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RECHT BERATUNG WEITERBILDUNG

Introduction to US business law Civil litigation

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Repetition – Last time

- > Court systems
 - > Federal courts
 - > State courts
- > Structure
- > Differences state/federal courts
- > Powerful federal courts (Marbury vs. Madison)
 - > Yesterday: public lecture by Judge Jed Rakoff!
- > USSC
- > Judicial activism/living constitution
- > Picking the right court (forum shopping)

Exempel jurisdiction

- > Bill is crossing the street in New Orleans (LA) and gets run over by a car driven by John, a Marti Gras fellow from New Orleans who drives a car owned by his boss from Texas.
- > Where to sue?
- > Which court has jurisdiction based on what?
 - > State law = state court?
 - > Diversity = federal court?

Civil Procedure (I)

- > Federal/States Courts (2% vs. 98%)
- > All rules that courts follow in civil lawsuits (as opposed to criminal ones)
- > Filing a claim, lawsuit
- > Plaintiff/claimant – adversary system
- > Defendant
- > „Sanchez v. Meier“
 - > Sanches plaintiff
- > Remedies
 - > Preliminary Relief (temporary restraining orders, preliminary injunctions, and restrictions on the use of money and real property)
 - > Legal and Equitable Remedies (damages – money, restitution, transfer of property, injunction)

US Civil Procedure (II)

- > Originally based on common law
 - > Rule: federal courts follow local state rules
 - > Due Process
 - > *Goldberg v. Kelly*, 397 U.S. 254 (1970)
 - > *Hamdi v. Rumsfeld*, 542 U.S. 507
 - > US Constitution, 5th Amendment and 14th Amendment
- > But: State civil procedure law diverged
- > Therefore, (1938) Federal Rules of Civil Procedure
 - > 35 states adopted these rules, too
 - > Harmonization



<https://www.youtube.com/watch?v=B64lvJthb-M>



<https://www.youtube.com/watch?v=D9KSIbHUFu4>

US Civil Procedure (III)

- > **Specialities in a US civil procedure**
 - > Extensive pretrial discovery
 - > Heavy reliance on live testimony (jury)
 - > Aggressive pretrial motions
 - > Summary judgement
 - > Settlement
 - > Class actions
 - > Punitive damages
 - > Lawyers fees (contingency fee based, no „loser pays“ rule)

Federal Rules of Civil Procedure (I)

- > FRCP are promulgated by the US Supreme Court and approved by Congress
- > **Purpose:**
 - > *"to secure the just, speedy, and inexpensive determination of every action and proceeding." Fed. R. Civ. P. 1.*
- > Different changes since 1938
- > FRCP has 86 rules in 11 Titles plus Appendix of Forms (XII) and Supplemental Rules for Admiralty of Maritime Claims and Asset Forfeiture (XIII).

Federal Rules of Civil Procedure (II)

- > Title I – Scope of Rules; Form of Action
- > Title II – Commencing an action; service of process, pleadings, motions, and orders
- > Title III – Pleadings and motions
- > Title IV - Parties
- > Title V – Disclosures and Discovery
- > Title VI – Trials
- > Title VII – Judgement
- > Title VIII – Provisional and Final Remedies
- > Title IX – Special Proceedings
- > Title X – District courts and Clerks: Conducting Business; Issuing Orders

Stages of the Trial (I)

1. Pleading
2. Pre-Trial
3. Trial
4. Post-Trial

Stages of the Trial (II)

1. Pleading (I)

- > Parties begin process by exchanging information
- > Plaintiff: filing complaint
 - > Not detailed
 - > Copy to the defendant (serve)
 - > Time frame to respond (~20 days)
 - > No answer: default judgement

Stages of the Trial (III)

1. Pleading (II)

- > Defendant
 - > Either file answer (either admits or denies alleged complaints)
 - > or to move to dismiss (challenge jurisdiction)
 - > Motion to dismiss
 - > Now all objections must be presented
 - > Possible counterclaim

Stages of the Trial (IV)

2. Pre-trial discovery (I)

- > Peculiar American speciality
- > Essential for plaintiff to gain access to evidence
- > 3 forms
 - > Interrogatories
 - > questions to other side under oath
 - > To produce documents
 - > Expl. Studies by tobacco companies
 - > Questions to third parties and depositions
 - > Testimonies (before court or not)

Stages of the Trial (V)

