



# Judicial Federalism

*(Concepts & Practices of Judicial Systems in Federal Countries)*

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# Structure of the Three Days Lecture

Day 1- The Concept of Judicial Federalism

Day 2 - Balancing Judicial Powers  
Between Federal and State Levels

Day 3 - The Importance of Judicial  
Independence in Federalism

# Outlines (Day 1)

## Session 1 – Lecture (1 hour and 45 Minutes)

- Introduction to Judicial Federalism
- Myanmar's judicial system: A Brief overview
- The Role of Judiciary in Federalism
- The Practice of Judicial Systems in Federal Countries

## Session 2

- Group Work Discussion (30 minutes)
- Group Presentation (30 minutes)

# What is Federalism?

- ❖ **Federalism** is a system of government in which authority is
  - ✓ divided between a Federal (Union/National/Central) government and Subnational (States/Regional/ Provincial/Cantons- Constituent Units) governments,
  - ✓ allowing each level to operate independently within its own sphere of power
- ❖ This **division of powers** ensures a balance between unity and regional diversity, preventing the concentration of authority in one level of government
- ❖ Through a constitution, responsibilities and functions are clearly distributed to promote efficiency, accountability, and cooperation among the different levels of government
- ❖ Federalism ensures **national integration** while protecting the **autonomy of state/regional governments**

# What is Judicial Federalism?

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- ❖ A system where **judicial authority** is divided between national and sub-national (state, regional, or provincial) courts
- ❖ Courts at **both levels have the power** to interpret laws
- ❖ Focus on different types of cases based on the constitution or legal structure
- ❖ **The national** (or federal) courts handle matters that involve the constitution or federal laws, **while state or regional courts deal with local laws and issues within their jurisdictions.**
- ❖ e.g. The US – **federal** (take on issues related to the U.S. Constitution or federal laws, such as immigration and civil rights)/ - **state courts** (handle cases like family law or local criminal offenses)



# Judicial Federalism

Having multiplied the number of governments

A federal democracy must provide for the allocation of power and responsibility among them,

It must devise mechanisms and procedures for resolving disagreements and settling boundary conflicts

\*\*e.g., Austria, Canada, and India — have not instituted complete sets of courts at both the federal and component-unit levels

# Continue....

## Judicial Federalism

- Dual Judiciary (Have Separate Court Systems – within jurisdiction of federal (issues involving national law or constitutional matters) or state (focus on regional legislation))
- Judicial Review (has the power to review laws for constitutionality)
- Federal-State Relations (resolve intergovernmental disputes and ensure cooperative federalism)
- Human Rights and Minority Protections (Courts interpret laws to safeguard federal human rights standards and minority protections, sometimes influenced by international treaties.)

# Key Elements of Judicial Federalism

- ❖ Court Structure
  - Lower Courts (Trial Courts) handle cases at the initial stage
  - Appellate Courts
  - Supreme or Constitutional Courts
- ❖ Judicial Hierarchy
- ❖ Types of Jurisdiction
- ❖ Judges and Their Roles
- ❖ Criminal and Civil Proceedings
- ❖ Judicial Independence
- ❖ Balance Power



## The Role of Judiciary in Federalism

- ❖ plays a crucial role in maintaining the federal balance by interpreting the constitution,
- ❖ resolving disputes between the different levels of government, and
- ❖ ensuring that both national and subnational laws comply with the constitution.
- ❖ The judiciary, especially at the federal level, safeguards the rights of the states or provinces while ensuring that national laws are uniformly applied

# Trend of Myanmar Legal System

- **Myanmar Kings:** criminal laws, case laws, custom, code of law, etc.
- **British Colonial (1885):** applied India's criminal laws and civil laws, different level of courts, code of custom and custom remained
- **Beyond Independent and parliament era:** Supreme court, single judge system,. 1947 constitution
- **Revolutionary council (1962):** single judge system substituted by public representative judge

# Continue...

- ❖ **Socialist (1974-88):** executive body and judicial body were under parliament, the highest court is accountable to parliament and national council, 1974 constitution
- ❖ **The State peace and development council (1988-2000):** military government, supreme court, state and division courts, district, tsp etc.
- ❖ **2008 Constitution:** Unique Combination of Customary laws, Case law, Enacted Laws

**Continue...**

## Under the 2008 Constitution

- ❖ Practice Mixed Common Law and Civil Law legal system
- ❖ Include a mixed of Customary Laws, Statutes Laws, Case Laws
- ❖ Since the 2021 military coup, Military power heavily influencing judicial decisions (human rights abuses and the erosion of the rule of law in Myanmar)

# Myanmar's Judicial System: A Brief Overview

Single-hierarchy court system under the  
2008 Constitution

1. General Courts
2. Constitutional Tribunal
3. Military Courts

# Key Features of a Federal Judicial System

Constitutional Framework

Dual Court System

Supremacy of Federal Law

Judicial Review

Appellate Structure

Coordination Between Courts

# Functions of the Judicial System in Federal Countries



Interpretation of Laws



Dispute Resolution



Protection of Rights



Constitutional Review



Precedent Setting

# Interpretation of Laws

Involves a multi-layered legal system

Constitutional Supremacy

- Courts must interpret laws in accordance with Constitutional Provisions
- Federal and States Laws align with Constitutional Principles

