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比較法學 第13輯(2002)

American Courts and Cases: An Introduction

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I'd like to talk about the structure of the court system in the U.S., but actually there is no one court system. The U.S. has at least 51 different court systems-one federal and one for each of the 50 states, with each state having its own variation. Since it would be too much to talk about all the different variations, I would like to talk about the basic model of a three-level system of courts that is used at the federal level in the U.S. and by most of the states. I think this will help give a general idea of how people in the U.S. use the courts when they go to trial. I would also like to talk briefly about the jury system and the use of cases, the decisions of courts, in American law.

First, the courts. Some people say that the United States has a reputation for being a litigious country-that is, that people always sue each other whenever they have a dispute. There is the impression that when people have disagreements or disputes, they go to a lawyer and tell the lawyer they want to sue the other person in the dispute, and the people, their lawyers, and their dispute all wind up

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in a court room, with a judge, frequently a jury, and witnesses. It is probably more realistic to say that people in the U.S. usually don't sue each other when they have a dispute and don't go to court. Many disputes are ignored; some are resolved by an apology; others by compromise between the people involved, and so forth. Sometimes people consult an attorney about a problem and the attorney is able to resolve the problem by settling the dispute with the other person or with the other persons attorney, outside of court. Negotiation is frequently used instead of going to court. There are several methods of such alternative dispute resolution. It is said that only about 3-5% of legal disputes in the U.S. actually wind up in a court of law.

Keeping that more realistic picture in mind, I'd like to look at the small percentage that do go to trial.

Let's assume that we have two individuals who are involved in a dispute that they have not been able to resolve. One person or party decides to sue the other; there is a lawsuit and there may be a trial. A first question-- Where will the trial take place? In a court-yes-but which one? The trial might take place in a court that handles only limited matters or it might take place in a court that handles all kinds of lawsuits. The first kind of court, one that handles only certain kinds of legal matters, is called a court of limited jurisdiction. Examples of this kind of court would be family court, probate court, and small claims court. The other is called a court of general jurisdiction. A trial court is an example of a court of general jurisdiction and this is what we will be talking about today.

Another consideration: a trial could take place in a federal or in a state court, depending on the nature of the dispute. The place where

the trial is held is also used with the word jurisdiction-federal jurisdiction or state jurisdiction. Jurisdiction has several meanings and here we see two of them: (1) the court's authority to hear the case and (2) the location-e.g., a state; a federal district--in which a trial is held.

A trial court is a court of general jurisdiction. In this kind of court, whether it is one of federal or state jurisdiction, parties present their "side" of a dispute in a public forum. The trial process in the United States is viewed as adversarial, meaning that during the trial process, the plaintiff's attorney (or the prosecutor, in a criminal case) and the defendant's attorney act as opponents, trying to present their best legal arguments on behalf of their client's situation. Because of this adversarial nature, people talk in terms of who "won" and who "lost" the case.

In this adversarial setting, each side has the opportunity to present evidence, to call witnesses and to give a theory of what happened, and, when appropriate, to present a defense. If one party is asking for money as part of the lawsuit, then generally speaking there can be a jury. The jury will listen to and observe the witnesses, consider the evidence, and then listen to the judges instructions and deliberate in private and secrecy to reach a decision.

There are some kinds of lawsuits that do not involve a jury; these usually are lawsuits in which a party is asking the judge to order the other party to do something-for example, to finish painting a building--or to not do something-for example, to not have a march down a busy street. In these kinds of lawsuits, the judge makes the determinations and there is no jury. For today, I would like to focus

on the jury trial.

In order to have a jury, the court selects people of the community at random and sends them a summons for jury duty. A summons is a formal written demand to appear in court on a certain date. When the people arrive at the court, they receive an explanation of their responsibilities as jurors and then they are asked to come into the courtroom where they are interviewed, either by the lawyers or by the judge, to see whether there is a reason to exclude them from being on the jury for the particular trial. From the many people who are assembled in this way, a group of people is chosen to act as a jury for a case. The tradition of using a jury came into use in colonial America as a carry-over from Americas English origins. The jury is a typical feature of many, although not all, trials in the U.S. at both the federal and the state level.

