

Civil Procedure: Introduction

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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 are 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 (e.g. property interests)

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

3 Courts in the U.S.

3.1 Dual Court Systems: State & Federal

3.1.1 Aspect of federalism

- State and federal governments as sovereign entities
 - Federal courts are supreme over state courts only within the sphere of federal powers as allocated under the Constitution
 - State courts are supreme within the sphere of matters left to state authority under the Constitution

3.1.2 Overlapping Subject Matter Jurisdiction

- Cases may generally originate in state court even though they involve matters of federal law
 - Exceptions for special areas of federal law where Congress or Courts have vested federal courts with exclusive jurisdiction
- Cases may sometimes originate in federal court even though they involve matters of state law
 - The U.S. Constitution and federal statutes limit the types of cases that may be brought in federal court.

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)
- Most cases originate here

3.2.2 U.S. Courts of Appeal

- Organization
 - 12 Circuits defined by geographical coverage
 - › 1st - 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. Court of International Trade, and from all U.S. District Courts in cases arising under certain federal laws, notably Patents (and other more esoteric statutes)
- Composition
 - Total number of judges varies by Circuit
 - Appeals are typically heard by a panel of 3 judges
 - › En banc review
 - › Heard by all active judges on the court
 - › 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
 - › 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
 - In some rare instances, a federal statute will 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 at stake.
- Original Jurisdiction
 - Constitution gives the Supreme Court original jurisdiction over certain cases. See Article III, sec. 2

3.2.4 Appointment of Federal Judges

- Article III Courts
 - Judges are appointed by President, with confirmation by Senate
 - Lifetime appointment
- 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 level, to which parties generally have a right of appeal from the trial-level 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, including NY, PA) or nonpartisan (13 states, including NC)
 - › While judicial elections in NC are nonpartisan, judicial candidates may identify themselves as members of a political party, attend and speak at political party events, and make financial contributions to political parties.
 - 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.
- Missouri Plan (a.k.a. merit selection)
 - 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
 - E.g. New York:
 - › Judges on the lower and intermediate appellate courts (called the Supreme Court and Supreme Court Appellate Division) are elected
 - › Judges on the highest court (called the Court of Appeals) are appointed by the Governor to 14-year terms, subject to State Senate confirmation

4 Outline of a Civil Action

4.1 Precipitating incident

- Transaction or event giving rise to dispute
- Role of attorney in the transformation of incidents into grievances and disputes
 - The client must decide, in the first instance, to consult an attorney
 - › A function of legal consciousness
 - Attorney helps translate the client's problem from law terms into legal categories: tort, contract, property, etc.
 - Attorney may also help client identify alternative potential defendants, available remedies, etc.

4.2 Choice of Forum

- Choice of court system

- Subject-Matter Jurisdiction: Does the court have authority to decide this type of case?
- Choice of court
 - Personal Jurisdiction: Do courts 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

- State v. Federal (*Erie* doctrine)
- State v. State

4.4 Scope of Suit: Claims & Parties

- Joinder

4.5 Commencement of Action

- Pleadings
- Preliminary Motions

4.6 Pre-Trial Practice

- Discovery
- Summary Disposition

4.7 Trial & Appeal

- Judgment
- Post-Trial Motions
- Appeals
- Execution

4.8 Future Litigation

- Claim Preclusion
- Issue Preclusion