Division of Judicial Powers

- Reserved for the Federal Government
- Delegated to the States or Provinces

**\*\*Courts interpret laws ---within the jurisdiction of federal or state authorities**

# Dispute Resolution

Refers to the various methods used to resolve conflicts or disagreements between parties

- ❖ Negotiation
- ❖ Mediation
- ❖ Arbitration
- ❖ Litigation
- ❖ Conciliation



# Protection of Rights

- ❖ Managed through a combination of federal and state laws
- ❖ Both government levels responsible for safeguarding individual rights
  - Constitutional Guarantees
  - Dual Protection
  - Judicial Oversight
  - Human Rights Laws
  - International Influence



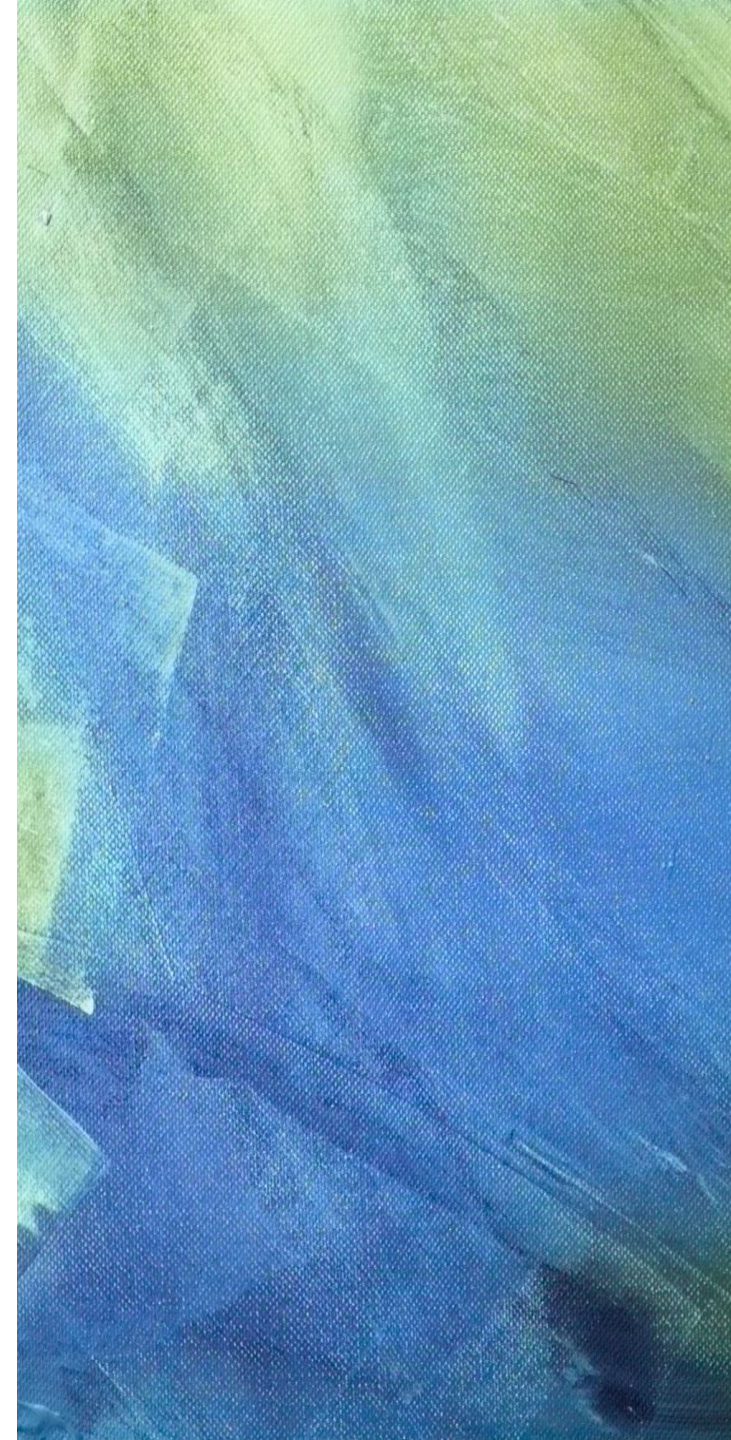
# Constitutional Review

The process by which courts evaluate whether laws or government actions comply with the constitution

The supreme or constitutional courts, have the power to review laws and executive actions to ensure they align with constitutional principles

Courts can declare laws or actions unconstitutional, invalidating them ----(protect individual rights and prevents abuses of power)

