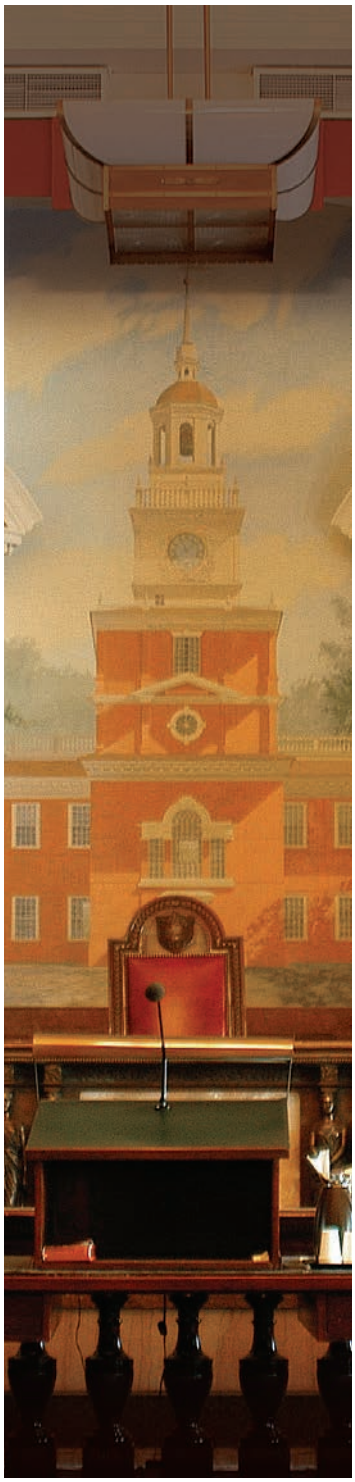


THE SUPREME COURT

OF PENNSYLVANIA

"The Supreme Court of Pennsylvania shall consist of the Chief Justice of Pennsylvania and six associate justices. The court shall be the highest court of this Commonwealth and in it shall be reposed the supreme judicial power of the Commonwealth."

42 Pa. Cons. Stat. § 501

The Supreme Court of Pennsylvania – arguably the oldest appellate court in British North America – predates the United States and has its roots in the early years of William Penn's "Holy Experiment." This brief history celebrates the 300th anniversary of the 1722 Judiciary Act and highlights the Court's long history and significant decisions.

The Supreme Court's Powers

While many think a supreme court's primary responsibility is hearing appeals from lower courts, the powers of the Supreme Court of Pennsylvania can affect almost every aspect of Commonwealth citizens' lives, from immediately hearing matters of public importance to regulating the state courts and practice of law. Strikingly, these powers do not derive from a single source or date: some come from statute, others derive from the Pennsylvania Constitution, and most have evolved over time.

Appellate Authority

The Supreme Court of Pennsylvania can accept appeals from final orders of the state's intermediate appellate courts (the Superior Court and the Commonwealth Court). In addition to this acceptance of review, the Court also may take direct appeals from Pennsylvania's courts of common pleas on certain types of matters, and from some constitutional and judicial agencies. Unlike the intermediate appellate courts, the Supreme Court has discretion to decide which cases it will hear on appeal.

Commonwealth v. Edmunds

In *Edmunds*, the Court accepted review of a Superior Court ruling and issued a landmark decision that established a four-part protocol that lawyers and litigants should follow in briefing and arguing all state constitutional issues. *Edmunds* has become a model for state supreme courts and jurists nationwide as they analyze state constitutional issues.

Extraordinary Jurisdiction

"…the Supreme Court may, on its own motion or upon petition of any party, in any matter pending before any court or magisterial district judge of this Commonwealth involving an issue of immediate public importance, assume plenary jurisdiction of such matter at any stage thereof and enter a final order or otherwise cause right and justice to be done."
42 Pa. Cons. Stat. § 726

In matters of "immediate public importance," the parties – and the public – may not have the luxury of waiting for a case to be decided by a lower court. The Court recently has applied this jurisdiction to invalidate a Congressional redistricting scheme as unconstitutional and create a process for a redistricting plan to be put in place before the next election. *League of Women Voters v. Commonwealth*, 178 A.3d 737 (Pa. 2018)

Extraordinary jurisdiction sometimes is confused with King's Bench but is narrower in that it applies only to cases that are pending in a state court.

King's Bench Powers

"The Supreme Court shall have and exercise …the powers of the court, as fully and amply, to all intents and purposes, as the justices of the Court of King's Bench, Common Pleas and Exchequer, at Westminster, or any of them, could or might do on May 22, 1722."
42 Pa. Cons. Stat. § 502

"The jurisdiction of this court [of king's bench] is very high and transcendent. It keeps all inferior jurisdictions within the bounds of their authority, and may either remove their proceedings to be determined here, or prohibit their progress below."
4 William Blackstone, Commentaries *42

Though rarely used, King's Bench powers are key to the Court's ability promptly to address and resolve matters of great public importance in the Commonwealth. King's Bench jurisdiction extends beyond extraordinary jurisdiction to allow the Court to take jurisdiction *where no case is pending*. The Court has invoked this power in situations such as public employee strikes and judicial misconduct cases.

Rulemaking and Supervisory Authority over Lower Courts

"The Supreme Court shall have the power to prescribe general rules governing practice, procedure and the conduct of all courts…"
Art. V. §10(c) of the Pennsylvania Constitution of 1968

The 1968 Pennsylvania Constitution confirmed many powers the Court already had, including its King's Bench powers to address important legal questions. This confirmation was necessary; prior to 1968, Pennsylvania's procedural law came from both legislatively-created statutes and court-promulgated rules, with the statutes having precedence. The new constitutional provisions clarified that procedural rule-making was the Court's province and allowed

it to promulgate unified procedural rules governing evidence and criminal, civil, domestic relations, juvenile court, orphans' court, and appellate procedure.

Supervising and Regulating the Practice of Law

"The Supreme Court shall have the power to prescribe general rules … for admission to the bar and to practice law…."
Art. V. §10(c) of the Pennsylvania Constitution of 1968

The 1968 Constitution granted the Court the power to regulate the practice of law and lawyers' admission to practice. Numerous boards assist in this function, including the Pennsylvania Board of Law Examiners, the Disciplinary Board, and the Continuing Legal Education Board. In 1988, the Court promulgated the Pennsylvania Rules of Professional Conduct, which guide the Commonwealth's lawyers in matters of ethics and practice.

