

CHAPTER ONE: THE NATURE, PURPOSE, AND FUNCTION OF CRIMINAL LAW

HISTORY OF ILLINOIS

Prior to the European settlement in 1673, Illinois was composed of a federation of five tribes: The Tamaroas, Michigamies, Kaskaskias, Cahokias, and Peorias. The tribes had a distinct system regarding community and a communal code of conduct. Each tribe had a chief or leader who performed the legislative and judicial duties of the tribe. Because of the great respect for the leaders, judicial decisions were mostly enforced without force.

French explorers Jacques Marquette and Louis Joliet explored the Illinois River in 1673. As a result of their exploration, Illinois was part of the French empire until 1763, when it passed to the British as a result of the French and Indian War. In 1722, the first court in Illinois was established, with its primary purpose to resolve both civil and criminal matters.

George Rogers Clark claimed the Illinois Country for the Commonwealth of Virginia during his military campaigns there in 1778. The area was ceded to the new United States in 1783 and became part of the Northwest Territory. The Illinois-Wabash Company was an early claimant to much of Illinois. The Illinois Territory was created on February 3, 1809, with its capital at Kaskaskia. In 1784, the United States of America gained possession of Illinois. However, no legal form of government was established until the Congress of the United States passed the Northwest Ordinance of 1787. Illinois officially became the 21st state in the United States in 1818.

Illinois and Slavery Abolition

In 1720, five hundred slaves were sold to the settlers of Illinois. Prior to the passage of the Northwest Ordinance of 1787, there was no restriction on the owning of slaves. However, the Ordinance of 1787 stated: "There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted." Due to the uneasiness of the slave owners, the governors declared that the ordinance did not include slaves that were considered property prior to 1787. It was not until the constitution of 1818 that barred any slavery in the future, yet this did not include the slaves that were owned prior to Illinois becoming a state in the Union.

“In 1839 a suit was brought by the administrators of Nathan Cromwell against David Bailey, in the circuit court of Tazewell County, upon a promissory note made to Cromwell, in his lifetime, by Bailey, for the purchase of a negro girl named Nance. The plaintiff was represented by Judge Stephen T. Logan, and the defendant by Abraham Lincoln. Judgment was rendered upon the note by Judge William Thomas, who presided at the trial, in favor of the plaintiff for \$431.97. The defendant appealed the case to the Supreme Court, where it was contended the note was without consideration and void, as it was given as the purchase price of a human being who the evidence showed was free and therefore not the subject of sale. The Supreme Court reversed the trial court, the opinion being written by Judge Breese (3 Scam., 71) who held, contrary to the established rule in many of the southern states, that the presumption in Illinois was that a negro was free and not the subject of sale. This case established a broad principle in the jurisprudence of our State. Under the old rule the burden was upon the negro to establish that he was free, as the presumption obtained that a black man was a slave. Under the rule established in this case the presumption obtained that a black man was free, and the person who asserted he was a slave was required to bring forward his proof, which he often could not do (Hand, John P).”

Illinois is known as the "Land of Lincoln" because it is here that the 16th President spent most of his life, practicing law and living in Springfield. In 1837, with Lincoln's support and urging, the General Assembly voted to move the capital to Springfield. As early as 1840, Illinois was called the "Sucker State", a nickname with several possible reasons.

Illinois was not a strong anti-slavery state. In 1853, led by Democrat John A. Logan, the legislature passed a Black Code designed to keep free blacks out of the state. Chicago gained prominence as a Great Lakes port and then as a canal port after 1848, and as a rail hub soon afterward. By 1857, Chicago was Illinois' largest city.

In the 20th century, Illinois emerged as one of the most important states in the union with a population of nearly 5 million. By the end of the century the population would reach 12.4 million. The Century of Progress world's fair was held at Chicago in 1933. Oil strikes in Marion County lead to a boom in 1937, and by 1939 Illinois ranked 4th in U.S. oil production.

Following World War II, Argonne National Laboratory, near Chicago, activated the first experimental nuclear power generating system in United States in 1957. By 1960, the first privately financed nuclear plant in United States, Dresden 1, was dedicated near Morris. Chicago became an ocean port with the opening of the Saint Lawrence Seaway, in 1959. The seaway and the Illinois Waterway connected Chicago to both the Mississippi River and the Atlantic Ocean. In 1960, Ray Kroc opened the first McDonald's franchise in Des Plaines.

