

Civil Procedure

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Introduction

1 What is Civil Procedure?

1.1 Procedure v. Substance

Outcome determination

But many cases are won or lost on procedure, not substance

Primary rights

Substance: Rules determining underlying rights and obligations in dispute

Procedure: Rules determining how the court manages the dispute

- But procedural rules may also be rooted in fundamental rights, especially Due Process

1.2 Procedure as Aspect of Due Process

Constitutional requirement

5th Amendment: applies to federal government

14th Amendment: applies to state government

Elements

- Notice
- Opportunity to be heard

2 Courts as socio-legal institutions

2.1 The Judicial Process

Wigmore, *The Judicial Function*, in *Science of Legal Method* at xxviii (1921):

[The] process .. of deciding, by an agent of state power, a controversy existing between two individuals (or the State and an individual), by rational (not merely personal) considerations, purporting to rest on justice and law (i.e. the community's general sense of order).

Elements of Wigmore's definition

- Decision
 - State power (authority)
 - Controversy
- Two (or more) parties
- Rational/Impersonal (cf. Max Weber)
- Justice and law (community norms)

2.2 The Legislative Process:

Wigmore:

The process of (1) formulating a rule in more or less general terms, (2) because of certain policies deliberately deemed to be controlling; i.e. (1) formulation (2) to effect a felt purpose.

2.3 Law as a Social Construct & Practice

2.3.1 Turning Disputes into Claims

Felstiner, Abel, & Sarat, The Emergence and Transformation of Disputes: Naming, Blaming, Claiming, 15 Law & Society Review 631 (1980-81)

Naming: Recognizing an injurious experience as such

Blaming: Translating experience into a grievance

Claiming: Transforming a grievance into a dispute, i.e. claim for relief/remedy

2.3.2 Multiple legalities

Multiple, co-existing, sources of law

May be in tension or conflict

- Sometimes one may over-ride or limit another
 - Example: Internal rules of a private organization (corporation, labor union, social club, homeowners' association, etc.) may be subject to requirements or limitations under state or federal law.
- Applicability may depend on time/place/activity/dispute

Example

Religious law governs religious matters, without interference by secular law

But secular law may govern matters affecting secular rights and liabilities of religious institutions (e.g. ownership of church property)

2.3.3 Multiple Institutions

Official courts are not the only, nor necessarily the primary, institution through which parties seek to resolve disputes. Even disputes that might be within the jurisdiction of official courts are frequently resolved by other means.

- Arbitration and mediation
- Social sanctions (shunning, gossip, etc.)

3 Courts in the U.S.

3.1 Dual Court Systems: State & Federal

3.1.1 Aspect of federalism

Dual sovereignty of federal and state governments

- Supremacy clause: Federal government is supreme within the sphere of federal powers as allocated under the Constitution.
- 10th amendment: State governments retain powers not allocated to federal government under the Constitution.

3.1.2 Overlapping Subject Matter Jurisdiction

State courts may usually decide cases that involve matters of federal law.

- Exceptions for special areas of federal law where Congress or Courts have vested federal courts with exclusive jurisdiction

Federal courts may sometimes decide cases that involve matters of state law

- Diversity jurisdiction: Cases with state law claims between parties who are citizens of different states
- Supplemental jurisdiction: Cases with both federal and state law claims arising from same dispute

3.2 The Federal Court System

U.S. Constitution, Article III, sec. 1:

The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish.

The Constitution mandates only a single federal court, the Supreme Court

- Congress early on established a system of lower courts to hear most cases in the initial instance, limiting the Supreme Court's jurisdiction primarily to appeals from those lower courts.
- The system and organization of lower courts has varied historically.
- The present system organizes the federal courts into three hierarchical levels

3.2.1 U.S. District Courts

One or more in each state.