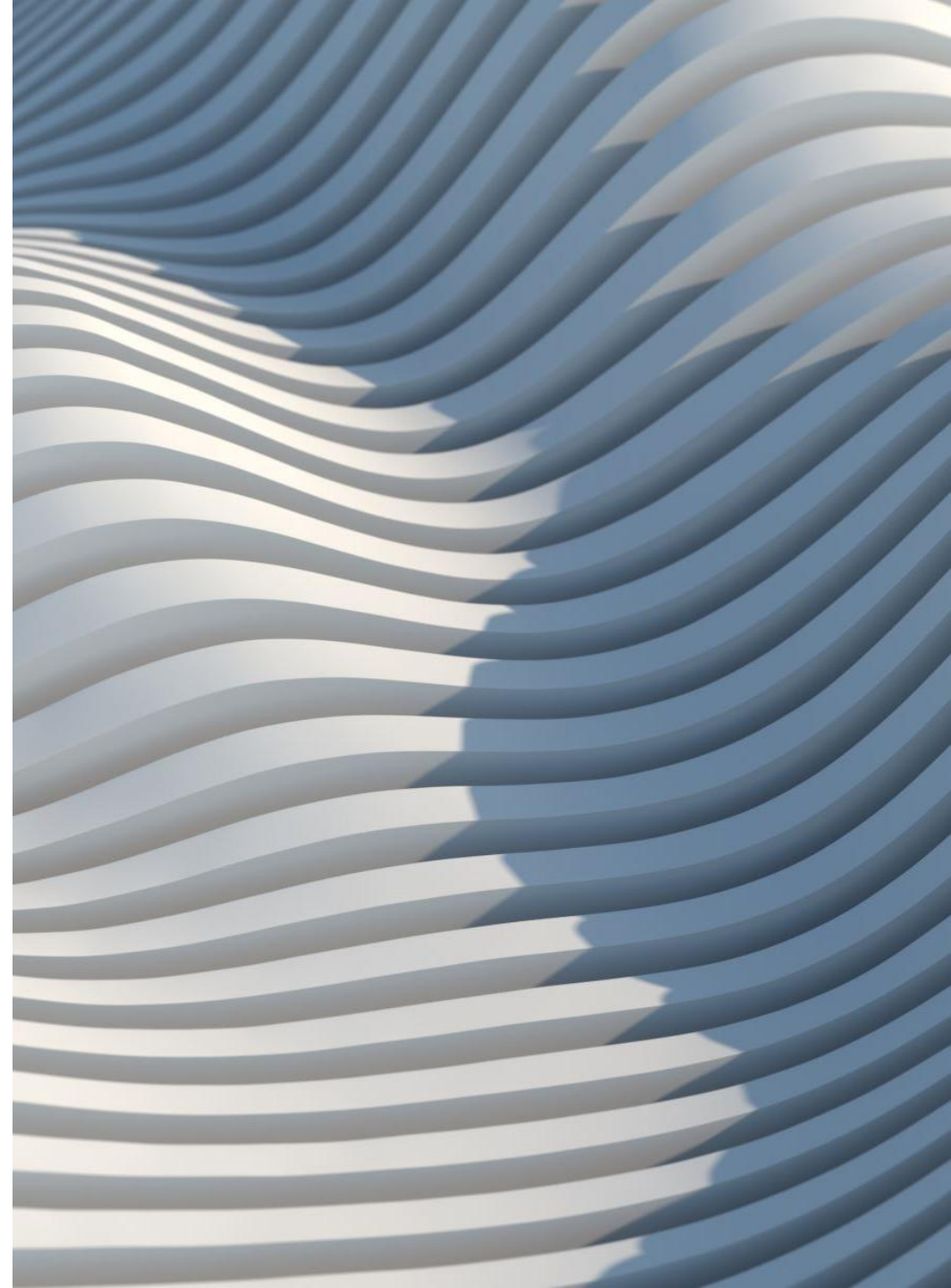
Enforcing Division of Powers



# Precedent Setting

Refers to the practice where judicial decisions establish legal principles or interpretations that guide future cases

Ensures consistency and predictability in the application of law across different jurisdictions within the federal system