Original Jurisdiction

"The Supreme Court shall have original but not exclusive jurisdiction in all cases of:
(1) Habeas corpus.
(2) Mandamus or prohibition to courts of inferior jurisdiction.
(3) Quo warranto as to any officer of Statewide jurisdiction."
42 Pa. Cons. Stat. § 721

Original jurisdiction is another protective tool the Court may employ to protect against abuse and to compel government and judicial actors to perform necessary actions. As with extraordinary jurisdiction and its King's Bench powers, the Court has been restrained in using its original jurisdiction.

1992 Port Authority of Allegheny County drivers' strike

At the Pittsburgh mayor's request, the Court exercised immediate jurisdiction using its King's Bench powers and found the city had standing to intervene in the strike, another instance of quick action preventing long litigation in a matter of great public importance.

Pennsylvania's Early Attempts at a Supreme Court

"all courts shall be open, and justice shall neither be sold, denied nor delayed"

Frame of Government of Pennsylvania and Laws Agreed Upon in England (May 5, 1682)

Courts of the European Settlers Prior to William Penn

William Penn did not create the first European-styled courts in Pennsylvania. Beginning in 1638 and continuing until 1664, the Swedish colonists and Dutch colonists established control in the tidewater areas of what is now the State of Delaware, southern New Jersey, and southeastern Pennsylvania. The Dutch established their own courts, with schepens (justices) having civil and criminal jurisdiction, and appeals to the director general and council of New Netherlands were allowed for criminal cases or judgments larger than 100 guilders.

When England took control of New Netherland in 1664, English authority replaced that of the Dutch in the Delaware Valley. The English courts initially incorporated both aspects of the existing Dutch courts and practices from the New England colonies. In 1676, the Duke of York gave more exact instruction on the courts' jurisdiction, frequency, and fees. Again, appeals stayed relatively local, as they went to New York.

The 1670 Trial of William Penn in England

William Penn's experience as a defendant in the English courts likely influenced his views on the entire English system of law. In 1670, Penn and William Mead, both Quakers, were arrested after attending a meeting for worship. Penn demanded to know the law under which he was charged, to which the court vaguely responded the "common law." Despite direction from the court and threats from court and mayor, the jury found Penn and Mead not guilty. The infuriated court fined and imprisoned the jury, Penn, and Mead.

William Penn mural painted by Edward Trumbull in 1923 and mounted in the Supreme Court courtroom in Pittsburgh.

Penn's "Holy Experiment"

In the 1681 Charter for the Province of Pennsylvania, Charles II granted Penn the power **"to doe all and every other thing and things, which unto the compleate Establishment of Justice, unto Courts and Tribunalls, formes of Judicature, and manner of Proceedings doe belong…, And by Judges by them delegated, to award Processe, hold Pleas, and determine in all the said Courts and Tribunalls all Actions, Suits, and Causes whatsoever, as well Criminall as Civill, Personall, reall and mixt."**

Penn lost little time in formulating a new government. Penn saw Pennsylvania as an opportunity to create a very different social construct, as he described in a 1681 letter to James Harrison (who later would become a judge in the colony):

"[t]hat an example may be set up to the nations; there may be room there, though not here, for such an holy experiment."

Penn's 1682 Frame of Government and Laws Agreed Upon in England reflected his utopian hopes. In Pennsylvania courts, parties would plead cases

themselves, or be represented by friends. Judges would be nominated by an elected provincial Council and approved by the governor, and Penn allowed himself the power to nominate and appoint judges, who would be allowed to hold their office **"for so long time as every such person shall well behave himself in the office…and no longer".**

But vision and practice soon ran afoul of one another. In the following forty years, the Pennsylvania colonists, through their General Assembly, repeatedly passed laws to create and improve their courts, and the Crown repeatedly disallowed them.

Pennsylvania courts in disarray – but moving toward a final form

As indicated by the numerous acts the General Assembly passed in the span of thirty years – and their subsequent disallowances – Pennsylvania courts' powers and structures remained in flux throughout the 17th and early 18th centuries. The courts became caught up in political clashes and rivalries between the legislature and the governor, between the colonists and Penn, between Anglicans and Quakers, and between the lower counties (now Delaware) and the rest of the colony. Adding to the disarray was the difficulty in finding suitable justices, as few people had the needed training, compensation was low, and riding circuit (hearing cases in outlying counties) was time-consuming.

This tumult had its benefits, however. Out of the frequent debates and court changes emerged a growing consensus that a supreme court with clearly-defined powers was the key to a functioning judiciary.

The 1722 Judiciary Act

"That there shall be holden and kept … a court of record …which said court shall be called and styled the Supream Court of Pennsylvania."

1722 Judiciary Act Sec. VI

A milestone in the Pennsylvania judiciary's development

Although several earlier acts passed by Pennsylvania's General Assembly created a Supreme Court for Pennsylvania, the British Crown disallowed each of them. The 1722 Judiciary Act, though incorporating many elements from earlier acts, was the first to pass this hurdle. As a result, the Supreme Court of Pennsylvania marks its anniversary as a permanent judicial body from the 1722 Act.

1682

Frame of Government and Laws Agreed Upon in England

- Gave provincial council power to erect courts (with governor) and nominate judges, which governor approves
- Directed parties to plead cases themselves, or represented by friends

Voted down by Pennsylvania's General Assembly

1684

Act passed by General Assembly

- 5 judges appointed by the proprietor (Penn), who would go on circuit into each county
- Hear and determine all appeals from the lower courts
- Hear all causes not determinable in the county courts

Disallowed by the Crown in 1693

1690

Act passed by General Assembly

Established judicial system including a provincial court

- 5 judges
- Hear appeals from county courts

Disallowed by the Crown in 1693

1701

Act passed by General Assembly

Comprehensive judicial reform, including Provincial Councils' appellate function and renamed high court as Supreme Provincial Court

- 5 judges, appointed by the governor
- Courts were to follow "the methods and practice of the Kings court of common pleas in England"

Disallowed by the Crown in 1705

Political maneuvers and personal rivalries

David Lloyd was instrumental in assuring passage of the 1722 Judiciary Act. Lloyd had been appointed Chief Justice in 1718 and simultaneously served in the Pennsylvania General Assembly as Speaker of the House. He thus had a vested interested in passing the Judiciary Act of May 22, 1722.

