

A. Origins of the Maryland Court of Appeals

The Court of Appeals of Maryland is one of the oldest appellate courts in the United States,¹ with its origins dating back to 1638,^{2,3} as a “...general court at St. Mary’s.”⁴ Called first the County Court⁵ and later the Provincial Court⁶, the general court functioned as the local version of the King’s Bench in England and was granted appellate jurisdiction in 1642.⁷

Until 1649, the Provincial Court shared judicial responsibilities with the assembly, which “functioned as an additional law court forum for freemen.”⁸ In 1649, the assembly divided into two houses: (1) an Upper House, consisting of the governor and his council, and (2) a Lower House, known as the House of Burgesses.⁹ The Lower House was responsible for the adjudication of “relatively unimportant disputes;” the Upper House retained the Provincial Court’s appellate jurisdiction.¹⁰ When exercising appellate jurisdiction, the Upper House was sitting as a Court of Appeals,¹¹ a name that was then “merely descriptive and was not an official title,”¹² a term used in the royal colonies to refer to the governor and council’s appellate docket.¹³ The formal title was not adopted until after the Revolution.¹⁴

Until 1692, the Provincial Court and the Upper House were different entities comprised of the same individuals—the governor and his council. In 1692, the Provincial Court was made a separate institution from the Upper House; consequently, a judge did not need to be on the Governor’s council to be a member of the Court.¹⁵ The Provincial Court had both original and appellate jurisdiction, and its rulings could be appealed to the Upper House.¹⁶

The constitutional convention of 1776 prompted significant changes to Maryland’s judiciary. In Maryland’s first Constitution, Article 6 separated the functions of the executive, legislature, and judiciary,¹⁷ and Article 56 established the Court of Appeals as the principal appellate court in Maryland.¹⁸ The Court’s seal was adopted in 1783 and is still in use today.¹⁹ A constitutional amendment in 1805 transferred the appellate jurisdiction of the General Court, the successor to the Provincial Court, to the Court of Appeals, formally consolidating all appellate jurisdiction in Maryland in the Court of Appeals.²⁰

Originally, the judges on the Maryland Court of Appeals had both trial and appellate responsibilities.²¹ In 1943, the Court was restructured to deal solely with appellate matters.²² In 1960, the number of judges increased from five to the current seven.²³ The