# The Practice of Judicial Systems in Federal Countries



SINGLE COURT



DUAL COURT



INTEGRATED COURT



SINGLE-INTEGRATED  
COURT

# Single Court System

The country operates under one unified judiciary

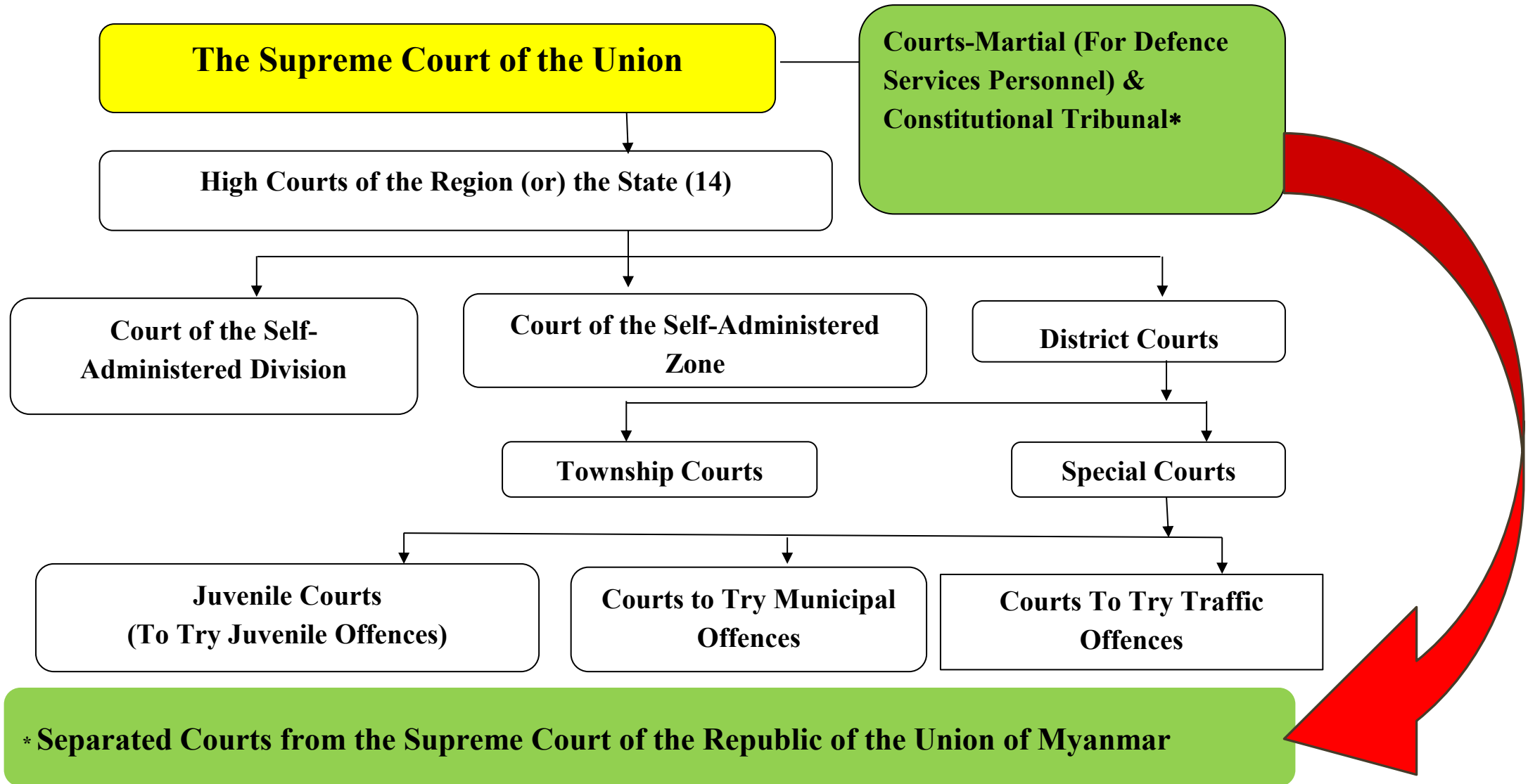
No separate federal and state courts

All cases are heard within the same court hierarchy

The highest court overseeing lower courts

E.g. – Austria, Switzerland, Myanmar etc.

# Hierarchy of Courts in Myanmar (Judicial Structure)



## **Dual Court System**

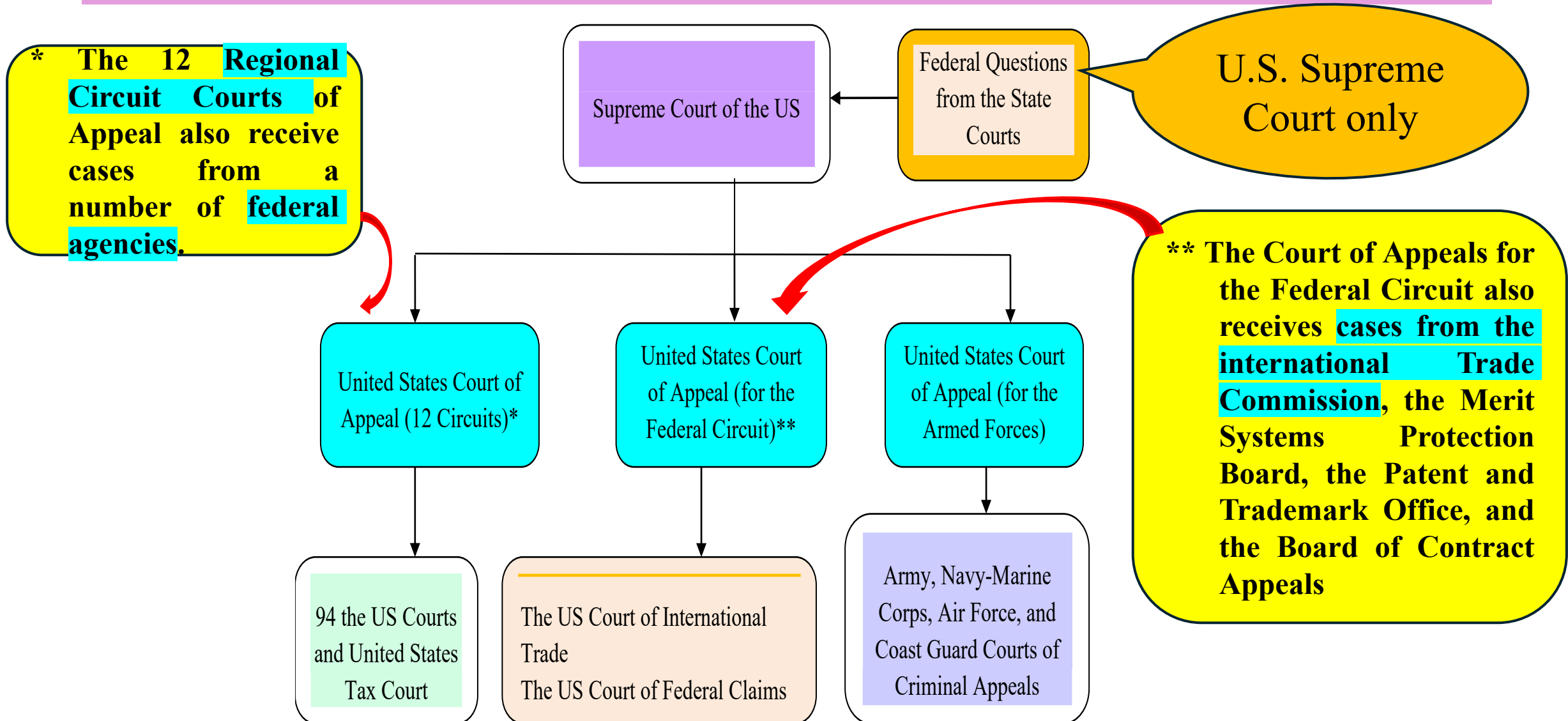
There are two parallel systems of courts