Acts passed by Pennsylvania's General Assembly had to be submitted to the Crown for approval, however, a hurdle that proved the downfall of previous acts attempting to establish a Pennsylvania judiciary. Acts needed to be submitted to the Crown within five years of passage, and the Crown had six months to approve or disapprove them.

It remains a mystery why the Board of Trade, an English government entity overseeing English colonies, did not always fulfill its obligation to present colonial laws to the Crown for approval in a timely manner: an agent for Pennsylvania stated he found some acts "laid up in a by corner of the Broad of Trade and covered very thick with dust." This group of acts likely included the 1722 Act, which appeared in a list the Board of Trade considered in 1739, and which the Board did not find to have been approved. This conclusion has been confirmed by legal scholars.

In the meantime, the Judiciary Act of 1727 had been submitted, but it the Crown repealed it in 1731. As a result of the 1727 Act's repeal, the 1722 Act was revived and became law due to the lapse of the Crown's allotted approval time. Despite its singular history, the 1722 Act has stood the test of time.

David Lloyd

David Lloyd's influence on early Pennsylvania law and courts cannot be understated. He was born in Wales and studied law in England, then provided legal counsel to William Penn regarding his Pennsylvania proprietorship.

Penn brought Lloyd to Pennsylvania to become its first Attorney General in 1686. Lloyd quickly became involved in Pennsylvania government. He first was elected to General Assembly in 1693 and was re-elected 22 more times, with a reputation as a voice against the proprietary (Penn and Penn's heirs). Lloyd served as Speaker of the Assembly for 14 terms. Lloyd authored and influenced numerous acts, including the Judiciary Acts of 1701 and 1710.

Lloyd became Pennsylvania's chief justice in 1718 while continuing to serve in the General Assembly. While not an author of the Judiciary Act of 1722, Lloyd's political acumen and influence helped to assure its passage.

What powers did the 1722 Judiciary Act give the Supreme Court?

The 1722 Judiciary Act established a Supreme Court that would be composed of three justices who had lifetime appointments. The Court combined appellate and trial functions, including King's Bench jurisdiction, appellate functions, and jurisdiction over capital crimes. The 1722 Act, however, did preserve the right of appeal to the Crown or courts appointed to hear appeals from the colonies.

1706

Provincial Governor John Evans issued ordinance

Created Supreme Court

- High court consists of chief judge and 2 or more associates, which the governor could remove at his pleasure
- Would decide cases taken up on writs of habeas corpus, certiorari, or error

General Assembly balked but Governor and his successor assembled courts by proclamation

1710

General Assembly Bill

Created Supreme Court

- 4 judges appointed by the governor
- Returned criminal case responsibilities to the Supreme Court

Disallowed by the Crown in 1713

1715

General Assembly Act

Act for erecting a Supreme or Provincial Court of Law & Equity

- Jurisdiction in all matters that could be heard in other courts
- Had criminal case responsibilities and would handle capital cases

Disallowed by the Crown in 1719

1722

Act passed by General Assembly

Created Supreme Court

Allowed by the lapse of the Crown's allotted approval time

1727

Act passed by General Assembly

Created Supreme Court

Disallowed by the Crown in 1731

The Supreme Court of Pennsylvania's broad jurisdiction thus fulfilled William Penn's hopes for a court and, half a century later, became a model for a national Supreme Court, as envisioned in Article III of the United States Constitution.

The Court's Evolution with the Pennsylvania Constitution

A Revolutionary Constitution

The Pennsylvania Constitution of 1776 predated and influenced the Federal Constitution. The Pennsylvania Constitution, among others, guaranteed the right to a public trial, the right to bear arms, the right to be free from unreasonable searches and seizures, and freedom of religion, concepts that later would be found in the Federal Constitution's Bill of Rights.

The 1776 Constitution also provided "fixed salaries" to Supreme Court justices, a protection against the legislature's using compensation to reward or punish judicial actions. Together with its prohibition that judges "shall not be allowed to sit as members in the continental congress, executive council, or general assembly, nor to hold any other office civil or military, nor to take or receive fees or perquisites of any kind," the 1776 Constitution provided the Commonwealth's Supreme Court an unusual degree of independence.

Continuing Change

Over the next 200 years, Pennsylvania constitutions, constitutional amendments, and statutes changed the Commonwealth's highest court in areas ranging from term length to the Court's powers.

1776 Constitution

Term length is seven years, but justices can be reappointed.

Fixed salaries instituted.

1790 Constitution

Justices have life terms (during good behavior)

Justices are appointed by the governor.

Various acts from 1799-1834

Circuit courts are created and abolished several times, finally ending in 1834 (thus ending the Supreme Court's trial jurisdiction in civil matters, except in Philadelphia)

1838 Constitution

Term length decreased to 15 years

Justices "required to be learned in the law."

Justices must receive adequate compensation, which cannot be diminished during the justice's tenure.

The High Court of Errors and Appeals

For a period, the Supreme Court of Pennsylvania was not the highest court in the Commonwealth. In 1780, the General Assembly passed an act creating a High Court of Errors and Appeals to replace the English Privy Council's previous role in overseeing the Supreme Court. The High Court included the Supreme Court justices, as well as judges from other courts and three commissioned persons. It met once a year.

In 1806, the General Assembly passed an act to "alter the Judiciary System," which included abolishing the High Court of Errors and Appeals, effective 1808. During its 28-year tenure, the High Court heard only 33 cases.

Old City Hall, Philadelphia

1850
Constitutional amendment

Justices are to be elected, not appointed.

1874
Constitution

Term length increased to 21 years, but justices cannot serve a second term

Supreme Court increased from five to seven justices. Nisi prius (which had allowed the Supreme Court to have original jurisdiction in some circumstances) abolished.

1968
Constitution

Term decreased to 10 years, and justices can run for re-election

Judiciary reorganized into the Unified Judicial System, giving the Supreme Court general supervisory and administrative authority over the entire Pennsylvania judiciary and the power to promulgate rules of practice, procedure, and conduct.