In 1970, the state's sixth constitutional convention authored a new constitution to replace the 1870 version. It was ratified in December.

The Illinois Constitution

Illinois has the distinct advantage of not only having one of the first truly unified court systems in the nation, but also having had the opportunity in the 1970 Constitution of refining and improving that system after a trial period. The 1964 Judicial Article established a model court system of simplicity, efficiency, and flexibility. After seven years of scrutiny and analysis this successful system was modified to eliminate some of the minor flaws. Illinois now has a judicial system to meet the needs of its citizens; a system built on tradition but designed with flexibility to accommodate future needs as well.

The Judicial Article of the Illinois Constitution of 1970 (Article VI) provides for a unified, three-tiered judiciary, comprising of the Circuit Courts, the Appellate Courts, and the highest Court in the State, the Illinois Supreme Court. Cases are normally channeled to the Supreme Court from the Appellate Court, but in cases where a Circuit Court has imposed a sentence of death, the law provides for an appeal directly to the Supreme Court, bypassing the Appellate Court.

Preamble to the Constitution of the State of Illinois

We, the People of the State of Illinois - grateful to Almighty God for the civil, political and religious liberty which He has permitted us to enjoy and seeking His blessing upon our endeavors - in order to provide for the health, safety and welfare of the people; maintain a representative and orderly government; eliminate poverty and inequality; assure legal, social and economic justice; provide opportunity for the fullest development of the individual; insure domestic tranquility; provide for the common defense; and secure the blessings of freedom and liberty to ourselves and our posterity - do ordain and establish this Constitution for the State of Illinois.

Bill of Rights

SECTION 1. INHERENT AND INALIENABLE RIGHTS

All men are by nature free and independent and have certain inherent and inalienable rights among which are life, liberty and the pursuit of happiness. To secure these rights and the protection of property, governments are instituted among men, deriving their just powers from the consent of the governed.

SECTION 2. DUE PROCESS AND EQUAL PROTECTION

No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws.

SECTION 3. RELIGIOUS FREEDOM

The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever be guaranteed, and no person shall be denied any civil or political right, privilege or capacity, on account of his religious opinions; but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of the State. No person shall be required to attend or support any ministry or place of worship against his consent, nor shall any preference be given by law to any religious denomination or mode of worship.

SECTION 4. FREEDOM OF SPEECH

All persons may speak, write and publish freely, being responsible for the abuse of that liberty. In trials for libel, both civil and criminal, the truth, when published with good motives and for justifiable ends, shall be a sufficient defense.

SECTION 5. RIGHT TO ASSEMBLE AND PETITION

The people have the right to assemble in a peaceable manner, to consult for the common good, to make known their opinions to their representatives and to apply for redress of grievances.

SECTION 6. SEARCHES, SEIZURES, PRIVACY AND INTERCEPTIONS

The people shall have the right to be secure in their persons, houses, papers and other possessions against unreasonable searches, seizures, invasions of privacy or interceptions of communications by eavesdropping devices or other means. No warrant shall issue without probable cause, supported by affidavit particularly describing the place to be searched and the persons or things to be seized.

SECTION 7. INDICTMENT AND PRELIMINARY HEARING

No person shall be held to answer for a criminal offense unless on indictment of a grand jury, except in cases in which the punishment is by fine or by imprisonment other than in the penitentiary, in cases of impeachment, and in cases arising in the militia when in actual service in time of war or public danger. The General Assembly by law may abolish the grand jury or further limit its use.

No person shall be held to answer for a crime punishable by death or by imprisonment in the penitentiary unless either the initial charge has been brought by indictment of a grand jury or the person has been given a prompt preliminary hearing to establish probable cause.

SECTION 8. RIGHTS AFTER INDICTMENT

In criminal prosecutions, the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation and have a copy thereof; to be confronted with the witnesses against him or her and to have process to compel the attendance of witnesses in his or her behalf; and to have a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed.

SECTION 8.1. CRIME VICTIM'S RIGHTS.

