

教學經驗分享

科技法律研究所
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授課課程

□ 歷年單獨授課：

- 1. 英美法導論(英語授課)、
- 2. 國際智慧財產權法、
- 3. 國際智慧財產權法(英語授課)、
- 4. 國際商務與投資法、
- 5. 當代法學思想、
- 6. 著作權法專題、
- 7. 著作權法專題(英語授課)、
- 8. 商標法專題、
- 9. 網路法、
- 10. 英美財產法、
- 11. 美國民事訴訟法、
- 12. 著作權法與商標法研究專題

□ 共同授課課程

- 1. 生物科技法律
- 2. 美國智慧財產權案例研析
- 3. 美國專利訴訟實務

教學方法與成果

□ 準備的方法：

- 沒有教過的課程、沒有學過的課程→先寫一本課本
- 教材：課文、案例、*Power Point*兼備

□ 教學的方法：

- 注意學生的反應：這一段在說什麼？
- 也許老師懂了，學生不懂
- 那我們來動動腦好了

□ 英語教學怎麼準備？

- 中翻英、英翻中
- “*In other words*”

教學成果

- 其實是態度的問題：什麼是最重要的事情？
 - 教學成果
 - 老師比學生認真，學生不好意思不認真
 - 這麼困難的課程是誰教的？
 - 原來可以這麼有趣
-

Power Point 例 1

美國智財案例研析

Case law

- *Judicial opinions are published in "reports" or "reporters"*
 - *I.e., published judicial opinions, or "bound publications that print only cases (or cases and annotations)"*
 - *New volumes are continuously published and contain the judicial opinions as they are handed down by the courts.*
 - *United States Reports (U.S.). Supreme Court Reporter (S.Ct.), Lawyer's Edition (L.Ed., L.Ed. 2d), the Federal Reporter (F., F. 2d, F. 3d), the Federal Supplement (F. Supp.)*
 - *E.g., Meritor Sav. Bank v. Vinson, 477 U.S. 57, 60 (1986). [first party versus second part, reporter, date of decision (no court listed because it is clear from reporter name)]*
 - *E.g., United States v. MacDonald, 531 F.2d 196, 199-200 (4th Cir. 1976). [+span of specific pages referred to, deciding court]*

Reporters



Case Briefing

- Case brief: a synopsis of a judicial opinion.
 - Purpose of case briefing: examining each aspect of a precedent & decide whether it is sufficiently similar to the present situation to create a likelihood that the same legal standards would be applied in the same way to the case at hand.
 - Focus only on statements that directly affect the final decision.
- The elements of judicial opinions:
 - The facts:
 - Identify the key facts. Disregard most background information.
 - Background information: facts that did not play a part in the outcome of the case → should generally be disregarded in a case brief.

Case Briefing

- *Include only information absolute necessary (i.e., legally relevant: has impact on the outcome) to understand the issue & the ruling.*
- *E.g., When deciding D's liability in a car accident, the color of car is generally irrelevant.*
- *E.g., the date & the time of an occurrence are generally irrelevant to the legal effect of the decision.*
- ***The issue: the legal question***
 - *The issue is not who won or lost, or the guilt or innocence of a party.*
 - *Rather, the issue is whether the correct legal standards were applied, i.e., what legal question(s) the court answered in its opinion.*

Power Point 例二

英美法導論

The US Courts of Appeals

- *Created by Congress in 1891 (the Judicial Act of 1891).*
 - Today, the courts of appeals are commonly referred to as circuit courts, because each one of them presides over a graphical area known as a circuit.
- *Hear cases originating from the US District Court within its jurisdiction*
 - E.g., Iowa → 8th Circuit; Boston → 1st Circuit; Florida → 11th (Atlanta); NY → 2nd; Illinois → 7th; CA → 9th Circuit;
 - Two purposes:
 - Prevent "**forum shopping**"
 - Maintain the consistency of legal standards within the jurisdiction // What if several circuits have different standards?