Decisions and Actions: Constitutional Law and Civil Rights

"We possess … the power of declaring a law to be unconstitutional, and such power has heretofore been exercised."

Hubley's Lessee v. White, 2 Yeates 133, 147 (Pa. 1796)

Separation of Powers

The three branches of state and federal government – the executive, the legislative, and the judicial – have checks and balances to keep any one branch from accruing too much power. Although we now accept that the judicial branch has the power to determine whether a statute passed by the legislature (and usually signed by the executive) is constitutional, that was not always a given.

Law students learn about the seminal 1803 United States Supreme Court case *Marbury v. Madison*, which established that federal courts have the power to overturn statutes that violate the federal Constitution. Pennsylvania's Supreme Court, however, had declared – and wielded – its power to strike down Pennsylvania statutes that violated the state's constitution for several years before *Marbury*.

Independent review of a law's constitutionality continues to be a regular part of the Supreme Court's functions; just in the few decades since the 1968 Constitution's enactment, the Court has issued hundreds of opinions concerning state laws' constitutionality. One recent example is *Mallory v. Norfolk Southern Railway Company*, where the Court's December 2021 opinion affirmed that "our statutory scheme is unconstitutional to the extent that it affords Pennsylvania courts general jurisdiction over foreign corporations that are not at home in the Commonwealth."

Religious Liberty

"That no Person or Persons, inhabiting in this Province or Territories, who shall confess and acknowledge One almighty God, the Creator, Upholder and Ruler of the World; and profess him or themselves obliged to live quietly under the Civil government, shall be in any Case molested or prejudiced, in his or their Person or Estate, because of his or their conscientious Persuasion or Practice, nor be compelled to frequent or maintain any religious Worship, Place or Ministry contrary to his or their Mind, or to do or suffer any Act or Thing, contrary to their religious Persuasion."

Charter of Privileges Granted by William Penn, esq. to the Inhabitants of Pennsylvania and Territories, October 28, 1701 (boldface added)

"That all men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences and understanding: And that no man ought or of right can be compelled to attend any religious worship, or erect or support any place of worship, or maintain any ministry, contrary to, or against, his own free will and consent: Nor can any man, who acknowledges the being of a God, be justly deprived or abridged of any civil right as a citizen, on account of his religious sentiments or peculiar mode of religious worship: And that no authority can or ought to be vested in, or assumed by any power whatever, that shall in any case interfere with, or in any manner controul, the right of conscience in the free exercise of religious worship."

1776 Pennsylvania Constitution Declaration of Rights

William Penn's vision of religious tolerance may be found throughout Pennsylvania's early laws. Penn believed one's obligations to their religious faith superseded civil law so long as religious practice did not cause a breach of the peace.

Penn's philosophy, with its emphasis on liberty of conscience, was incorporated into the 1776 Constitution's Declaration of Rights and uses language very different from that adopted by the federal Bill of Rights. Pennsylvania's language has been modified over the years, but it continues to emphasize allowing worship according to the dictates of individual conscience.

In the 19th century, however, under Chief Justice John Bannister Gibson, the Supreme Court shifted the understanding of how religious liberty relates to government and society. One example was *Philips v. Gratz*, 2 Pen. & W. 412 (Pa. 1831), which held that secular laws have priority over individual conscience. The Court held that Philips, a Jew, could not receive a continuance for conscience's sake for a case scheduled for a Saturday (the day he observed the Sabbath), when the continuance would delay the matter to the next judicial term: "there are not duties half so sacred as those which the citizen owes the laws."

The modern Court has not yet issued an opinion that indicates whether it would follow Penn's vision or Gibson's view. When it does decide, perhaps it will forge a new understanding of the balance of religious faith, individual conscience, and civil obligations in the Commonwealth.

Anti-Discrimination Jurisprudence

Pennsylvania enacted many anti-discrimination laws, including the 1961 Pennsylvania Human Relations Act (PHRA) outlawing discrimination in public accommodations based on race, earlier than the federal and many other state governments. As a result, the state Supreme Court's jurisprudence in this area has several important cases, a few of which are discussed below.

In *Pennsylvania Human Relations Commission v. Chester School District*, 233 A.2d 290 (Pa. 1967), the Chester School District had successfully appealed to the lower courts the Pennsylvania Human Relations Commission's finding that Chester School District's neighborhood school system, as applied, violated the PHRA. The Supreme Court held the PHRA encompassed de facto segregation, and the Commission's findings were supported by substantial evidence, so the Court reinstated the Commission's order directed at racial imbalance in the Chester schools.

A few years later, the Supreme Court addressed employment discrimination in *General Electric Corporation v. PHRC*, 365 A.2d 649 (Pa. 1976). In this case, the Court considered who has the burden of proof to show a complainant in a protected class was – or was not – the "best able and most competent to perform the services required." By putting the burden on

Impeachment

Although an independent branch of government, the judiciary does have checks on its power. Pennsylvania's legislature has the power to impeach Supreme Court justices, and it has exercised – or threatened to exercise – that power when unhappy with the Court.

Impeachment proceedings against high court justices were brought early in the colony's history. In 1685, the Provincial Council started impeachment proceedings against Chief Justice Nicholas More due to his actions on the bench and his overt animosity towards the Council and its laws, as exemplified by More's calling Provincial Council members "fooles and Logerheads" and claiming "it were well if all the Laws had Drapt [dropped] and that it would never be good Times as Long as ye Quakers had the Administration." More was removed from the bench that year, less than two years after being appointed.

Tense relations between the legislature and judiciary arose again a century later, resulting in the legislature's bringing impeachment charges in 1805 against Chief Justice Edward Shippen IV and two other justices. Although the justices were narrowly acquitted, the legislature of the era's many judicial acts reflect its wish to shape the courts to its liking.

The threat of impeachment continues today. In 2018, after the Supreme Court ruled the General Assembly's 2011 congressional redistricting plan was unconstitutional, members of the Pennsylvania House of Representatives unsuccessfully sought impeachment of the five justices who had joined or concurred in the opinion.

the employer to show the complainant was ***not*** the best able and most competent, the Court adopted a practical approach (as employers are best able to state their reasons for hiring) and, because the law actually protected employers "from having to select employees who do not meet their qualification standards," it was fairer for the employer to bear the burden.

