

Week 2

INTERPRETING THE CONSTITUTION

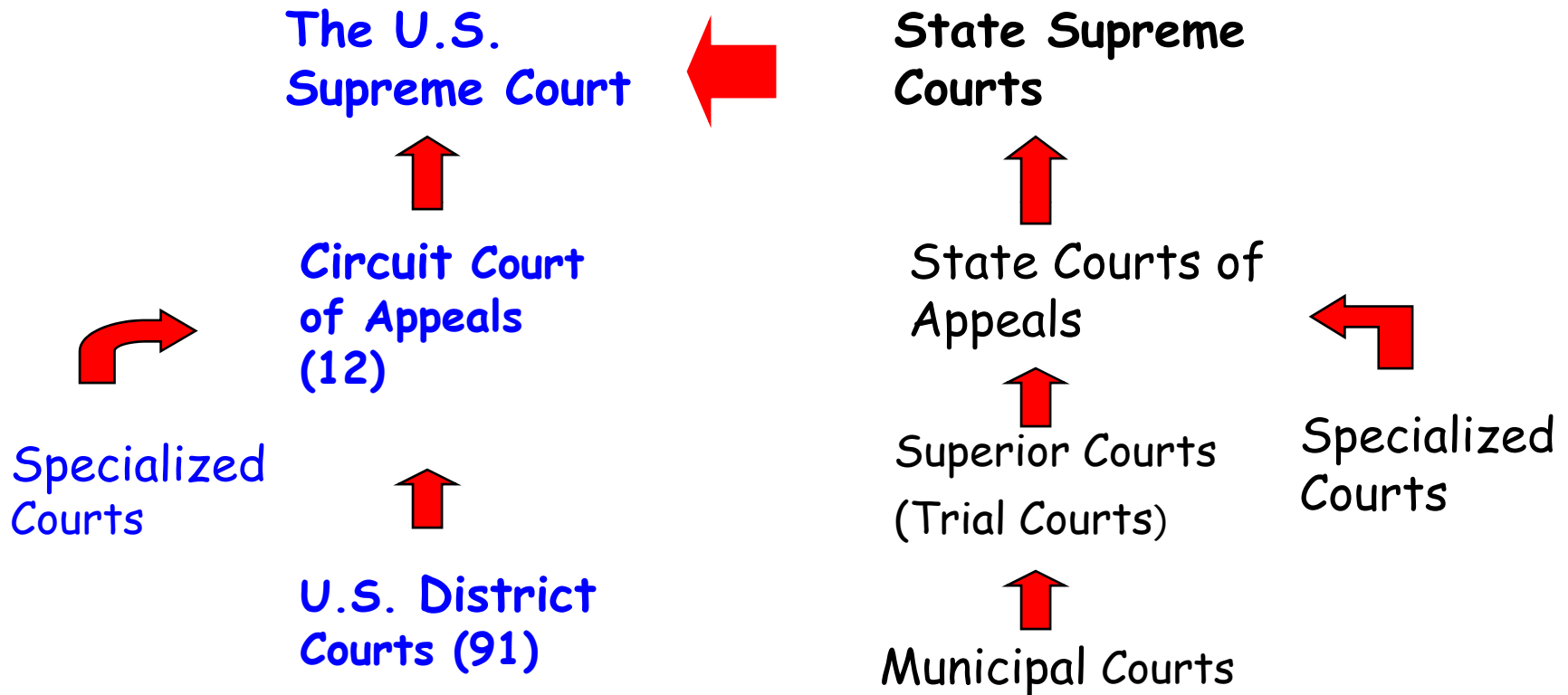
Section B

Jan 14, 2008

JUDICIAL REVIEW

- The judicial power shall extend to all cases, in law and equity, arising under this Constitution Art. III, Sec 3
- When conflict (litigation) arises
- The duty of the courts (Marbury v. Madison, 1803):
 - Interpret the Constitution
 - Determine the constitutionality of the act in controversy

THE APPEAL PROCESS



LOCKNER V. NEW YORK, 1905

- A Bakery Owner's Complaint
 - NY's labor law that regulates the hours of work
 - The 14th Amendment: "nor any State deprive any person of life, liberty, or property without due process of law"
 - The right to enter a contract
- The Baker's claim: NY's labor law violates the Due Process Clause, so it is invalid.
- Duty of Judges

CONTINUING DEBATE ON THE PRACTICE OF JUDICIAL REVIEW

- Judges interpret the Constitution and determine whether the law (or the act of government) in controversy is in line with the Constitution.
- Language of the Constitution
- How much latitude should judges have when interpreting the Constitution?

REHNQUIST VIEWS

- The Claim at Issue
- Rehnquist's Counter-Argument
 - Historical Experience
 - Separation of Powers
 - Republicanism
- Conclusion
 - Judges must exercise restraint and stick to the language of the Constitution and the intent of its framers.
 - Even if the legislature or the executive has failed to address a particular social evil

Readings for Next Class

- Tribe and Dorf, “Structuring Constitutional Conversation”