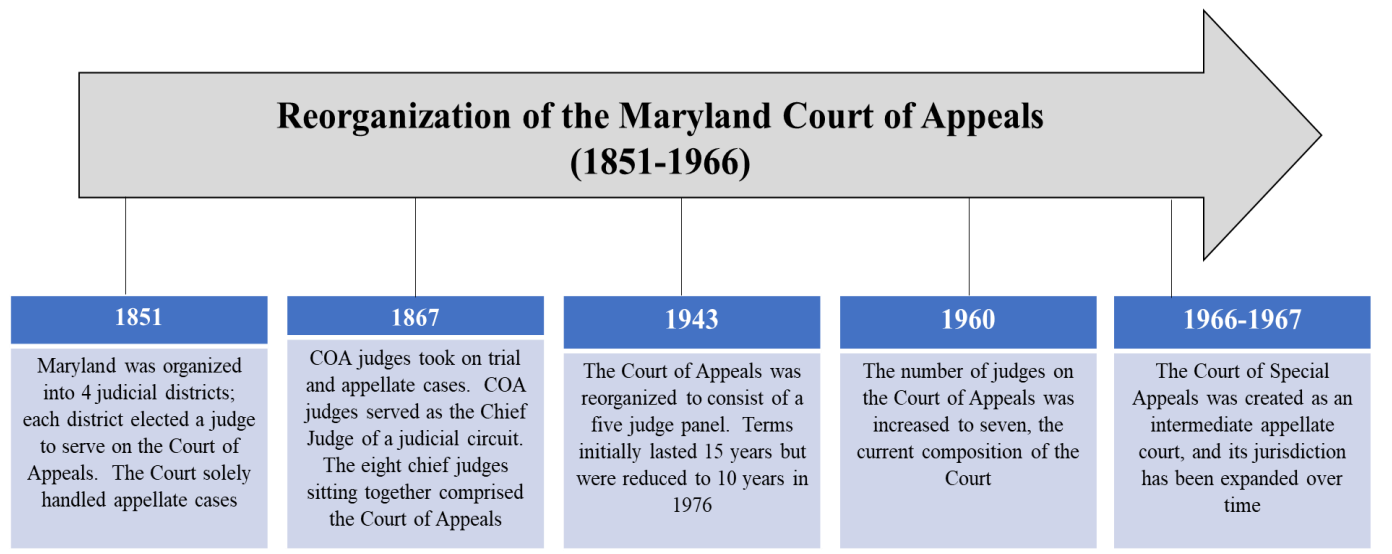
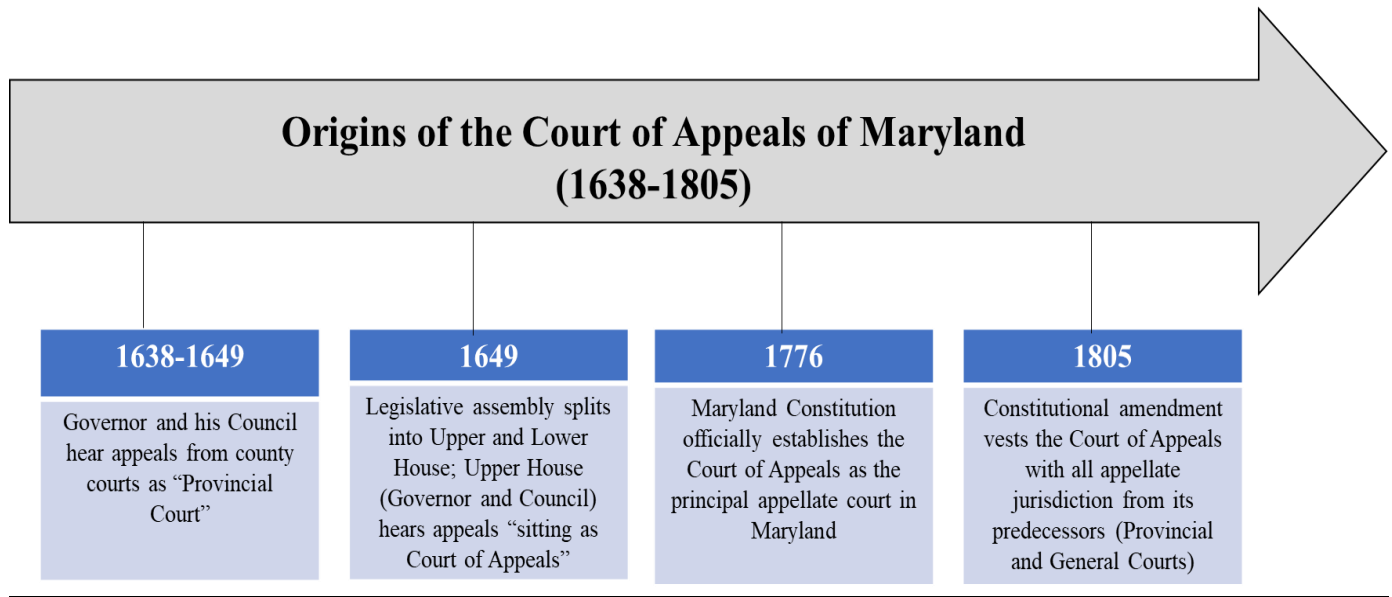
“extraordinarily heavy dockets” of the Court of Appeals²⁴ led to the creation of the Court of Special Appeals in 1967 to handle criminal and certain civil appeals.²⁵ In 1974, the legislature extended the Court of Special Appeals’ jurisdiction to include review of any action taken by a circuit or orphan’s court²⁶ to address the “daunting pace” of the growing appellate caseload.

B. Origins of Appellate Courts in Other States

Other states took a different approach to naming their highest appellate court:

- ✦ **New Hampshire**, for example, also had a colonial “court of appeals” comprised of the governor and council; in 1776, the state discarded that title, establishing the Superior Court of Judicature (renamed the Supreme Court in 1876) as its high court.²⁷
- ✦ **New Jersey** established an intermediate appellate court called the Supreme Court in 1844 to supplement its high court, the Court of Errors and Appeals.²⁸
- ✦ **Pennsylvania** established its Supreme Court in 1722 to replace the Provincial Appellate Court.²⁹
- ✦ **Massachusetts** established the Superior Court of Judicature in 1692 and renamed it the Supreme Judicial Court in its 1780 constitution.³⁰
- ✦ **Virginia** retained its “Court of Appeals” after the Revolution but renamed it the Supreme Court in 1971³¹ and in 1984, created an intermediate appellate court called the Court of Appeals.³²
- ✦ **Kentucky**’s highest court was also called the “Court of Appeals” until 1974, when, due partially to the backlog of appellate cases, the legislature created an intermediate appellate court, the “Court of Appeals,” while renaming the highest court the “Supreme Court.”³³
- ✦ **West Virginia** combined “Supreme Court” and “Court of Appeals,” calling its highest court the “Supreme Court of Appeals” from its inception in 1864.³⁴

Currently, 49 of 54 jurisdictions in the United States call their highest court the “Supreme Court.” See attached.



