

INTERNATIONAL LITIGATION

FROM THE U.S. PERSPECTIVE

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THE CENTRAL TAVERN-Est 1892



COMMON LAW VS. CIVIL LAW

System Features

Common Law

Civil Law

Continuity of Legal System

Evolutionary

Revolutionary

Major Source of Law

Custom & Practice

Legislative Statutes

Reliance on Precedent

Strong

Weak

Judicial Role in Law Making

Active/Creative

Passive/Technical

Role of Legal Scholarship

Secondary & Peripheral

Extensive & Influential

Judicial Review of Statutes & Executive Actions

Yes

No

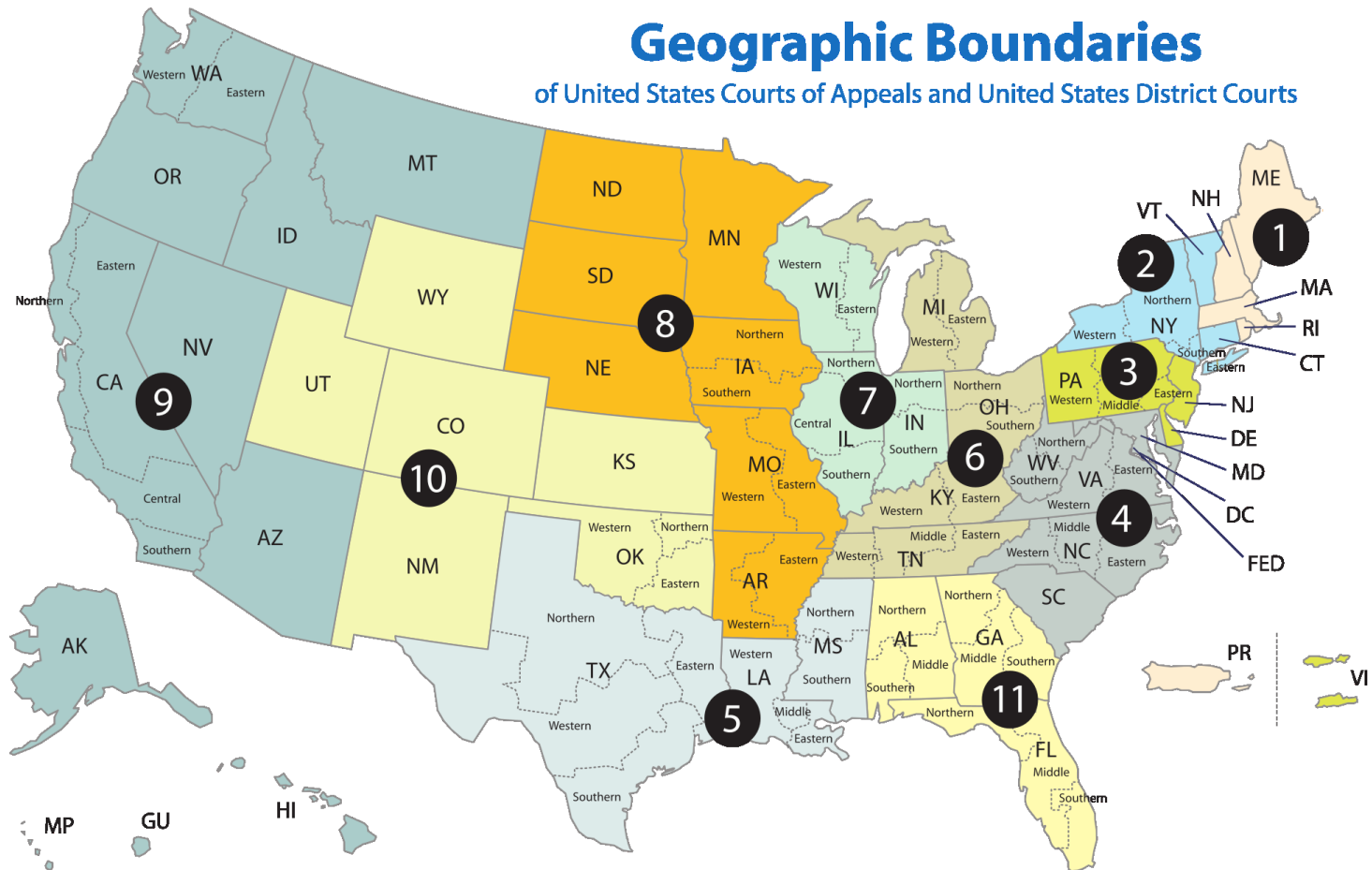
JUDICIAL JURISDICTION

- Subject Matter Jurisdiction
- Personal (In Personam) Jurisdiction
- In Rem Jurisdiction
- Enforcement Jurisdiction

SUBJECT MATTER JURISDICTION

- “The powers not delegated to the United States by the Constitution . . . are reserved to the States respectively, or to the people.”
- Subject Matter Jurisdiction delegated to the federal courts in Article III of Constitution:
 - Federal Question (“Arising Under”)
 - Alienage (International Diversity)
 - Special Cases (Admiralty, Diplomatic Immunity)

U.S. FEDERAL COURTS



ERIE DOCTRINE

[T]here is no federal general common law."
Erie Railroad v. Tomkins, 304 U.S. 64 (1938)

In the absence of federal legislation, federal courts must apply state substantive law, including state common law.

EXCEPTIONS TO ERIE DOCTRINE

- Federal Courts may fashion Federal Common Law in a Few & Restricted Areas:
 - 1) Areas involving a “Uniquely Federal Interest” e.g., foreign relations, and
 - 2) Only to Prevent Significant Conflict Between State & Federal Policy

SOURCES OF INTERNATIONAL LAW

- Treaties & Conventions
- Customary International Law (General & Consistent Practice of Concerned States)
- General Principles of International Law (Common Domestic Law)
- Judicial Decisions & Writings of Experts