One at the national (or federal) level and another at the regional or state level

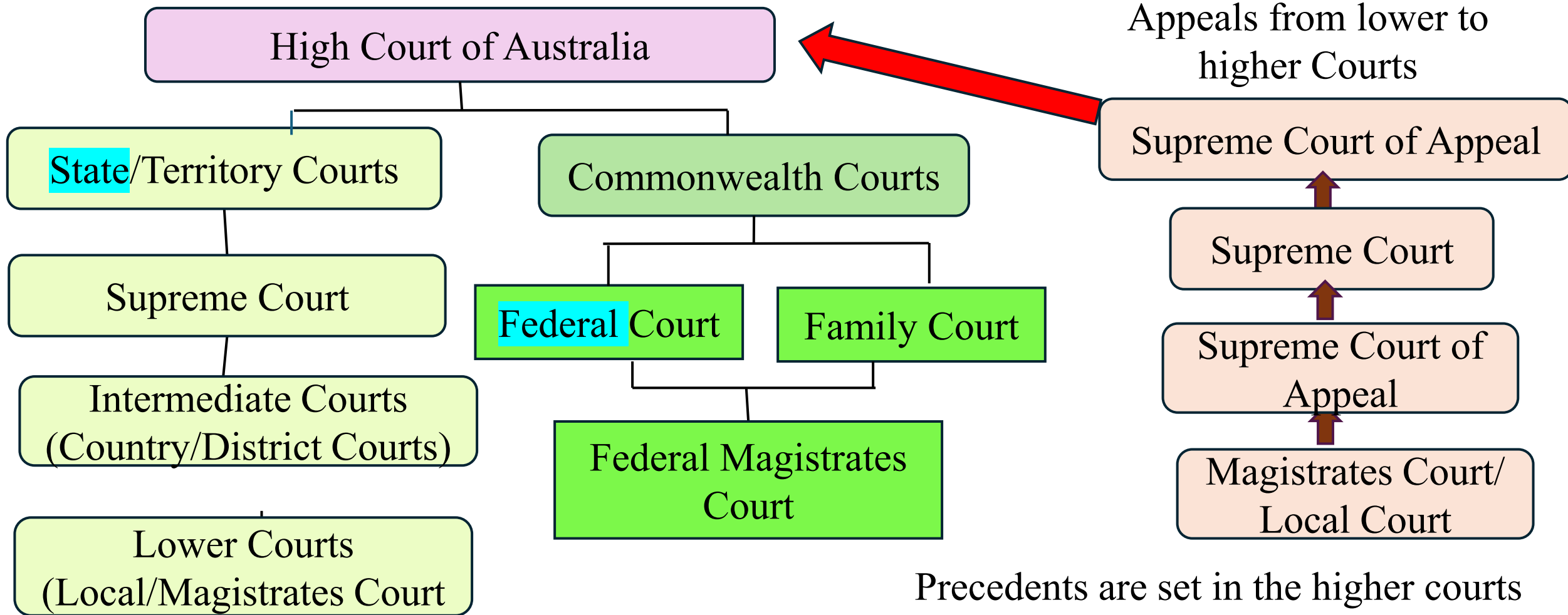
Each system has its own jurisdiction and authority over different types of legal matters

E.g - United States, Australia etc.

