

# American civil procedure

[Countries](#), [United States](#)



General Description of Court Systems The U. S. court system consists of fifty state court systems plus a similar system for the District of Columbia and a separate system of federal courts. The federal courts and most state court systems are organized into trial courts (the U. S. District Courts in the federal system), intermediate appellate courts (a losing litigant in a federal district court generally may appeal a final decision to the United States Court of Appeals for the circuit in which the district court is located), and a Supreme Court.

There are today 91 judicial districts in the United States, each having its own court. Additionally, there are districts courts for Puerto Rico, Guam, the Virgin Islands, and the Northern Mariana Islands. Every state, as well as the District of Columbia, has at least one judicial district, and many larger states are divided into two or three, or even (in the cases of Texas, New York, and California) four judicial districts. Congress' decision to divide a particular state into more than one judicial district depends on population, geography, and caseload.

At present there are eleven numbered circuits, each embracing a largely geographically contiguous area, including anywhere from three to ten states and territories. In addition, there is a Court of Appeals for the District of Columbia, which hears appeals from the federal district court there, and one for the Federal Circuit, which handles appeals on certain matters, such as patent disputes, and from various specialized federal tribunals, such as the Court of Federal Claims. At the apex of the federal court system is the Supreme Court of the United States, composed of nine justices.

Unless disqualified or ill, all of the justices participate in each decision of the Court. Most cases reach the Court on discretionary writs of certiorari from the United States Courts of Appeals or the highest courts of the states. The federal courts have limited jurisdiction; they may only hear cases raising a federal question or cases based on diversity of citizenship where a substantial sum is at stake. State courts, in contrast, can hear practically any sort of case, including most cases involving federal claims.

With respect to state law, the individual state supreme courts have the final authority. As to federal issues (including constitutional ones), state courts are subject to the oversight of the United States Supreme Court. The diversity of U. S. court systems poses a problem for a comparative analysis.

II) The Appointment of Judges Justices of the Supreme Court, the circuit courts of appeals, and the district courts are appointed by the President of the United States with the advice and consent of the Senate.

These are life appointments and can only be removed through impeachment by the Congress for " high crimes and misdemeanors. " There is no statutory qualification for judicial appointment to the Supreme Court or the lower federal courts. The process of appointment of a federal judge starts from a judicial vacancy. A vacancy occurs when a judge dies, resigns, is impeached by Congress, or where a new position is created by Congress. Congress is involved throughout the process of appointment of federal judges<sup>1</sup>, including both in the selection of candidates and confirmation of nominations.

Congress's Specifically, the Senate is involved while the House of Representatives has no formal role in appointment of judges. Influence in the selection of potential candidates lies in its capacity to make

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recommendations. As a general rule, in the United States judges do not specialize in specific subject matters. American judges are lawyers who have been appointed to the bench. They still think of themselves as lawyers, and they often go back to being lawyers after they resign from the bench.

In the United States, lawyers and judges are divisions of a single legal profession and are separated from each other only by a permeable membrane. It is quite natural for judges selected this way to play the relatively passive role that judges play in the U. S. system. Similarly, United States judges do not have a career ladder that they can climb based on their skill at resolving cases. At best, working one's way up means getting appointed to an appellate court. Such appointments are not the result of meritocratic advancement from the lower court bench.

Many appellate judges were never district court judges. The absence of a definite career ladder and responsibility for the job one does at an entry level court supports the U. S. model of a passive judge managing a civil litigation process largely driven by the lawyers. III) Civil Procedure Defined The subject of our meetings is the field of civil procedure. Thus, they will explore the principles surrounding the resolution of civil disputes in the courts and in so doing examine the various tools available to the lawyer who must defend or bring a lawsuit.

As distinguished from substantive matters, the civil procedure questions that will be analyze that follow focus on how attorneys frame their cases in order to bring them properly before a particular court, and how the case proceeds from its institution until a judgment finally is reached and enforced. The availability of an appeal and the likely scope and effect of any judgment that

is entered also will be discussed. In sum, then this lecture will present an exposition of how the procedural aspects of the civil justice system operate.

In order to understand the rules of procedure, it is important to appreciate two things. First, the purpose underlying the establishment of most rules of civil procedure, in any judicial system, is to promote the just, efficient and economical resolution of civil disputes. Federal Civil Procedure Rule 1 (hereinafter: F. R. C. P), which governs civil litigation in the United States district courts, provides: “ These rules shall be construed to secure the just, speedy, and inexpensive determination of every action”.

This is not to say that these goals always will be met or that they are entirely consistent, and many examples can be found cases in which both judges and lawyers appear to have lost sight of them. Nonetheless, these objectives remain the foundation on which current procedural rules are based, and the desire to achieve them underlies many of the proposals for change in today’s procedures. The second matter that must be remembered is that the Anglo-American judicial system is based on the adversary model. This differs from systems in civil law countries where the inquisitorial model prevails.

IV) The Adversary System A basic feature of modern American procedure is the adversary system, in which initiative and responsibility for presentation of the case rests primary with advocates on behalf of the parties. As a general rule, the adversary system of common law countries is lawyer-centered. Lawyers are the protagonists of lawsuits; by their continuous confrontation and " fight," lawsuits get resolved. The adversary system should be contrasted with the judge-centered procedure used in most modern legal systems, including those of continental Europe and Japan.