2. Pre-trial discovery (II)

- > Pre-trial conference
 - > Discussions with parties lawyers
 - > First impression by judge
 - > Final attempt at settlement
- > Default judgement (failure to plead)

Stages of the Trial (VI)

3. Trial (I)

- > Right to a trial by jury
 - > Either party
 - > 7th Amendment – constitutional right
 - > Selection of jury members (voters)
 - > Jury is finder of facts - all evidence before jury – must weight credibility
- > Closing argument
- > Tricky: jury also determines proper amount of damages (limited by Supreme Court)

Stages of the Trial (VII)

3. Trial (II)

- > Opening arguments
 - > Both sides present case in summary
- > Plaintiff produces evidence
 - > Witness get cross-examined
- > Defences produces evidence
- > Judge instructs the jury on the applicable law
- > Jury withdraws, deliberate in private, verdict in court must be unanimous

Stages of the Trial (VIII)

3. Trial (III)

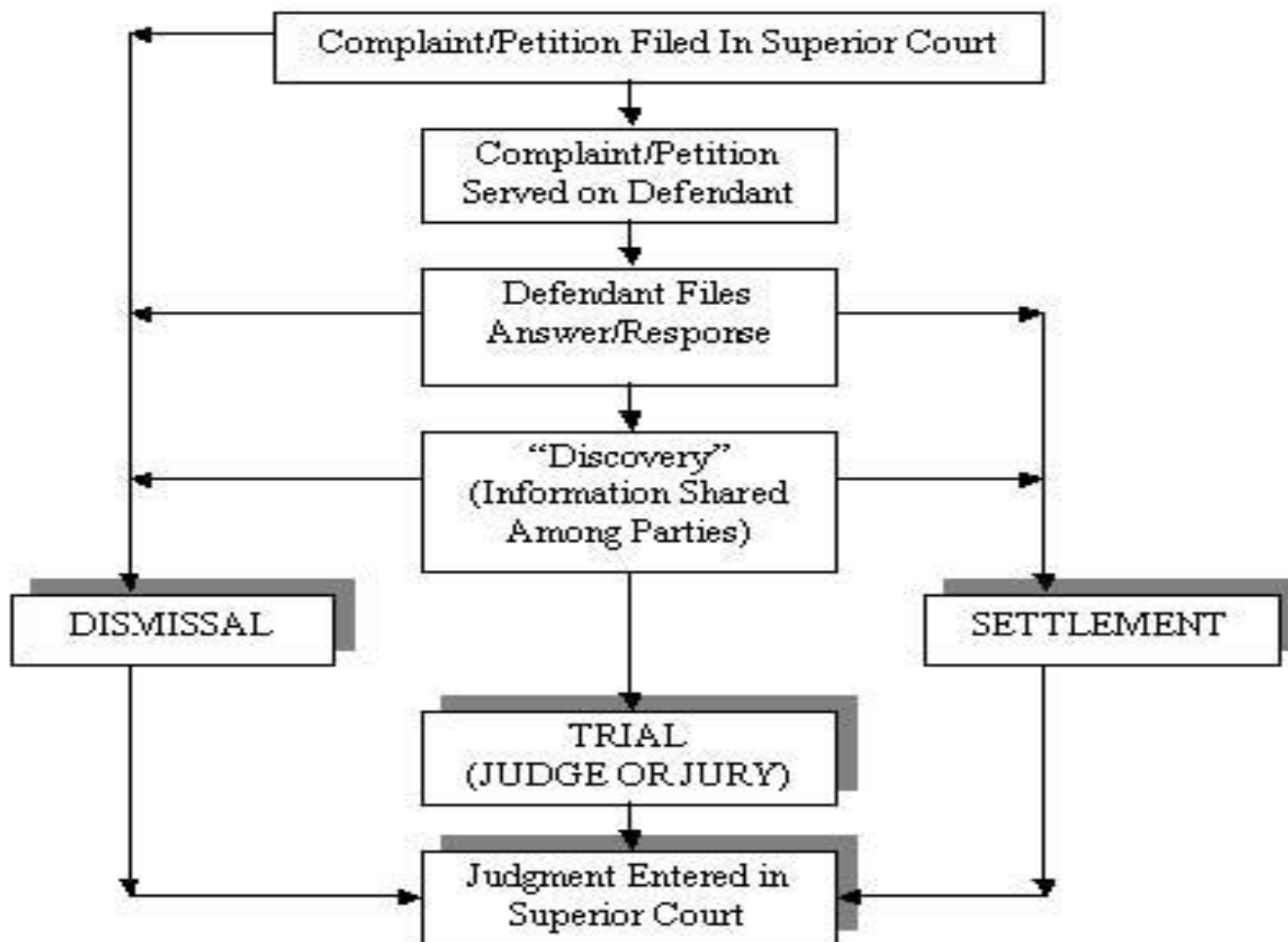
- > Mock Jury-Trial
- > Judge has ultimate decision on admission of evidence
- > What is the judge doing at all?