- NC has three federal court districts (Eastern, Middle, Western)

3.2.2 U.S. Courts of Appeal

Organization

12 Circuits defined by geographical coverage

- 1st through 11th Circuits cover multiple states
 - Appeals from U.S. District Courts within the geographic region of the Circuit
 - N.C. is within the 4th Circuit, which also covers Maryland, Virginia, West Virginia, and South Carolina
- D.C. Circuit covers the District of Columbia
 - Appeals from U.S. District Court for District of D.C.
 - Appeals from certain federal administrative agencies, regardless of where those cases originated (e.g. appeals from the NLRB).
- Federal Circuit (based in DC)
 - Appeals from certain federal administrative tribunals (e.g. Court of Federal Claims, Merit Systems Protection Board, Court of Appeals for Veterans Claims, Trademark Trial & Appeal Board, Board of Patent Appeals & Interferences, Board of Contract Appeals, International Trade Commission)
 - Appeals from U.S. District Courts in cases arising under certain federal laws (e.g. Patents)

Composition

Appeals are typically heard by a panel of 3 judges.

En banc review:

- Heard by all active judges on the court (total number varies by Circuit)
 - In the 9th Circuit, an en banc court consists of 11 judges
- Either by request of a party or at court's own initiative - Requires affirmative vote by majority of court's active judges

3.2.3 U.S. Supreme Court

U.S. Constitution, Article III, sec. 2:

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

Composition (not set by Constitution)

- 1 Chief Justice
- 8 Associate Justices

Appellate Jurisdiction

Discretionary review

- Parties seeking appellate review by the Supreme Court must typically file a Petition for Certiorari. If at least 4 Justices agree to hear the case, the Court issues a Writ of Certiorari.
 - The Court typically grants Certiorari to resolve splits among the Federal Courts of Appeals on important questions of federal law
 - Some federal statutes provide for an automatic right to appellate review by the Supreme Court
- Review of state court decisions
 - The Supreme Court may review decisions by a state's highest court, but only where there is an issue of federal law (substantive or procedural) at stake.

Original Jurisdiction

Constitution (Article III, sec. 2) gives the Supreme Court original jurisdiction over certain cases.

3.2.4 Appointment of Federal Judges

Article III Courts

Judges are appointed by President, with confirmation by Senate

- Lifetime appointment, subject to removal by impeachment

Administrative Law Judges

In addition to the federal courts established under Article III, there are a variety of adjudicatory tribunals as part of the federal administrative state. These tribunals perform quasi-judicial functions, and operate much like courts, though often with less formality in their procedures.

Because these administrative tribunals are established to review actions by administrative agencies to which Congress has delegated legislative authority under Article I, they are often referred to as "Article I Courts".

The presiding officers on these tribunals are often called Administrative Law Judges (though in some agencies, they have other titles such as Hearing Officer). Unlike federal judges appointed under Article III, sec. 1, ALJs do not enjoy life tenure.

The Administrative Law and Federal Courts courses address the Constitutional status and operation of these tribunals.

3.3 State Court Systems

3.3.1 Organization

Trial Courts

Nomenclature varies

- NC: Superior Court
- Other states use different names (e.g. PA: Court of Common Pleas; NY: Supreme Court)

Geographical coverage

- State trial courts usually cover a single county or a few contiguous counties within the state
- Sometimes there are inferior courts, e.g. small claims courts for disputes over small dollar amounts, or special courts for limited types of issues.
 - N.C.: District Courts
 - Typically, state procedure allows parties to seek a de novo trial in superior trial court

Appellate Courts

Most states follow the federal system in having two levels of appellate court

Intermediate Appellate Court

In some states, there is a single intermediate-level appellate court, which hears direct appeals from all trial-level courts

- e.g. NC Court of Appeals

In other states, there are multiple intermediate-level appellate courts

- Geographic division: e.g. NY & CA: multiple intermediate appellate courts each covering a geographical territory, akin to the U.S. Circuits
- Subject Matter division: e.g. PA (Superior Court hears most appeals; Commonwealth Court hears appeals in which the state is a party, and cases under certain state laws)