SECTION 9. BAIL AND HABEAS CORPUS

All persons shall be bailable by sufficient sureties, except for the following offenses where the proof is evident or the presumption great: capital offenses; offenses for which a sentence of life imprisonment may be imposed as a consequence of conviction; and felony offenses for which sentence of imprisonment, without conditional and revocable release, shall be imposed by law as a consequence of conviction, when the court, after a hearing, determines that release of the offender would pose a real and present threat to the physical safety of any person. The privilege of the writ of habeas corpus shall not be suspended except in cases of rebellion or invasion when the public safety may require it.

Any costs accruing to a unit of local government as a result of the denial of bail pursuant to the 1986 Amendment to this Section shall be reimbursed by the State to the unit of local government.

SECTION 10. SELF-INCRIMINATION AND DOUBLE JEOPARDY

No person shall be compelled in a criminal case to give evidence against himself nor be twice put in jeopardy for the same offense.

SECTION 11. LIMITATION OF PENALTIES AFTER CONVICTION

All penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship. No conviction shall work corruption of blood or forfeiture of estate. No person shall be transported out of the State for an offense committed within the State.

SECTION 12. RIGHT TO REMEDY AND JUSTICE

Every person shall find a certain remedy in the laws for all injuries and wrongs which he receives to his person, privacy, property or reputation. He shall obtain justice by law, freely, completely, and promptly.

SECTION 13. TRIAL BY JURY

The right of trial by jury as heretofore enjoyed shall remain inviolate.

SECTION 14. IMPRISONMENT FOR DEBT

No person shall be imprisoned for debt unless he refuses to deliver up his estate for the benefit of his creditors as provided by law or unless there is a strong presumption of fraud. No person shall be imprisoned for failure to pay a fine in a criminal case unless he has been afforded adequate time to make payment, in installments if necessary, and has willfully failed to make payment.

SECTION 15. RIGHT OF EMINENT DOMAIN

Private property shall not be taken or damaged for public use without just compensation as provided by law. Such compensation shall be determined by a jury as provided by law.

SECTION 16. EX POST FACTO LAWS AND IMPAIRING CONTRACTS

No ex post facto law, or law impairing the obligation of contracts or making an irrevocable grant of special privileges or immunities, shall be passed.

SECTION 17. NO DISCRIMINATION IN EMPLOYMENT AND THE SALE OR RENTAL OF PROPERTY

All persons shall have the right to be free from discrimination on the basis of race, color, creed, national ancestry and sex in the hiring and promotion practices of any employer or in the sale or rental of property.

These rights are enforceable without action by the General Assembly, but the General Assembly by law may establish reasonable exemptions relating to these rights and provide additional remedies for their violation.

SECTION 18. NO DISCRIMINATION ON THE BASIS OF SEX

The equal protection of the laws shall not be denied or abridged on account of sex by the State or its units of local government and school districts.

SECTION 19. NO DISCRIMINATION AGAINST THE HANDICAPPED

All persons with a physical or mental handicap shall be free from discrimination in the sale or rental of property and shall be free from discrimination unrelated to ability in the hiring and promotion practices of any employer.

SECTION 20. INDIVIDUAL DIGNITY

To promote individual dignity, communications that portray criminality, depravity or lack of virtue in, or that incite violence, hatred, abuse or hostility toward, a person or group of persons by reason of or by reference to religious, racial, ethnic, national or regional affiliation are condemned.

SECTION 21. QUARTERING OF SOLDIERS

No soldier in time of peace shall be quartered in a house without the consent of the owner; nor in time of war except as provided by law.

SECTION 22. RIGHT TO ARMS

Subject only to the police power, the right of the individual citizen to keep and bear arms shall not be infringed.

SECTION 23. FUNDAMENTAL PRINCIPLES

A frequent recurrence to the fundamental principles of civil government is necessary to preserve the blessings of liberty. These blessings cannot endure unless the people recognize their corresponding individual obligations and responsibilities.

SECTION 24. RIGHTS RETAINED

The enumeration in this Constitution of certain rights shall not be construed to deny or disparage others retained by the individual citizens of the State.