# Hierarchy of Courts in the United States



# Hierarchy of Courts in Australia



Appeals from lower to higher Courts

Precedents are set in the higher courts and must be followed in the lower courts

# Integrated Court System

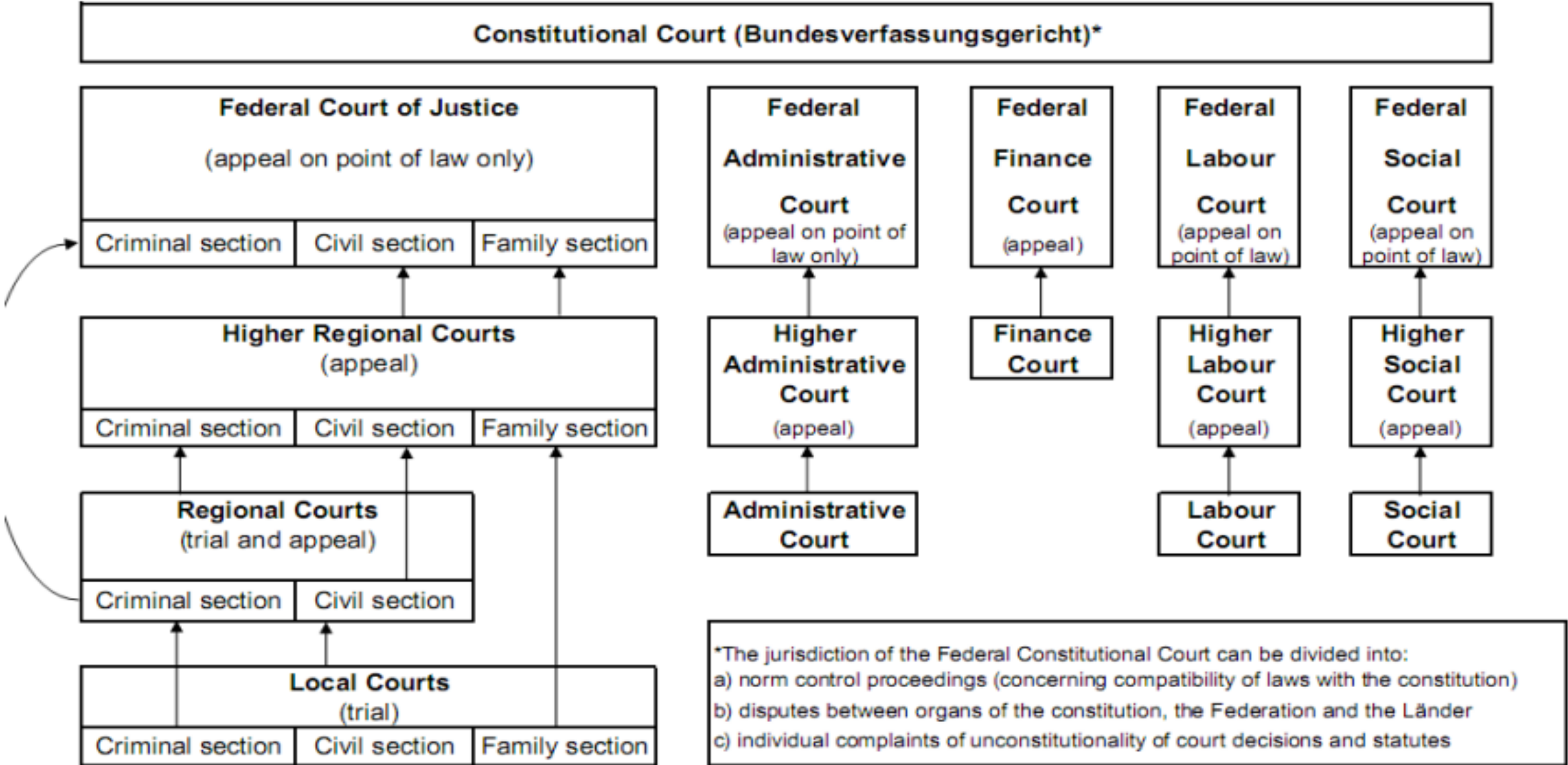
Blends features of both dual and single court systems

Jurisdiction - civil, criminal, or constitutional matters

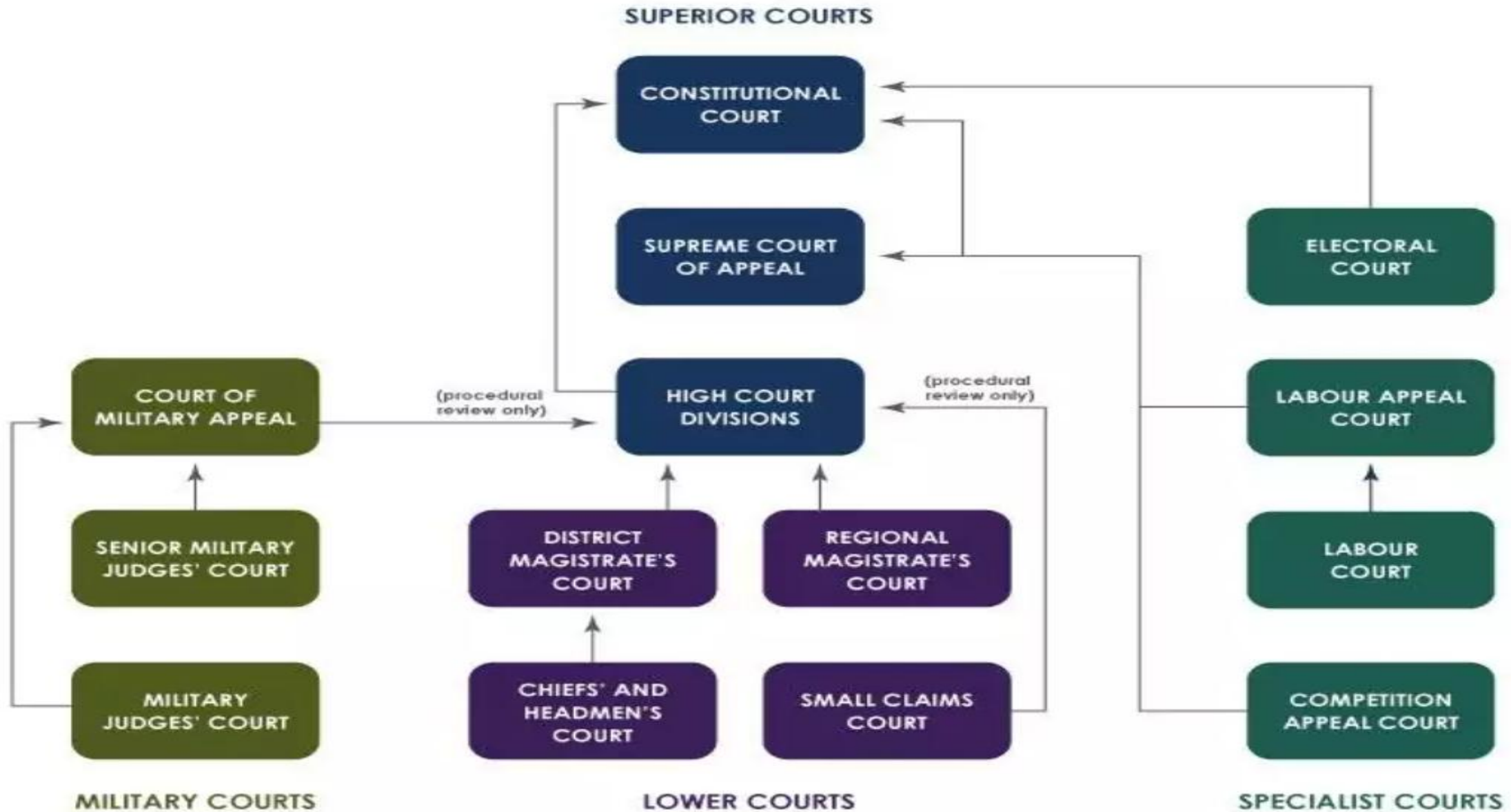
There is a high level of coordination between different courts, often under a common hierarchy

