

Civil procedure analysis

Law



CIVIL PROCEDURE Civil procedure in the US comprises of the rules that govern processes in the federal courts, courts as well as the territorial courts. At first the civil procedure in both federal and civil courts was rather confusing. The early 20th century reformers used innovative federal procedural rules to bring uniformity in the civil procedure in the states. By 1960 many states had adopted the FRCP as part of their civil procedural systems. There are three main features of the civil procedure in the US. An adversarial model of resolving a dispute is followed and the plaintiff and the defendant start and propel the legal process. Then the judge playing the role of an umpire listens to both the parties, and gives a fair verdict. This is contrary to the inquisitorial model of dispute resolution and in this case the judge does not ask independent questions (Langbein, 1985). It is up to both the parties to prosecute their complaints and fortifications.

There have been some changes in the procedural rules that tend to weaken the judicial evaluation of the qualities of lawsuits. These procedures are used by the attorneys and changed according to what benefits their clients (Molot, 1998). This makes the lawyers a very essential part of the legal system whose responsibility is to make sure that justice is achieved.

The civil procedure in the United States is influenced by the positive law however the essential rules of decision taught during the first year in law school are centered more on the common law. The basic difference between the two is in the materials that contain the legal rules. This makes it difficult for a first year student to outrank the common law to the comparatively simpler positive law. The “ knowledge of the statutory law” is considered to be highly important information by those lawyers who are practicing, a little more than the “ knowledge of procedural rules (Blaird, 1978)

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The civil procedure should have some essential traits, the justice must be provided in less time. However, the way that disputes are resolved in the United States does not fulfill the purpose of 'speedy and inexpensive' with the number of lawyers involved and a national trend of judicial resolution of things which other societies resolve using political and administrative ways. (Garry, 1997)

The outer limits of the civil procedure are defined by the constitutional law. The constitution limits the subject matter of federal court cases, governs the effect that courts of one state must give to the judgments of the other and also reserves the right to jury in some types of cases of the federal court. The other source of positive procedural law is the 'statutes' that determine the power of the courts in both federal and state systems as well as what cases they can hear. They also outline the personal jurisdiction of the state courts. However, the most significant sources of positive law are the previously implemented rules of the civil procedure. By 1986, 23 states followed the Federal Rules of Civil Procedure with a few changes.

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