STATE STATUTES FOR CRIMINAL OFFENSES

<http://www.ilga.gov/legislation/ilcs/ilcs.asp>

Illinois Criminal Code of 1961 – 720 ILCS5, Section 1-2

The provisions of this Code shall be construed in accordance with the general purposes hereof, to:

(a) Forbid and prevent the commission of offenses;

- (b) Define adequately the act and mental state which constitute each offense, and limit the condemnation of conduct as criminal when it is without fault;
- (c) Prescribe penalties which are proportionate to the seriousness of offenses and which permit recognition of differences in rehabilitation possibilities among individual offenders;
- (d) Prevent arbitrary or oppressive treatment of persons accused or convicted of offenses.

Illinois Criminal Code of 1961 – 720 ILCS5, Section 1-3

No conduct constitutes an offense unless it is described as an offense in this Code or in another statute of this State. However, this provision does not affect the power of a court to punish for contempt or to employ any sanction authorized by law for the enforcement of an order or civil judgment.

COURTS IN ILLINOIS

The Supreme Court, highest tribunal in Illinois, has seven justices, elected from judicial districts for a term of 10 years. Three justices are elected from the First District (Cook County), and one from each of the other four districts. The Supreme Court has general administrative and supervisory authority over all courts in the state. This authority is exercised by the Chief Justice with the assistance of the Administrative Director and staff appointed by the Supreme Court. The Supreme Court hears appeals from lower courts and may exercise original jurisdiction in cases relating to revenue, mandamus, prohibition or habeas corpus.

The Appellate Court hears appeals from the Circuit Courts. There are five districts of the Appellate Court, and Judges are elected for 10-year terms. Cook County, which comprises the 1st District, has 18 Appellate Judges. The remaining 101 counties are divided into four districts that elect six Judges each. Additional Judges are assigned by the Supreme Court to the Appellate Court, temporarily, on a showing of need. Elgin is the seat of the 2nd District; Ottawa, the 3rd; Springfield, the 4th, and Mount Vernon, the 5th.

The Unified Trial Court in Illinois is the Circuit Court comprised of Circuit and Associate Judges. The state is divided in 22 judicial circuits, each having one Chief Judge elected by the Circuit Judges. The Chief Judge has general administrative authority in his or her circuit, subject to the overall administrative authority of the Supreme Court. Circuit Judges may hear any case assigned to them by the Chief Judge. Associate Judges may not preside over criminal cases in which the defendant is charged with an offense punishable by imprisonment for one year or more (felonies), unless approval is received from the Supreme Court. Circuit Judges are elected for a term of six years; Associate Judges are appointed by the Circuit Judges in accordance with Supreme Court rules for a four-year term.