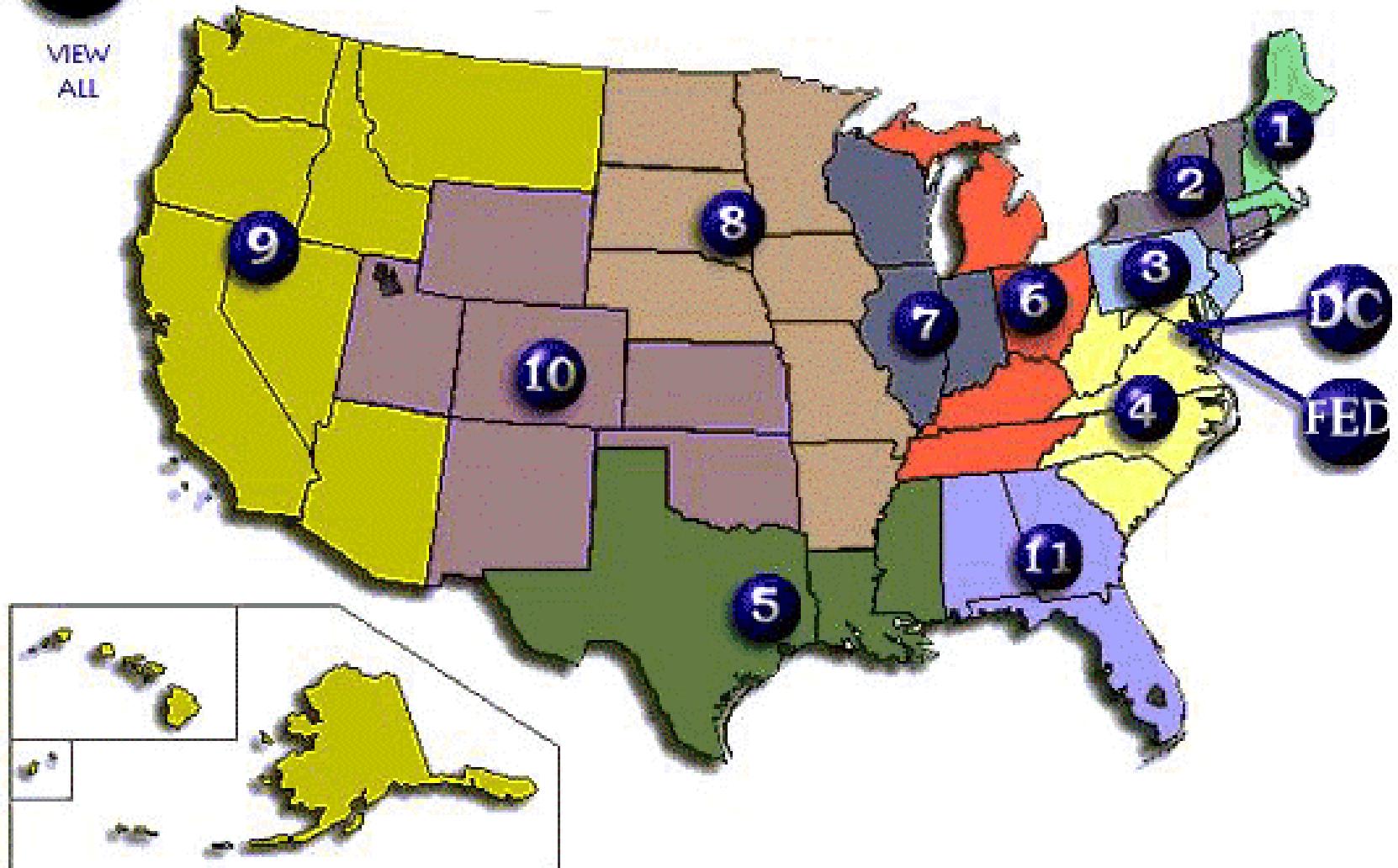
The US Courts of Appeals

- *13 US Courts of Appeals*
 - *1-11 Circuits: located across the country.*
 - *Two in DC: Circuit Court of Appeals for the District of Columbia; the Court of Appeals for the Federal Circuit*
 - *Federal circuit: authorized to grant appeals from decisions of specialized federal courts, including the Court of Veterans' Appeals, the Court of Federal Claims, & the Court of International Trade, as well as all patent cases.*
 - *D.C. Circuit: with additional function of hearing appeals from numerous quasi-judicial tribunals in the federal bureaucracy.*
 - *1st Circuit includes Puerto Rico; 3rd Circuit includes U.S. Virgin Islands; 9th Circuit includes Guam and the Northern Mariana Islands.*
- *Most responsible for establishing legal standards*
 - *E.g., contracts, torts.*
 - *Reason:*



[VIEW
ALL](#)

Court Links



The US Supreme Court

By certiorari (writ of certiorari) (most cases)

Meaning: "To be informed of" – common law origin

Certiorari: "A writ of common law origin used by a superior to an inferior court requiring the latter to produce a certified record of a particular case tried therein. The writ is issued in order that the court issuing the writ may inspect the proceedings and determine whether there have been any irregularities."

Absolute discretion: deny most cases – Of the more than 7000 petitions for certiorari ("cert"), the Court will normally grant review in only about 100.

The process of case selection: with the assistance of law clerks, the chief justice prepares a list of cases to be considered. The associate justices may add cases to the list.

Unless at least one justice indicates that a petition should be discussed, review is automatically denied. The Court considers petitions in private conferences. At least four justices must vote to grant certiorari.

The Court Room of the Supreme Court Building



教學方法舉例

教學舉例（一）

- 嬌蕉包的例子：如何處理商標仿諷
 - 案件：*Louis Vuitton Malletier S.A. v. Haute Diggity Dog, LLC (4th Cir. 2007)*
 - 相關法律：
 - Trademark parody
 - Trademark infringement
 - Trademark dilution

教學舉例（二）

- 交清鬆餅屋是那一種混淆？
 - *Karl Storz Endoscopy-America, Inc. v. Surgical Technologies, Inc. (9th Cir. 2002)*
 - 相關法律：
 - *Initial interest confusion*
 - *Post-of-sale confusion*
 - *Post sale confusion*