Eastern Europe, Germany also has a separate supreme constitutional court to which other courts refer frequently contentious constitutional matters.<sup>23</sup>

**SPAIN:** The Spanish court system features distinct specialized courts at the lowest level -- the lower judicial administrative courts and the lower labor courts. Successive appeals from the decisions of those courts may pass into one or more of the provincial courts of justice, the superior courts of justice, the National Court of Justice, and the Supreme Court. Each of these categories of courts has multiple divisions or chambers with specified areas of jurisdiction. Where the first division or chamber exercises general civil jurisdiction, the second handles criminal matters. The third has authority to adjudicate disputes that fall within administrative law, and the fourth, disputes that fall under labor jurisdiction.<sup>24</sup>

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<sup>23</sup> For additional information on the German courts and justice system, go to

[http://www.bundesjustizministerium.info/enid/951e65ce1379a21de6789e1e964e42be\\_54fa14305f7472636964092d0933323936/Ministry/Structure\\_14p.html](http://www.bundesjustizministerium.info/enid/951e65ce1379a21de6789e1e964e42be_54fa14305f7472636964092d0933323936/Ministry/Structure_14p.html)

<sup>24</sup> For additional information on Spain's courts and justice system, go to

[http://www.mjusticia.es/cs/Satellite?c=Page&cid=1057821035133&lang=en\\_gb&pagename=Portal del ciudadano%2FPage%2FHomeJusticia](http://www.mjusticia.es/cs/Satellite?c=Page&cid=1057821035133&lang=en_gb&pagename=Portal_del_ciudadano%2FPage%2FHomeJusticia)