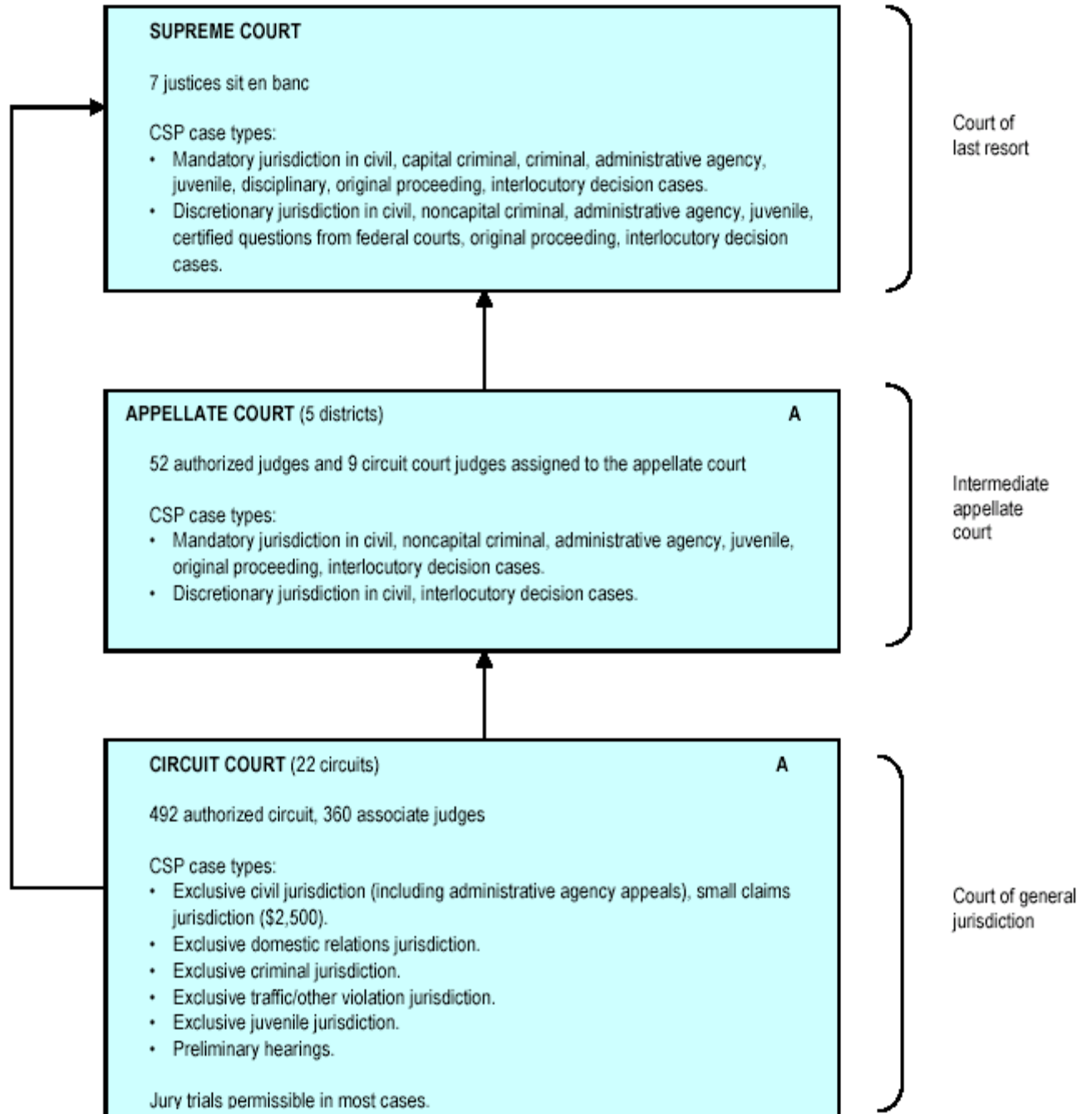
When a Supreme, Appellate or Circuit Court Judgeship is vacant or newly created, candidates are nominated at Primary Elections and elected at the General Election. However, any Judge previously elected may, at the expiration of his or her term, have his or her name submitted to the voters on a special judicial ballot without party designation and without an opposing candidate, on the sole question of whether he or she shall be retained in office for another term.

The Illinois Courts Commission, composed of one Supreme Court Justice, two Appellate Court Judges, two Circuit Judges and two citizens, has the authority after notice and public hearing (1) to remove from office, suspend without pay, censure or reprimand any member of the judiciary for willful misconduct in office, persistent failure to perform his or her duties or other conduct that is prejudicial to the administration of justice or that brings the judicial office into disrepute; or (2) to suspend, with or without pay, or retire any member of the judiciary who is physically or mentally unable to perform his or her duties.

JURY SELECTION

Prospective jurors names are drawn from a lot of combined lists of registered voters, licensed drivers, and holders of Illinois Identification cards and Illinois Disabled Person Identification Cards who reside in certain counties.

ILLINOIS COURT STRUCTURE



LANDMARK DECISIONS IN ILLINOIS

Escobedo v. Illinois, 378 U.S. 478 (1964)

Escobedo was arrested in connection with a murder and brought to the police station. He repeatedly asked to see his lawyer, but was never allowed out of the interrogation room. His lawyer even went so far as to come to the police station in search of him, but was denied access. Escobedo then confessed while under interrogation to firing the shot that killed the victim. As a result, he was soon convicted. Escobedo appealed to the Supreme Court and it overturned the conviction. The Court extended the "exclusionary rule" to illegal confessions and ruled that Escobedo's confession should not have been allowed in as evidence. The Court also defined the "Escobedo Rule" which holds that individuals have the right to an attorney when an "investigation is no longer a general inquiry...but has begun to focus on a particular suspect..." The ruling went on to detail that (Where) the suspect has been taken into custody...the suspect has requested...his lawyer, and the police have not...warned him of his right to remain silent, the accused has been denied...counsel in violation of the Sixth Amendment."