STATE	INTERMEDIATE APPELLATE COURT	COURT(S) OF LAST RESORT
Alabama	<ul style="list-style-type: none"> • Court of Civil Appeals • Court of Criminal Appeals 	Supreme Court
Alaska	Court of Appeals	Supreme Court
Arizona	Court of Appeals	Supreme Court
Arkansas	Court of Appeals	Supreme Court
California	Courts of Appeal	Supreme Court

Colorado	Court of Appeals	Supreme Court
Connecticut	Appellate Court	Supreme Court
Delaware	None	Supreme Court
D.C.	None	Court of Appeals
Florida	District Courts of Appeal	Supreme Court
Georgia	Court of Appeals	Supreme Court
Hawaii	Intermediate Court of Appeals	Supreme Court
Idaho	Court of Appeals	Supreme Court
Illinois	Appellate Court	Supreme Court
Indiana	Court of Appeals	Supreme Court
Iowa	Court of Appeals	Supreme Court
Kansas	Court of Appeals	Supreme Court
Kentucky	Court of Appeals	Supreme Court
Louisiana	Courts of Appeal	Supreme Court
Maine	None	Supreme Judicial Court
Maryland	Court of Special Appeals	Court of Appeals
Massachusetts	Appeals Court of Massachusetts	Supreme Judicial Court
Michigan	Court of Appeals	Supreme Court
Minnesota	Court of Appeals	Supreme Court
Mississippi	Court of Appeals	Supreme Court
Missouri	Court of Appeals	Supreme Court
Montana	None	Supreme Court
Nebraska	Court of Appeals	Supreme Court
Nevada	Court of Appeals	Supreme Court
New Hampshire	None	Supreme Court
New Jersey	Superior Court, Appellate Div.	Supreme Court
New Mexico	Court of Appeals	Supreme Court
New York	Appellate Div. & Appellate Terms of the Supreme Court	Court of Appeals
North Carolina	Court of Appeals	Supreme Court
North Dakota	Court of Appeals	Supreme Court

Ohio	Courts of Appeals (12 districts)	Supreme Court
Oklahoma	Court of Civil Appeals	<ul style="list-style-type: none"> • Supreme Court (civil & constitutional) • Court of Criminal Appeals
Oregon	Court of Appeals	Supreme Court

Pennsylvania	• Superior Court • Commonwealth Court	Supreme Court
Rhode Island	None	Supreme Court
South Carolina	Court of Appeals	Supreme Court
South Dakota	None	Supreme Court
Tennessee	• Court of Appeals (civil) • Court of Criminal Appeals	Supreme Court
Texas	Courts of Appeals	• Supreme Court (civil & juvenile) • Court of Criminal Appeals
Utah	Court of Appeals	Supreme Court
Vermont	None	Supreme Court
Virginia	Court of Appeals	Supreme Court
Washington	Court of Appeals	Supreme Court
West Virginia	None	Supreme Court of Appeals
Wisconsin	Court of Appeals	Supreme Court
Wyoming	None	Supreme Court
Guam	None	Supreme Court
Puerto Rico	Court of Appeals	Supreme Court
Virgin Islands	None	Supreme Court
Totals	<ul style="list-style-type: none"> • Court(s) of Appeal(s), Appellate Court, or Appellate Div.: 40 • None: 12 • Other: 2 (Md. & Pa.) 	<ul style="list-style-type: none"> • Supreme Court: 49 (incl. W.Va., Mass., and Me.) • Two courts: 2 (Tex. & Okla.) • Court of Appeals: 3 (D.C., Md., & N.Y.)

¹ For an interesting discussion on which state has the oldest appellate court in the nation, see Michael Wein, *What was the “First” Appellate Court in the Colonial Americas?*, Md. Appellate Blog (Dec. 28, 2017), https://mdappblog.com/2017/12/28/whatwas-the-first-appellate-court-in-the-colonial-americas/#_ednref4. Massachusetts and Pennsylvania also claim that they hold this title; however, “if Maryland could establish that the Court of Appeals of Maryland, is traceable as ‘continuously’ formed from the appellate law system . . . [in] 1638, then there could be a claimed stake to Maryland being the oldest existing appellate court in the United States.” *Id.*

² Hon. Carroll T. Bond, *The Court of Appeals of Maryland, A History* 1 (1928)

(“[T]here has been a tribunal of last resort in Maryland known as the Court of Appeals since the seventeenth century[.]”).