Decisions and Actions: Torts

Strict Liability in Pennsylvania

As its slavery jurisprudence indicated, the Supreme Court of Pennsylvania long has been attuned to larger societal issues. Torts refers to the law regarding the doing of harm to others. Two examples of tort law separated by almost one hundred years – the Johnstown Flood and the rise of strict products liability – further illustrate how the Court has adopted new legal theories when social and policy needs arise.

In the first part of the nineteenth century, those injured in accidents were required to prove negligence, that is, the fault of the party that caused the accident. As industry's rise introduced new and more complicated hazards into workplaces and surrounding communities, however, courts recognized the need for a new approach. The famous English case *Fletcher v. Rylands* (1868), in which Rylands built a reservoir that flooded his neighbor's mine, introduced strict liability – that is, liability for damage or injury with no finding of fault needed. This new approach recognized the difficulty in proving exactly what Rylands did wrong and allowed liability without such proof.

In the decades after *Fletcher* was decided, the concept of strict liability began to appear in American law. In Pennsylvania, the adoption of strict liability was spurred by a disaster that caused the largest loss of civilian life in US history to date and changed the face of tort law.

In the 1880s, in southwestern Pennsylvania, the South Fork Fishing and Hunting Club's members (many of whom were wealthy industrialists) enjoyed the use of a reservoir they dubbed Lake Conemaugh. On May 31, 1889, the dam containing the lake failed, releasing an estimated 20 million tons of water into the valley – and city – below, in what became known as the Johnstown Flood. More than 2,000 of the 30,000 residents died, and mud and debris covered the once-vibrant city.

The disaster transfixed the country and transformed strict liability law. No tort claims brought by flood victims succeeded, and public perception was that the fault rule prevented recovery. State courts quickly began to apply – and expand – strict liability. In 1891, the Supreme Court of Pennsylvania adopted strict liability in *Robb v. Carnegie Brothers*, holding that the defendant was liable for damages its coke ovens' smoke and gas caused a neighboring farm. Emphasizing that the harm was caused by manufacturing, not a natural use of the defendant's land, the Court was required to balance public and private interests. The Court concluded: "**[i]t is a fundamental principle of our system of government that the interest of the public is higher than that of the individual.**"

Building on this early precedent, Pennsylvania courts continued to develop and apply strict liability in scenarios where requiring a showing of fault was inappropriate or unfair. Examples include injury from oil that escaped from a pipeline (*Hauck v. Tide Water Pipe-Line Co.*, 1893) and loss of business and sickness due to odor from a manufacturing facility (*Keiser v. Mahoney City Gas Co.*, 1891). And the Supreme Court would continue to consider the larger implications of applying strict liability or negligence.

The Pendulum of Products Liability in Pennsylvania

Prior to the mid-20th century, products law centered on privity (the legal relationship between the parties) and negligence. Starting in the 1960s, however, state courts started to apply strict liability to products.

Recognizing this emerging trend, in 1965, the American Law Institute published its Restatement

(Second) of Torts § 402A, which states that sellers are liable for products sold "in a defective condition unreasonably dangerous to the user" even if "the seller has exercised all possible care." The following year, in *Webb v. Zern* (1966), the Supreme Court adopted § 402A as the law of Pennsylvania.

§ 402A. Special Liability Of Seller Of Product For Physical Harm To User Or Consumer

(1) One who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm thereby caused to the ultimate user or consumer, or to his property, if

(a) the seller is engaged in the business of selling such a product, and

(b) it is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

(2) The rule stated in Subsection (1) applies although

(a) the seller has exercised all possible care in the preparation and sale of his product, and

(b) the user or consumer has not bought the product from or entered into any contractual relation with the seller.

Over the next half-century, the Court continued to refine and apply § 402A to myriad situations in which products were blamed for causing harm. This adherence to § 402A continued even as some other states turned away from strict liability and returned to the notions of fault and negligence. In the 1990s, advocates of limiting the reach of strict liability published the Restatement (Third) of Torts: Products Liability, which they hoped would replace § 402A. Legal scholars, litigants, and lower courts then engaged in a long debate about whether the Second or Third Restatements offered the more appropriate approach for resolving products liability cases.

A product is defective when, at the time of sale or distribution, it contains a manufacturing defect, is defective in design, or is defective because of inadequate instructions or warnings. A product:

(a) contains a manufacturing defect when the product departs from its intended design even though all possible care was exercised in the preparation and marketing of the product;

(b) is defective in design when the foreseeable risks of harm posed by the product could have been reduced or avoided by the adoption of a reasonable alternative design by the seller or other distributor, or a predecessor in the commercial chain of distribution, and the omission of the alternative design renders the product not reasonably safe;

(c) is defective because of inadequate instructions or warnings when the foreseeable risks of harm posed by the product could have been reduced or avoided by the provision of reasonable instructions or warnings by the seller or other distributor, or a predecessor in the commercial chain of distribution, and the omission of the instructions or warnings renders the product not reasonably safe.

In some of its opinions, the Court noted its awareness of these developments. In 2009, the Third Circuit predicted that Pennsylvania would adopt the Third Restatement, while lower state courts continued to follow the Second Restatement.

In 2014, the Supreme Court of Pennsylvania resolved the conflict with its decision in *Tincher v. Omega Flex, Inc*. The Court announced that Pennsylvania would continue to follow a "properly calibrated" § 402A. But even as it adhered to the existing standard, the Court modernized Pennsylvania's products liability law by adopting two tests, the risk-utility and consumer expectations tests, either or both of which plaintiffs must satisfy to prevail under § 402A. The tests evaluate whether products are defective from the standpoint of manufacturers and consumers, respectively, and allow for flexible application of strict liability law to the facts of particular cases.

Importantly, in addition to clarifying Pennsylvania law, the *Tincher* Court emphasized the importance of "judicial modesty" and "restraint" in changing the law. In a nod to the future, the Court also recognized that the law should continue to develop "within the proper factual contexts against the background of targeted advocacy." The Court thus foresaw that, as new products are introduced and the law around them develops in the lower courts and the nation as a whole, tort law will continue to evolve both in areas that currently seem settled and in areas that remain largely unexamined.