E.g. Germany, South Africa

# Hierarchy of Courts in Germany



# Hierarchy of Courts in South Africa



# Single-Integrated Court System

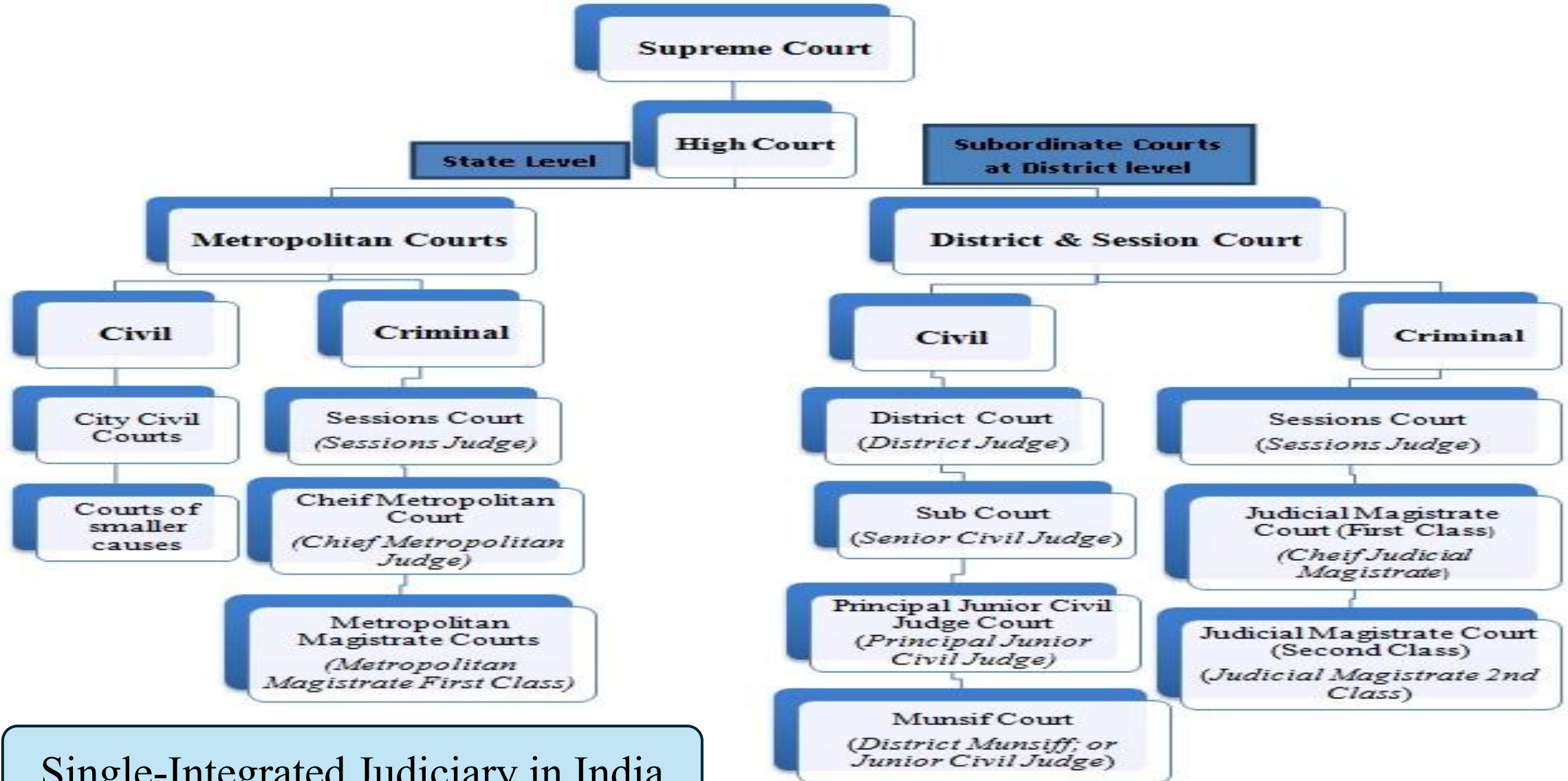
One unified structure for all ordinary civil and criminal courts, instead of separate federal and state court systems