³ *Id.* at 1 (“To a question of the exact age of the Court of Appeals of Maryland the answer would not be easy.”); *see also id.* at 3.

⁴ Hon. Hall Hammond, *Commemoration of the Two Hundredth Anniversary of the Maryland Court of Appeals: A Short History*, 38 Md. L. Rev. 229, 229 (1978).

⁵ *Id.*

⁶ *Id.* at 229-30.

⁷ *Proceedings and Acts of the General Assembly January 1637/8-September 1664*, Archives of Maryland Online 183, [https://msa.maryland.gov/megafile/msa/speccol/sc2900/sc2908/000001/000001/html/am1](https://msa.maryland.gov/megafile/msa/speccol/sc2900/sc2908/000001/000001/html/am1--183.html)

--183.html (last visited Feb. 4, 2019) (“[S]o that after judgment there be power of appeal[] to either part[y] to the Provincial[] Court.”).

⁸ *See* Hammond, *supra* note 4, at 230.

⁹ *Id.*; *see also* Bond, *supra* note 2, at 3.

¹⁰ *See* Hammond, *supra* note 4, at 230.

¹¹ Bond, *supra* note 2, at 7.

¹² *Id.* “[G]radually,” the trial court function—and the label of “Provincial Court”—was given to a court presided over by a chief justice with several associate justices. Erwin C. Surrency, *The Courts in the American Colonies*, 11 Am. J. Legal Hist. 253, 268 (1967).

¹³ Surrency, *supra* note 12, at 269.

¹⁴ Bond, *supra* note 2, at 33.

¹⁵ *Id.* at 4.

¹⁶ *Id.* at 6 (“This practice of appeals from the Provincial Court[,] presided over by the Governor and Council[,] to the Upper House of the Assembly made up of the same Governor and Council . . . seems anomalous and the wonder is increased by the fact that on such appeals reversals of the judgments rendered in the Provincial Court were proportionately numerous.”).

¹⁷ Bond, *supra* note 2, at 59.

¹⁸ Md. Const. of 1776, art. LVI.

¹⁹ Bond, *supra* note 2, at 77.

²⁰ *In re Petition for Writ of Prohibition*, 312 Md. 280, 295 (1988).

²¹ *See* Hammond, *supra* note 4, at 236-38.

²² Hammond, *supra* note 4, at 237-38.

²³ *Id.*

²⁴ *Id.* at 239.

²⁵ *Id.*

²⁶ Hon. Peter B. Krauser, *The Maryland Court of Special Appeals: Its Roots, History, and Future*, 50 Md. B.J. 4, 7 (2017).

²⁷ *About the Supreme Court*, N.H. Judicial Branch, <https://www.courts.state.nh.us/supreme/about.htm> (last visited Feb. 4, 2019).

²⁸ Robert A. Kagan *et al.*, *The Evolution of State Supreme Courts*, 76 Mich. L. Rev. 961, 974 (1978).

²⁹ *A Brief History of the Courts of Pennsylvania* 1, <http://www.pacourts.us/assets/opinions/Superior/out/aopchistory.pdf#search=%221684%22> (last visited Feb. 4, 2019) (explaining that appeals from the Provincial Appellate Court, established in 1684, had to be taken to England).

³⁰ *About the Supreme Judicial Court*, <https://www.mass.gov/service-details/aboutthe-supreme-judicial-court> (last visited Feb. 4, 2019).

³¹ *A short history of the Supreme Court of Virginia*, <https://scvahistory.org/aboutthe-biographies/supreme-court-of-virginia/> (last visited Feb. 4, 2019).

³² *A Short History of the Court of Appeals of Virginia*, <https://scvahistory.org/ashort-history-of-the-court-of-appeals-of-virginia/> (last visited Feb. 4, 2019).

³³ See Kurt X. Metzmeier, *A Constitutional Amendment to Reform Kentucky's Courts*, in *Selected Works of Kurt X. Metzmeier* 13 (2006); *Hoskins v. Maricle*, 150 S.W.3d 1, 7 n.2 (Ky. 2004), *as modified on denial of reh'g* (Dec. 16, 2004).

³⁴ Allen H. Loughry II, *Supreme Court's First Case is Still Good Law*, 2018 W. Va. Law. 18, 18 (2018).