Stages of the Trial (IX)

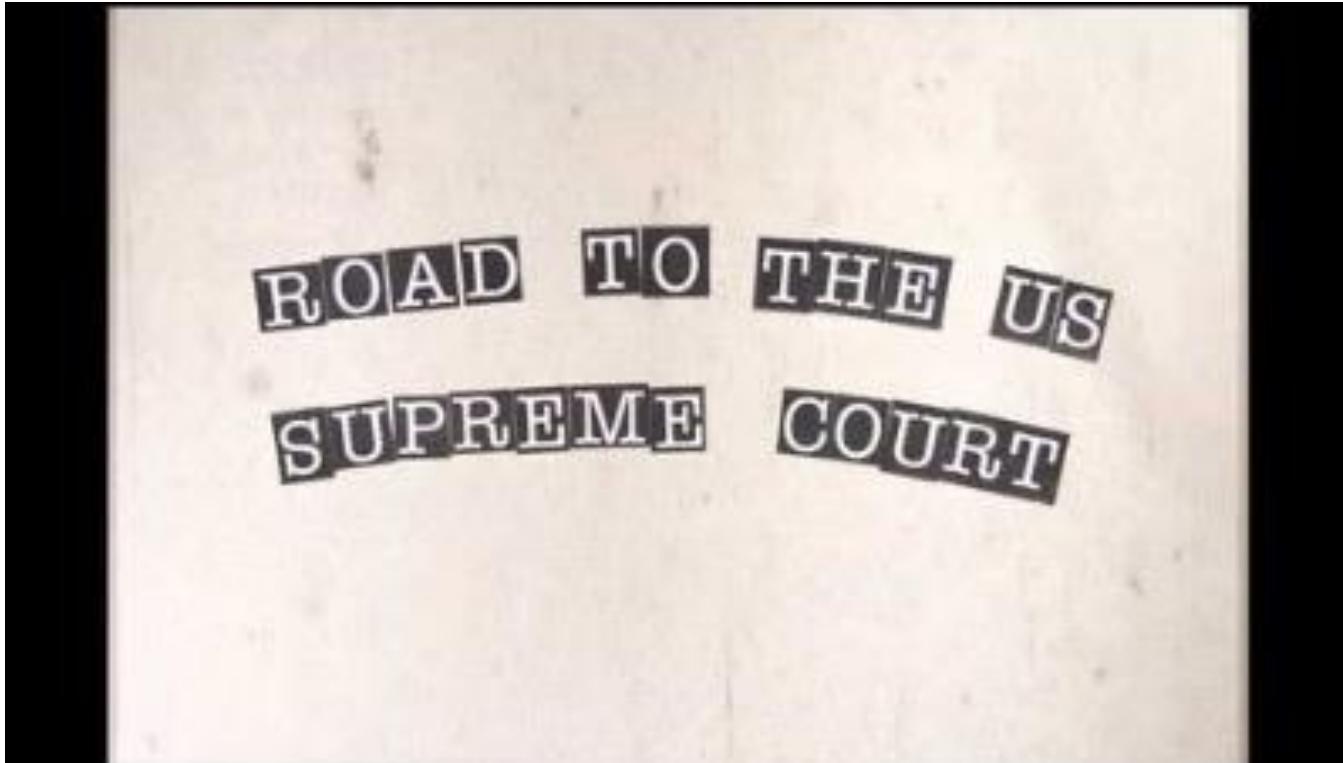
4. Post-Trial

- > Right to appeal to the Court of Appeal
 - > Generally only issues of law
 - > Written submissions and oral argument before three-judge panel
- > US Supreme Court
 - > Only right to *writ of certiorari*

How a Civil Case is Processed



The way up to the US Supreme Court!