It is the function of the advocate for the plaintiff to analyze the facts and legal basis of the grievance which will be sued on; to select the appropriate legal concept for presenting the case - in the common law system, determining which writ should be used; to gather before trial the evidence to be presented in support of the case; at trial, to present the evidence by questioning the appropriate witnesses and offering relevant documents; and, at the conclusion of trial, to argue to the trier of fact (judge or jury) that the evidence should lead to a finding for the plaintiff.

The advocate for the defendant has corresponding responsibilities. The defense must anticipate the legal contentions and the evidence to be offered by the plaintiff, and present countering evidence at trial. At trial, counsel for each side is permitted to cross-examine witnesses presented by the opposing party. The judge in the adversary system has relatively passive role, but nevertheless performs important functions.

These include: supervising the seating of a jury from among the citizens summoned for jury duty; at the beginning of trial, describing to the jury the general nature of the case and their responsibilities in deciding issues of fact; acting as umpire in the course of the trial, to restrain the advocates from pursuing irrelevancies or becoming overzealous; after all the evidence has been received, giving instructions to the jury about the legal principles to be applied in reaching a verdict; and, after the trial is over, considering whether there were mishaps at trial so prejudicial that a retrial should be held.

In practice, many judges perform a much more active role, including general direction of discovery, active questioning during trial, and giving of interim

explanations to the jury. V) The Federal Rules of Civil Procedure The U. S. Constitution, adopted in 1787, authorized establishment of a system of federal courts independent of the courts of states. The principal objectives in establishing an independent system of federal courts were twofold. First, federal courts could be expected to be more sympathetic in enforcing the federal government's interest than the state courts had been.

Second, federal courts could be more disinterested in litigation between citizens of different states than the state courts had been. Accordingly, the new federal first-instance courts were endowed with competence in cases involving the government and in those in which the parties were citizens of different states. It was generally understood that the federal courts could have their own distinct system of civil procedure. However, there were important practical obstacles to devising such a system. A major difficulty arose from the federal nature of the new government.

As I mentioned earlier, each state had its own procedural system, although the systems bore a family resemblance to each other. It was therefore convenient to provide that the federal trial courts in each state should use the common law procedural system of that state. Such was the provision of a statute adopted during the first sitting of the Congress of the United States in 1789, known as the Conformity Act. However, conforming the procedure in federal trial courts to that of local state procedure was impracticable in proceedings in equity. The mixed system (" law side" and " equity side") prevailed in the federal courts until 1938.

It caused much difficulty, chiefly because it required that federal civil litigation vary in its procedural aspects from one state to another. Moreover, <https://assignbuster.com/american-civil-procedure/>

in many states the common-law procedure was very antiquated. Federal courts of the twentieth century found themselves applying legal technicalities that emanated from the eighteenth century and earlier. In response to these difficulties – after many years of debate – Congress adopted the Enabling Act of 1934, which authorized promulgation of a single civil procedural system for the federal courts.

The responsibility for formulating the new rules was conferred on the U. S. Supreme Court, with a proviso that the rules be submitted to Congress for approval. The Supreme Court delegated the drafting task to a committee composed of experienced legal scholars, judges, and lawyers from various parts of the country, employing Dean Charles Clark of Yale Law School as draftsman. The committee's draft, after discussion and revision, was submitted and adopted in 1938. This procedural system is the Federal Rules of Civil Procedure, still in effect today with several subsequent amendments. Since 1938, most states on their own initiative have revised their procedural codes on the model of the Federal Rules.

Hence, from 1789 to 1938, federal procedure principally conformed to state procedure, but since 1938 state procedure has come principally to conform to federal procedure. When reference is made today to American civil procedure, whether in comparative law or in law school instruction, it is the Federal Rules that usually are in contemplation. VI) The Law of Civil Procedure The law of civil procedure governs the adjudication of legal disputes between private parties – for example, litigation over contracts, property, and civil wrongs.



The bulk of civil litigation involves controversies of this kind. In the American legal system, except for criminal matters, the law of civil procedure also governs the adjudication of public law controversies. These include litigation over the constitutionality of legislation, the legality of conduct by government officials, and the scope of authority conferred on administrative and regulatory agencies – that is, legal aspects of the exercise of public authority, hence “ public law”.

The central role of ordinary courts in resolving public law issues is unique to the United States. In most other modern political systems, issues of public law are usually resolved in special courts having jurisdiction of administrative or constitutional questions and using special procedure for determining such questions. In the United States these questions are resolved in the same courts that have jurisdiction over ordinary litigation between private parties, and according to the same procedure used in ordinary litigation.

A controversy over public law typically originates in a dispute between a private party and a governmental agency, and usually will first be considered within the agency itself. However, the controversy can then be carried into the courts by appeal from the agency or by a suit against the agency officials. Thus, legal questions such as those concerning racial discrimination by government agencies, abortion carries out in public hospitals or with public funding, and police handling of arrests can all be presented in the form of an ordinary civil lawsuit.

Civil Procedure thereby is the medium for presenting legal claims of social, political, and economic justice, and the courts are the immediate arbiter of the issues, sometimes their ultimate arbiter. VII) Personal and Subject-Matter

Jurisdiction and Venue of litigation 1) Overview When deciding where to file suit one of the first questions that must be answered is whether the chosen court has jurisdiction, specifically, subject-matter jurisdiction and venue over that particular dispute brought before it.

Furthermore, the court should have personal jurisdiction. That is, the court should have power to enter a judgment which would be binding on the defendants involved. Usually, state or federal constitutional provisions or statutes determine whether specific courts have subject-matter jurisdiction over certain categories of controversies. These provisions distribute judicial power to hear disputes among a variety of courts within a system and in that sense regulate the flow of cases in those courts.