Decisions and Actions: Slavery and the State

Pennsylvania, Slavery, and the Law

Pennsylvania's relationship with slavery was a complicated one. At least since the 1680s, slaves were present in the colony, as were protests against slavery. Pennsylvania's slavery laws and jurisprudence represented an attempt – not always successful, and not always consistent – to balance personal liberty, economic interests, and political realities.

In discussing the historical subject of the Supreme Court of Pennsylvania and the legal underpinnings of the U.S. system of slavery, it must be understood and kept in mind that throughout the first century of the Court, from Chief Justice David Lloyd to Chief Justice William Tilghman, a significant number of the justices were owners of enslaved persons.

Pennsylvania's 1780 act ending slavery was the first of its kind, but it did not end slavery immediately – or, for many people, ever. Instead, it was "An Act for the Gradual Abolition of Slavery." Under the statute, children of slave women born after March 1, 1780 needed to be registered within six months of birth, and they would serve their mother's master until they turned 28. Any person born before March 1, 1780 and registered as a slave by November 1 of that year, however, remained a slave for life. The Pennsylvania legislature's lofty language about "removing as much as possible the sorrows of those who have lived in undeserved bondage" was limited by a conflicting inclination to respect private property – specifically, the private property interests of the slaveholder.

Pennsylvania's registration requirement became the basis of several lawsuits, some of which eventually came before the state's Supreme Court. The Court often favored freedom over property, holding that absent or faulty registrations allowed slaves to gain their freedom. Examples include *Respublica v. Negro Betsey* (1789) (where the owner failed to register three children of a slave mother), *Commonwealth ex rel. Jesse v. Craig* (1814) (where the owner could not meet the burden of showing the child had been registered within six months of birth), and *Wilson v. Belinda* (1817), where the owner failed to note a slave's sex on the registration.

Pennsylvania and its slavery laws, however, did not exist in isolation. When Pennsylvania passed its act in 1780, all thirteen states allowed slavery. The 1780 act recognized this and allowed non-government visitors to "retain" slaves in the state for no longer than six months. Congressional delegates and foreign diplomats were exempted from the six-month rule – an unsurprising exception, given Philadelphia was the nation's capital until 1800 and hosted many such dignitaries.

These legal intricacies help explain why early Supreme Court of Pennsylvania opinions took seemingly varied stances in post-1780 slave cases. In the 1786 case *Pirate, alias Belt v. Dalby*, the plaintiff was born to a slave woman in Maryland and had not yet spent six months in Pennsylvania with his master, so the Court held that he was a slave – a very different outcome from the freedom granted the children in *Respublica v. Negro Betsey*.

The Pennsylvania Abolition Society assisted many visiting slaves in their claims for freedom, and several cases came before the Supreme Court with arguments about whether slave owners, typically visitors or new arrivals, had run afoul of the law by keeping slaves in the state longer than the six months. The Court found itself examining the facts of each case, sometimes holding in favor of freedom (such as when a former senator kept a slave in Philadelphia for two years after he left office), and sometimes in favor of property (such as when a slave was brought back and forth to Pennsylvania but never stayed six or more consecutive months).

In 1847, Pennsylvania finally abolished slavery, but that did not end questions about Blacks' legal rights – a fight that continues to this day.

Decisions and Actions: Labor Law

Pennsylvania's history of robust labor organizing has regularly put labor law cases before the Supreme Court. The Court's jurisprudence reflects the changing views of organized labor's place in society, and the evolution of the employer/employee relationship.

The Supreme Court of Pennsylvania continues to oversee the relationship between employer and employed, including the challenges associated with public-sector organization.

Recently, the Supreme Court addressed a new concern for employees – the security of their personal information their employer holds. In *Dittman v. UPMC* (2018), the Court recognized that an employer's requiring personal and financial information as a condition of employment created a duty to collect and store that information with reasonable care. The Court's future labor decisions undoubtedly will continue to be significant, as remote work, vaccination requirements, and other issues affecting workers come before the Court.

Post-Revolutionary War

The traditional apprentice/journeyman/master career relationships continue, but journeymen try to form "combinations" or associations to ensure adequate wages.

Many courts treated such associations as criminal concerted actions.

***Commonwealth v. Carlisle* (1821) – the Court examined how conspiracy law had expanded to find labor organizations criminal, and drew a line: "An association is criminal when its object is to depress the price of labour below what it would bring.... But....A combination to resist oppression, not merely supposed but real, would be perfectly innocent."**

The Great Depression

The Great Depression's high unemployment and wage reduction caused increased strikes and sit-ins, and the political climate shifted in favor of workers. Federal and state legislation limited employers' ability to use labor injunctions.

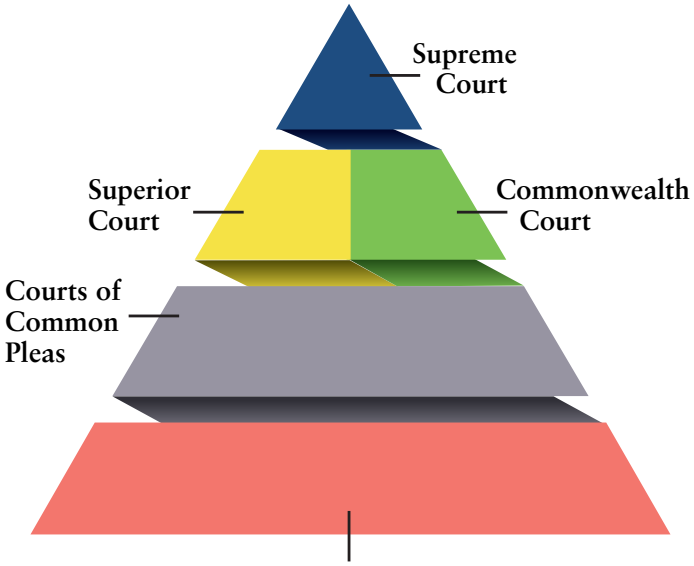
***Kirmse v. Adler* (1933) – just a few years after its Jefferson & Indiana Coal decision, the Court refused to sustain an injunction against a union's picketing of a theater, distributing cards to patrons, and using an "automobile with a radio appliance for music" to protest a theater's use of non-union labor. The Court stated that "No malice of any sort of character can be imputed to one who exercises an absolute right, whatever his motives."**

The Industrial Revolution's aftermath

Industries became more mechanized and used higher numbers of unskilled workers, and individual companies became larger and wielded more political power. Labor organizing increased, and large-scale strikes grabbed national headlines throughout the second half of the nineteenth century. Employers turned to the labor injunction as a tool to control striking workers, which greatly reduced labor organizations' clout.