Supreme Court

Sometimes known by other name, e.g. NY Court of Appeals; Mass. Supreme Judicial Court)

Appellate jurisdiction is typically discretionary, as with U.S. Supreme Court

- Automatic right to review in some circumstances
 - NC: constitutional question; dissent in Court of Appeals; Utilities Commission General Rate Cases; Bar Exam, Judicial Standards

Original Jurisdiction over certain cases, as provided under state constitution or by statute

3.3.2 Appointment of Judges

Varies by state

Direct Election (21 states)

May be partisan (8 states) or nonpartisan)

- NC changed from nonpartisan to partisan elections in 2016-17.

In some states (e.g. CA, PA), after serving an initial term, judges face a retention election for an additional term; in other states (e.g. NY, NC), an incumbent judge wishing to serve another term must face another contested election.

Merit Selection (“Missouri Plan”)

A special non-partisan commission recommends a list of potential judges, from which the governor selects a nominee for approval by the legislature.

In some states (e.g. CO), after an initial period of service (typically one or two years), judges face a retention election; in other states (e.g. DE), after serving a full term, judges may be reappointed through the same process.

Mixed systems

In some states, judges on some courts are elected while others are appointed.

4 Outline of a Civil Action

4.1 Precipitating incident

Disputes emerge out of everyday transactions or events. A grievance arises when someone perceives that they have been harmed and that someone else is responsible.

The transformation of a grievance into a legal case is a process:

- The aggrieved person must decide, in the first instance, to consult an attorney.
 - This is a function of legal consciousness: beliefs, attitudes & practices about the law (whether the law recognizes a particular grievance as a “legal” claim, whether the legal system will provide a satisfactory remedy, etc.)
 - Legal consciousness emerges and evolves out of socialization and experience.
 - The ideas and practices that constitute legal consciousness may not always accord with how lawyers, judges, etc. understand the law.
- The attorney helps translate the client’s problem into legal categories: “negligence”, “breach of contract”, “trespass”, etc.
 - These may or may not accord with the legal categories that the client ascribed to the grievance.
- The attorney also helps client identify potential defendants, available remedies, etc.
 - Again, these may or may not accord with the client’s initial perception of who was responsible, what remedy they seek, etc.

4.2 Choice of Forum

Choice of court system (Federal or State)

Subject-Matter Jurisdiction

Does the court have authority to decide this type of case?

- Federal courts have limited subject-matter jurisdiction, defined by Constitution and statute
- Some states have special courts (trial or appellate) for particular types of case
 - e.g. NC Business Court, small claims court, probate court, family court, etc.

Choice of court location

Personal Jurisdiction

Do courts (state or federal) in the state have authority to issue a decision binding on the parties?

Venue

Is this particular court a convenient forum for this action?

4.3 Choice of Law

Vertical

Federal or state law (*Erie doctrine*)

Horizontal

Which state's (or country's) law

4.4 Scope of Suit

Joinder

Combining multiple claims and/or parties in the same action

4.5 Commencement of Action

Pleadings

Complaint and Answer

Preliminary Motions

Pleadings

- Objections to form or content
- Requests to amend

Dismissal

- Procedural defects
- Legal deficiency

4.6 Pre-Trial Practice

Discovery

Fact gathering

Summary Judgment

Disposition on the merits, based on evidence developed in discovery

4.7 Trial & Appeal

Judgment

Court's order deciding the case and (if judgment is in favor of plaintiff) granting a remedy

Post-Trial Motions

e.g. Judgment notwithstanding verdict, remittitur, etc.

Appeals

Review by higher court

- Errors of law: *de novo* review
- Errors of fact: deferential review

Execution

Collecting money awarded in a judgment

4.8 Future Litigation**Claim Preclusion (Res judicata)**

Judgment in a case precludes the parties from asserting similar claims in another case

Issue Preclusion (Collateral estoppel)

Disposition of legal or factual issue in a case precludes parties (and sometimes others) from contesting the same issue in another case