<https://www.youtube.com/watch?v=ZS2Up5TeirM>

Criticism

- > Courts too generous?
- > New York as the „court of the world“?
- > Too easy/attractiv to sue someone?
- > Jury/live/witnesses/cross examination?
- > Parties not judges in charge?
- > Media too powerful?
- > Election/appointment?
- > Only one chance to appeal?
- > Blackmail/settlement/class actions?

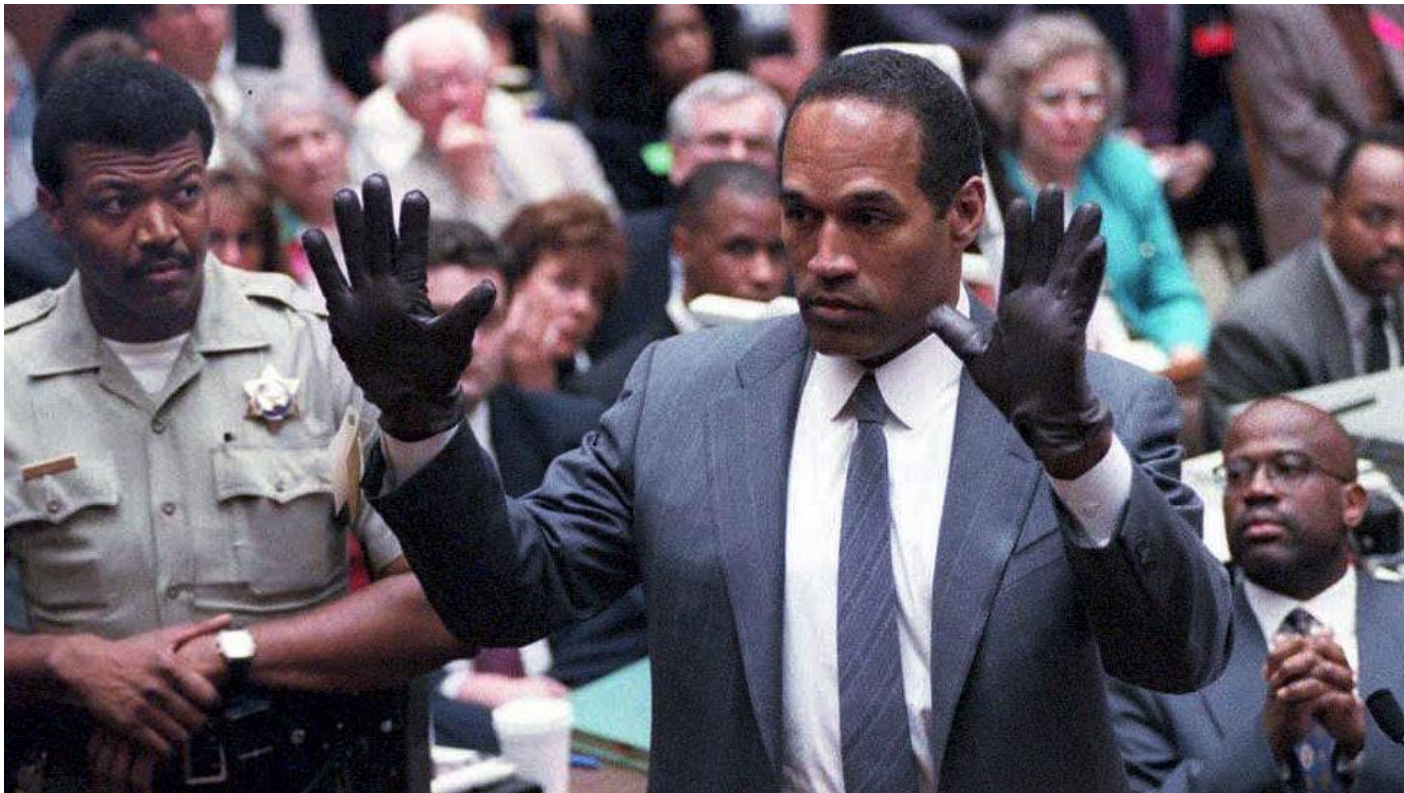
Civil trial – criminal trial

- > Criminal indictment only once!
 - > Res iudicata!
- > Alternative: civil trial
 - > Expl. O.J. Simpson case
 - > Success?

O.J. Simpson case (I) – 1994/95 criminal case



O. J. Simpson case (III)



Civil case 1997 – 33.5 million damage compensation



2008 – robbery case

- > 33 year in jail
- > Released in 2017



- > Until today he has never paid his debts!

Next time

– Contracts