***Jefferson & Indiana Coal Co. v. Marks* (1926) – while labor combinations were legal, the right to form such associations and strike was lawful "so only as long as the means employed are lawful." The Court upheld an injunction against striking workers' parades past the mines, finding they "constituted intimidation" because their intent was to cause fear in the strikebreakers.**

The Supreme Court of Pennsylvania Today



About the Pa. Supreme Court Justices

The Court has consisted, since 1874, of seven elected justices (each of whom must be an attorney), who serve staggered ten-year terms. Justices may run for re-election in retention elections, in which voters decide whether to retain the justice with a simple "yes" or "no" vote. Justices serve up to age 75. The justice with the longest continuous service on the Court automatically becomes Chief Justice.

The Court's Duties

The Supreme Court's current role in the state's legal system has become more formalized, particularly with the 1968 Constitution's creation of the Unified Judicial System and its extension of the Court's power to regulate lawyers' practice.

In addition to supervising the entire Pennsylvania Unified Judicial System, the Court also makes procedural rules for the administration of justice in the courts and regulates the practice of law, including admission to the bar and attorney discipline.

Cases Considered by the Court

The Pa. Supreme Court receives and considers over 2,000 requests for review annually.

These appeals primarily advance from the Commonwealth and Superior Courts, however in some circumstances such as cases involving the death penalty, the case is given an automatic appeal from the Common Pleas Court.

The Court can also consider any case pending in a lower court which members of the Court deem to be of immediate public importance. At its own discretion, the Court will grant an appeal upon approval of a majority of the justices who will review briefs and then hear oral arguments.

Following review of the case, Justices will write opinions.

Majority opinion

shared by more than half the Court and becomes the Court's decision

Dissenting opinions

opinions that disagree with the disposition of the case

Concurring opinions

agree with the result but not necessarily the rationale

William Penn, the founder of Pennsylvania, would not recognize the Court in its current composition, locations or caseload, but his declaration that "all courts shall be open, and justice shall neither be sold, denied nor delayed" resounds as loudly today as it did in 1682.

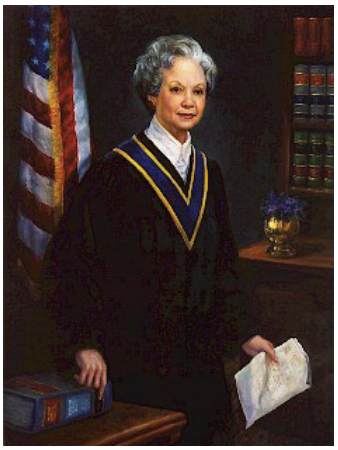
Diversity on the Court

Anne X. Alpern

Anne X. Alpern, the first woman to serve on the Supreme Court of Pennsylvania, was appointed in 1961 by Governor David L. Lawrence. This was only one of Alpern's many firsts – she was the first woman to serve as a city solicitor for a large U.S. city (Pittsburgh) and the first woman to serve as a state attorney general.

Robert N.C. Nix, Jr.

Robert N.C. Nix, Jr., first appointed in 1971, then elected in 1972, was the first Black justice to serve on the Supreme Court. In 1984, he became Chief Justice, the first Black Chief Justice of any U.S. high court.



Juanita Kidd Stout

Juanita Kidd Stout was the first Black woman to serve as a justice on the Supreme Court of Pennsylvania – and the first to serve as a justice of any high court in the United States. She was appointed to the Court in 1988 and served for a year before reaching the court's mandatory retirement age.

The Supreme Court's Physical Home

The Pennsylvania high court initially met in private residences (and lower courts met in ale houses). Thanks to a 1705 tax levy that provided courthouse construction monies, the Court was able in 1707 to move into its brick "Great Towne House" at Second and High (now Market) Streets in Philadelphia.

The Court moved to Independence Hall in 1743, then a few steps east to the old City Hall at Fifth and Chestnut in 1790. In 1802, it returned to Independence Hall and then, in 1824, it moved a few steps west to Congress Hall.

In 1806, when the Supreme Court's Western District was established in Pittsburgh, the Court first met at the local wooden courthouse until, in 1841, it moved to a new Greek Revival stone building. In the Court's early Pittsburgh years, in the absence of a permanent library, local lawyers' libraries were commandeered and sent to the justices' hotel rooms.

In 1707, the city of Philadelphia constructed the Towne House, a two-story house and market that functioned as an early city hall. The Court conducted its business at the Towne House until 1743, when it moved to its own courtroom in the State House - now known as Independence Hall.

Locations

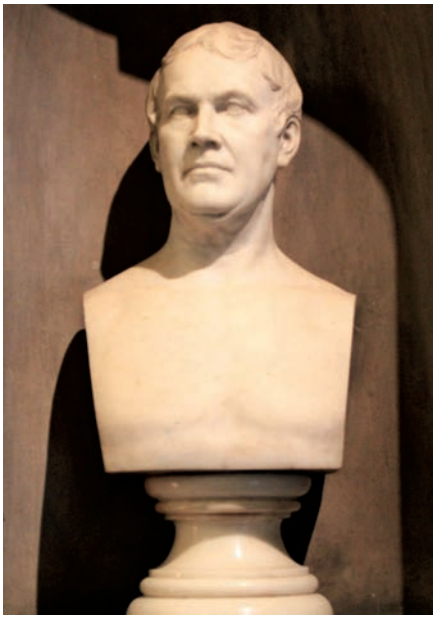
In order to serve the entire state more effectively, the Supreme Court moves between three locations: Harrisburg, Philadelphia, and Pittsburgh.

Harrisburg - Middle District
Dedicated in 1906, the Supreme Court of Pennsylvania's courtroom in Harrisburg is the most ornate of the three. Housed on the fourth floor of the Capitol Building, the courtroom conforms to the building architect's vision that the Capitol be a palace of art. The mahogany wainscoting, columns, bench and other adornments of the courtroom are crafted in the Greco-Roman style.

Philadelphia - Eastern District
Behind the bench is a mural of the Southern façade of Independence Hall where the Court sat for parts of the eighteenth and nineteenth centuries.