Headed by one apex court (e.g. SC) whose decisions bind all lower courts

Higher courts exercise supervisory and sometimes administrative control (e.g., transfers, practice rules, precedents) over lower courts, ensuring uniform procedures and interpretations of law

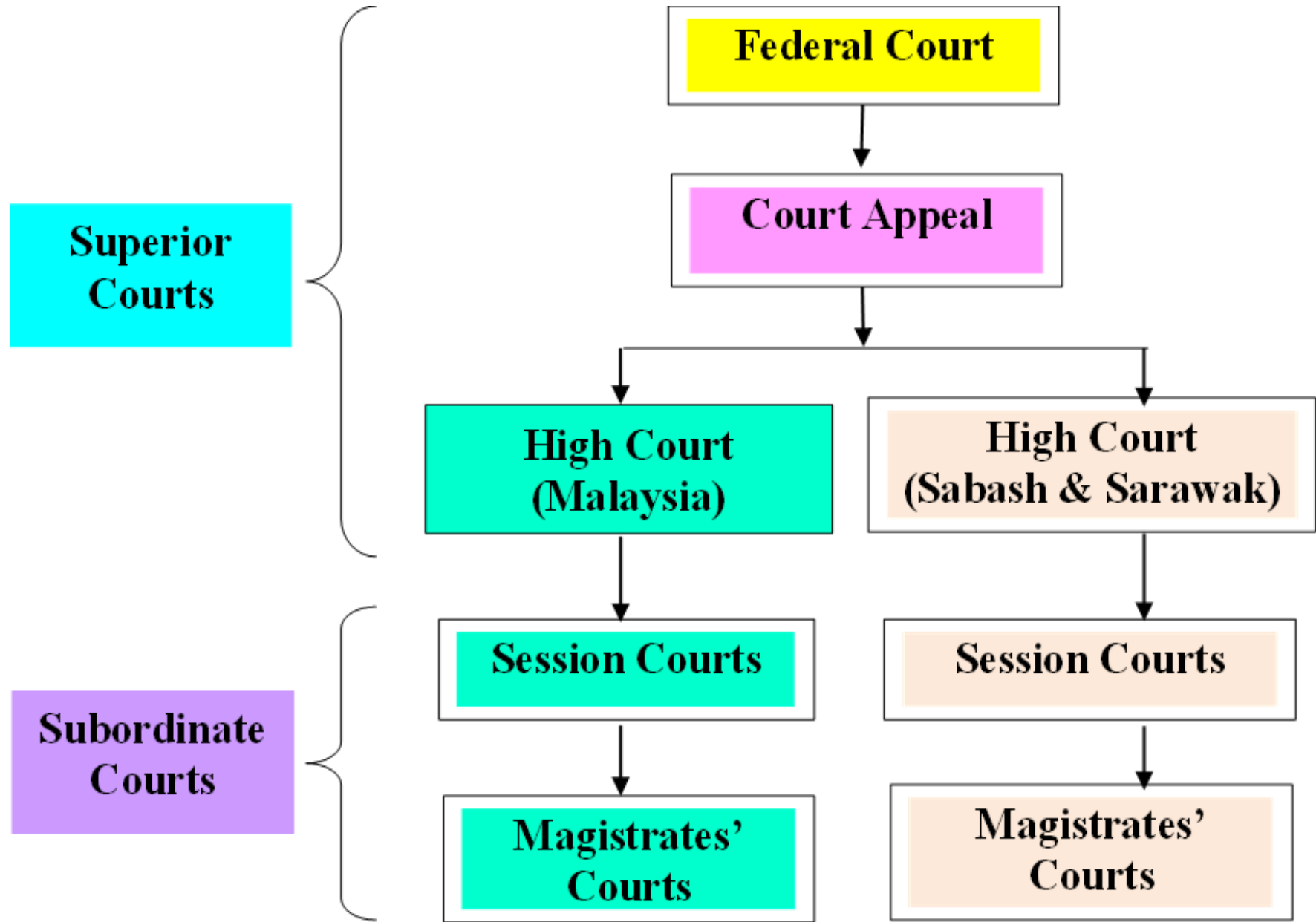
E.g - India, Malaysia etc.

# Hierarchy of Courts India



Single-Integrated Judiciary in India

# Hierarchy of Courts in Malaysia



**Any  
questions**





# Next- Discussion Time

