Chapter 2

The Legal System
Two Fundamental Processes

• **Federal System:** power divided between central (federal) government and smaller (state) governments

• **Checks and Balances:** Designed so that no one single branch of government could control the entire government. Also means each branch of government is scrutinized by the other branches
The Legal System
U.S. Constitution

• **Legislative Branch:** lawmaking body (Senate and House of Representatives); originates legislation

• **Executive Branch:** President, cabinet, and advisors; enforces the law

• **Judicial Branch:** judges and federal courts; interprets the law
Figure 2.1
The Branches of the U. S. Government
Sources of Law

- **Constitutional Law**: addresses relationship between individuals and their government
- **Statutory and Regulatory Law**: passed by legislative bodies, either Congress or state legislature
Sources of Law

- **Common or Case Law**: established from court decisions. Based on precedent. Old case decisions still influence today’s healthcare professionals.
Classification of Laws

- **Private or Civil**
  - Tort
  - Contract
  - Property
  - Inheritance
  - Family
  - Corporate

- **Public**
  - Criminal
  - Administrative
  - Constitutional
  - International
Civil (Private) Law

- Concerns relationships between individuals or between individuals, businesses, and government
- Awards monetary damages
- Includes tort law and contract law
Tort Law

- Civil injury, or wrongful act
- Committed against another person or property
- Results in harm
- Compensated by monetary damages
- Can be *intentional* or *unintentional*
Intentional Torts

- **Assault:** threat of bodily harm
- **Battery:** actual bodily harm
- **False imprisonment:** violation of one’s liberty
- **Defamation of character (slander/libel):**
- **Fraud (i.e., embezzlement):** deceitful practice
- **Invasion of privacy:** break in confidentiality
Unintentional Tort

- **Negligence**: an unintentional action that occurs when a person either performs or fails to perform an action that a “reasonable person” would or would not have committed in a similar situation.
- Involves performing carelessly or failing to perform a task.
- Not exercising ordinary standard of care.
Contract Law

- Addresses breach or neglect of legally binding agreement between two parties

**Contract:** voluntary agreement between two parties with intent of benefiting each other
  - Something of value (consideration) is part of agreement
  - Both parties must be competent
Contracts

• **Expressed Contract**: agreement entered into orally or in writing; all components of contract must be clearly stated

• **Implied Contract**: agreement shown through inference by signs, inaction, or silence
Contracts

- **Abandonment**: withdrawing medical care from a patient without providing sufficient notice (in writing)
- **Breach of Contract**: either party fails to comply with terms of the agreement
Class Action Lawsuit

- Filed by one or more people on behalf of a larger group of people
- The members of the group are all affected by the same situation
Public/Criminal Law

- Protects public from harmful acts of others
- Defines socially intolerable conduct that is punishable by law
- Government prosecutes person or institute that violates law
- Penalties are fine, imprisonment, or both
- May be *felony* or *misdemeanor*
Administrative Law

• Regulations set by government agencies:
  • Licensing and supervision of prescribing controlled substances
  • Health department regulations
  • Regulations against homicide, infanticide, euthanasia, assault and battery
  • Regulations against fraud
The Court System

- Two court systems in the United States
  - State
  - Federal
- Each has specific responsibilities
  - Exclusive
  - Concurrent (both courts have power to hear the case)
- Depends on type of offense committed
Figure 2.2
Separation of Powers in the Federal Legal System

**Legislative**
- House of Representatives (2-year term)
- Senate (6-year term)

Proposes amendments to overrule judicial decisions. Impeaches and removes judges. Establishes the number of judges. Establishes lower courts.

**Executive**
- President (4-year term)
- Cabinet

Overrules president's vetoes. Refuses to approve treaties. Refuses to confirm federal official appointments. Impeaches and removes the president. Refuses to appropriate money for executive program.

Vetoes bills. Calls special sessions of Congress. Controls patronage (power to control appointments to office).

Appoints federal judges. Pardons or reprieves federal offenders.

**Judicial**
- Supreme Court (lifetime term)
- Lower federal courts

May declare laws unconstitutional.

May declare laws or acts by executive branch unconstitutional.
Types of Courts

• Federal
  – District (municipal)
  – Court of appeals (circuit court)
  – U.S. Supreme Court

• State
  – District (municipal trial)
  – State court of appeals
  – State supreme court
Figure 2.3
Federal Court Structure
Figure 2.4
Components of Civil Law (Courtesy of Amy Wilson, BS, RT(R), RDMS, RVT)
Figure 2.5
Figure 2.6
Trial Process

- Grand Jury consists of 12–23 private citizens
- Hears evidence about case
- Determines if case merits court hearing
- Serves as filter
- Votes on whether to move indictment to trial court
The Procedure

- Litigation: may result when two parties are unable to solve a dispute by themselves
- Plaintiff: the person or institution who brings an action into litigation
- Defendant: the person or institution who is being sued
The Procedure

• Settling out of court: occurs when attorneys for both sides work out a settlement
• Waive: both parties (defendant and plaintiff) give up their right to a jury trial
• Trial: begins with opening statements made by attorneys for each side of the case
The Procedure

• Closing argument: attorneys for the plaintiff and the defendant make closing speeches or summaries of their case

• Appeal: plaintiff or defendant may ask (appeal) a higher court to review the decision
Figure 2.7

Summary Judgment

- Request made by an attorney
- Takes place in a civil trial
- Asks the court judge to declare no need for a trial
- Means neither plaintiff nor defendant entitled to win based on existing law
Subpoena

- **Discovery**: process by which facts are discovered
- **Deposition**: oral testimony before an officer of the court
- **Subpoena duces tecum**: court order to appear in court and bring records
Standards of Proof

• Several different levels of proof are required
• Civil case: court looks at “preponderance of evidence”
• Civil case places weight on evidence that is more credible and convincing
• Criminal case: needs proof “beyond a reasonable doubt”
Expert Witness

- Professional who has special knowledge or experience
- Assists jury or judge in determining accuracy of facts in case
- Often testifies to what standard of care is
- Generally paid a fee
- Clarifies points of knowledge not readily understood by the jury or judge
Testifying in Court

- Tell the truth
- Be professional
- Remain calm
- Do not answer a question that you do not understand
- Present only facts
- Do not memorize testimony