Pittsburgh - Western District
Three murals depicting the great law givers King Edward, Moses, and Emperor Justinian are mounted on the ceiling of the Supreme Court of Pennsylvania's courtroom in Pittsburgh, framed in gilded plaster. Oblong wainscoting, fluted columns, and bench are all mahogany. Behind the bench are murals of William Penn and William Pitt separated by a mural of the Pennsylvania coat or arms.

Edward Trumbull's mural of the Pennsylvania Coat of Arms in Pittsburgh.



Marble bust of Chief Justice John Bannister Gibson in the Philadelphia Supreme Court room. Chief Justice John Bannister Gibson served as a justice for thirty-seven years - serving as Chief Justice for twenty-four of those years. Interestingly, an 1851 constitutional amendment required that all Justices be elected and after vacating his position as Chief Justice, Gibson was elected and served as an associate Justice until his death in 1853.

Bronze cast of Chief Justice George Sharswood in the Philadelphia Supreme Court room. During Chief Justice Sharwood's service, the Court was often overwhelmed by a growing number of cases. Sharswood wrote extensively about the necessity of a quick decision without sacrificing adequate examination. He implemented a number of procedures hoping to find such a balance, but it was not until the establishment of the Superior Court in 1895 that Sharswood's concerns were sufficiently addressed.

Edward Trumbull Murals, Pittsburgh Courtroom

Emperor Justinian: Completed in 1920, the years surrounding the murals reflect the years Pennsylvania's Constitution was amended by constitutional convention

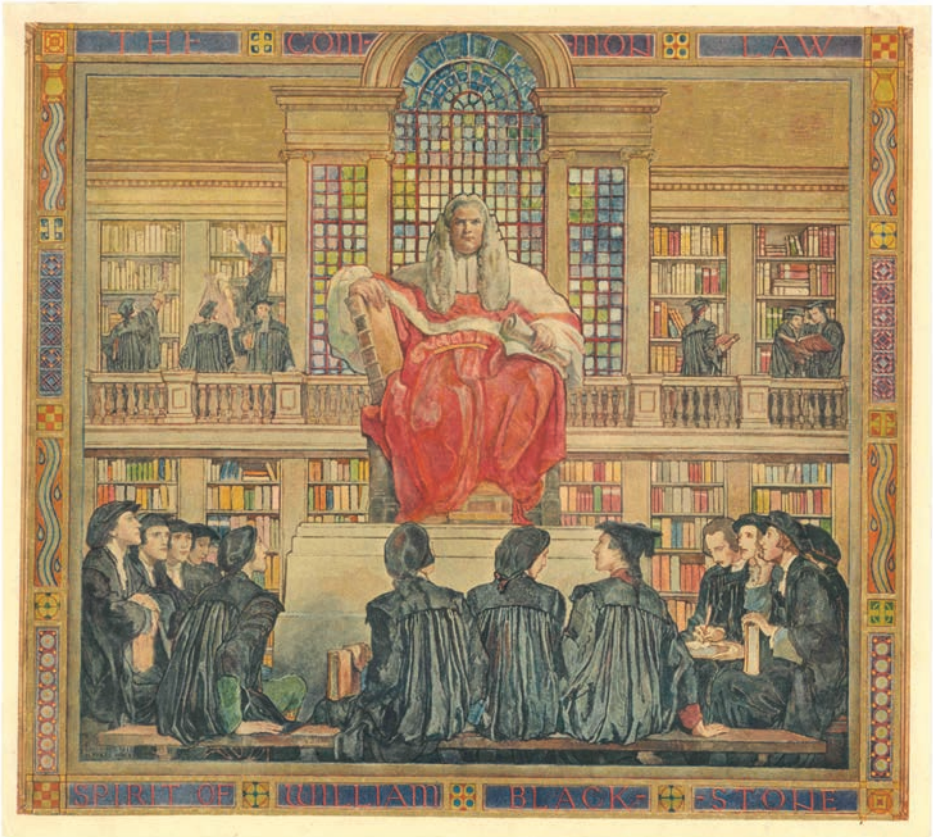
England's King Edward

Moses

Violet Oakley Murals, Harrisburg Courtroom

Supreme Court of the United States: Chief Justice John Marshall sits in front of the US Capitol building in Washington D.C. where the United States Supreme Court sat until it got its own building in 1935 - one hundred years after Marshall's death.

Scale of Law: Serving as a table of contents for the remaining portraits, Oakley depicted the evolution of Law as a musical scale.



Spirit of William Blackstone: William Blackstone is depicted sitting and lecturing his students on English common law. Mounted on either side of Blackstone are two murals bearing his commentaries that Oakley found important.

William Penn as Law-Giver:
William Penn sits in solitude while he authors his plan for a Parliament of Nations and an international court. Surrounding Penn are influential statesmen and philosophers. Oakley painted herself in the upper left and was so inspired while researching Penn that she adopted much of his Quaker ideals as her own.

Divine Law:
Mounted above the main entrance to the Supreme Courtroom in Harrisburg, Divine Law was both the beginning and culmination of Oakley's work. The face of Truth oversees the Earth and angelic figures grace Oakley's idea that Love, Law, and Wisdom were required for peace.

For more information about Pennsylvania's courts visit
https://www.pacourts.us/

For more information about the 300th anniversary of the Supreme Court of Pennsylvania, visit
https://www.pacourts.us/learn/history/celebrating-300-years

Celebrating 300 years of the Pa. Supreme Court

Learn from past and present Supreme Court justices as they reflect on the significance of this historic milestone and the role of the court throughout history.

Pa. Supreme Court murals by Violet Oakley

Learn about the beautiful, historic murals inside the Harrisburg Supreme Court courtroom painted by the famous artist, Violet Oakley, nearly 100 years ago. The murals grace the walls of its chambers in the state Capitol Building with the goal of inspiring judges and lawyers to a higher set of principles in administering justice.

Historical list of justices of the Pa. Supreme Court

The Supreme Court gratefully acknowledges the contributions of Mark Frazier Lloyd, Philadelphia archivist and historian; Julie Randolph, Director of Outreach and Information at Temple University Beasley School of Law; Dr. Joel Fishman of Duquesne University School of Law; and artist Keith Ragone of Keith Ragone Studio, Inc.

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