Witherspoon v. Illinois 391 U.S. 510 (1968)

Witherspoon was convicted of murder and sentenced to death by a jury in Illinois. An Illinois statute provides grounds for the dismissal of any juror with "conscientious scruples" against capital punishment. At Witherspoon's trial, the prosecution eliminated nearly half of the prospective jurors with qualms about capital punishment. The prosecution did not find out if most of the jurors dismissed would necessarily vote against capital punishment.

Witherspoon appealed, alleging that the dismissal of prospective jurors with qualms about capital punishment violated his Sixth Amendment right to an "impartial jury" and 14th Amendment right to due process. On appeal, the Illinois Supreme Court found that no constitutional violation took place.

In an opinion delivered by Justice Potter Stewart, the Court held 6-3 that Witherspoon's death sentence was unconstitutional. The Court reasoned that a jury composed after the dismissal of all who oppose the death sentence was biased in favor the death sentence; such a jury was not impartial and thus violated the Sixth and Fourteenth Amendments. The Court held that while jurors who say they will not impose the death sentence can be dismissed, jurors who simply oppose the death sentence as a personal belief may not. Justice William Douglas, concurring, argued that it also unconstitutional to dismiss prospective jurors who say they will never impose the death sentence.

Justice Hugo Black, with whom Justices John Harlan and Byron White joined, dissented. Douglas argued that the Constitution allows the dismissal of all jurors who oppose the death penalty personally, because they will be necessarily biased against the death penalty. In a separate dissent, White argued that the Illinois legislature was allowed to exclude "those with doubts" about "one of the punishments among which the legislature sought to have them choose...."

Munn v. Illinois 94 U.S. 113 (1876)

This case involved the famous opinion delivered by Chief Justice Morrison Remick Waite (1816-1888). In it, he upheld legislation proposed by the Grangers to regulate grain elevator rates, declaring that the general welfare requires that business interests be reined in by governmental authority. This decision also affected similar laws governing railroad rates; as they were also deemed private utilities serving the public interest, the laws governing their rates were constitutional as well. Both applications were considerably narrowed and weakened by the

decision in *Wabash, St. Louis & Pacific Railroad Company v. Illinois* (also known as the Wabash Case).

In *Munn v. Illinois*, the Supreme Court decided that the Fourteenth Amendment did not prevent the State of Illinois from regulating charges for use of a business's grain elevators, ignoring the question of whether Munn & Scott was a person. Instead, the decision focused on the question of whether or not a private company could be regulated in the public interest. The court's decision was that it could, if the private company could be seen as a utility operating in the public interest.

QUESTIONS FOR REVIEW

1. When did Illinois officially become a state?

- A. 1720
- B. 1970
- C. 1818
- D. 1865

Answer: C

2. True or False? Illinois has the distinct advantage of not only having one of the first truly unified court systems in the nation, but also having had the opportunity in the 1970 Constitution of refining and improving that system after a trial period.

Answer: True

3. Which of the following is not a court in the state of Illinois?

- A. Appellate
- B. Circuit
- C. Supreme
- D. Criminal

Answer: D

4. How are names drawn for prospective jurors?

- A. Lists of registered voters
- B. Licensed drivers
- C. Holders of Illinois Identification cards
- D. All of the above

Answer: D

5. True or False? The Appellate Court, highest tribunal in Illinois, has seven justices, elected from judicial districts for a term of 10 years.

WEB RESOURCES

- <http://www.19thcircuitcourt.state.il.us/bkshelf/resource/history.htm#1818> : Provides a complete history of the judicial system in Illinois
- <http://www.state.il.us/COURT/SupremeCourt/CourtsInIL.htm>: A comprehensive site regarding the court system in Illinois

- <http://law.onecle.com/illinois/720ilcs5/index.html>: The Illinois Criminal Code
- <http://www.iltrails.org/ilslavery.htm>: Read more about Slavery in Illinois
- <http://www.ilga.gov/commission/lrb/conmain.htm>: Constitution of the State of Illinois
- <http://www.historyillinois.org/hist.html>: Illinois History Resource Page
- <http://www.ilga.gov/legislation/ilcs/ilcs.asp>: Illinois' State Statute
- http://en.wikipedia.org/wiki/Illinois#Twentieth_century: Read more Illinois facts