After the jury is selected, the trial usually begins. Each lawyer will have a chance to give an opening talk to the jurors. The lawyer will talk about the lawsuit, what the evidence will show, what the witnesses will say, and will make a claim for the client-either that the client has a case or that the client is not liable. This opening talk is not considered part of the evidence presented at the trial, but it does give the jurors a general idea of each lawyer's approach in presenting the lawsuit. At this point, the lawyer for the party who brought the lawsuit, known as the plaintiff, will begin the case, presenting evidence, calling witnesses, and slowly building a set of facts to convince the jury that the plaintiff's lawsuit is believable. The lawyer's goal and burden is to prove to the jury to a given level of reasonable belief that the plaintiff's assertions are true.

Criminal trials demand a very high level of belief from the jury in order to say that the defendant is guilty, and thus the burden of proof for the prosecuting lawyer is quite high; civil trials do not require as high a level of belief to find the defendant liable and so the civil lawyer's burden of proof is not as high. Within these general guidelines, ideally the prosecuting attorney or plaintiff's lawyer will try to present the most convincing case possible.

Because this is an adversarial process, the defendant's attorney, acting as an adversary, is allowed to question each of the plaintiff's witnesses to try to weaken that witness's statements. After the plaintiff's attorney has finished questioning all the witnesses, the defendant's attorney will present the defendant's side of the dispute, with the plaintiff's attorney's being allowed to question and challenge the defendant's witnesses. The defendant attorney in a civil case tries to prove to the jury that the plaintiff's assertions are not fully credible and, if possible, tries to present facts to show that the defendant has an acceptable defense for the alleged actions. In a criminal trial, since the prosecution presents its case first, the defense attorney will intensely question (cross-examine) the witnesses for the prosecution in order to weaken the prosecution's case and instill doubt in the juror's minds. After the prosecution presents its case, the defense attorney will decide whether or not another version of the case will help acquit the defendant; if so, the defense attorney will present its own witnesses.

When both sides have completed presenting their side of the case, each attorney will again talk to the jury, this time giving closing arguments. Then the judge will give directions to the jury for

evaluating the evidence and testimony presented during the trial and for determining the defendant's liability (or guilt, in a criminal case).

This is the first level of the three tier court system typically found at the state and federal levels in the U.S. This basic trial may last one afternoon or weeks and weeks. Regardless of how long the trial lasts, at the conclusion after the verdict is given, the person who was not successful may want to have one more chance of "winning." When this happens, the losing party can appeal the decision, asking a higher level court within the jurisdiction to review the trial courts decision. At this point, the lawsuit moves to the next level of the court system, the appellate level.

The appellate level in the court system is quite different from the trial level. The differences can be seen in the style of the courtroom itself. A trial courtroom is typically a rectangular room that has benches in the back for the observers, with the judge's bench at the front of the room along with a jury box-that is, a section of the courtroom enclosed by a short wall, making a box-like structure, in which are chairs for the jury members to sit on. There is also a special chair used when a witness is called to give testimony; this is usually located next to the judge's bench and across from the jury box, so that the jury can observe the witness closely. There are also two tables that face the judge's bench, one table for the plaintiff's attorney (or prosecutor) and the plaintiff; one table for the defendant's attorney and the defendant.

In contrast to the trial courtroom setting, the appellate level courtroom has no jury box and no witness chair. This is because no facts are presented to a jury at this level, no evidence is given, and

no witnesses are heard. There is no jury. Instead, the appellate court reviews the law that was used at the trial court to see whether any errors were made. The appellate court will read the record of testimony that was taken by a court stenographer during the trial court, as well as a written explanation prepared by each side's attorney arguing why the trial court's decision should be changed (or why not). These written arguments are called appellate briefs. Many of the decisions of the intermediate level court are made from the judge's reading of the appellate briefs; occasionally, the lawyers will appear before the judges to present their case and to answer questions that the judges may have. At this stage, usually the actual parties do not appear in court.

A party who loses at the trial level generally has a right of one appeal. There are typically two appellate levels in the court system-intermediate and high; these two levels plus the trial court level give the three tier court system mentioned earlier. If the party also loses at the intermediate appellate level, there is no right to appeal again, but the party can petition the higher level appellate court to review the case a second time. Very few cases get to higher level; only cases that are viewed as asking significant legal questions are accepted. Again, at the high level, there is no jury and there are no witnesses. The courtroom has no jury box and no witness chair; it has two tables where the opposing attorneys sit and it has a very long bench with several chairs to accommodate the multiple judges of the high level court (usually called "justices" at this level). This high court will also read appellate briefs prepared by the attorneys and will give the attorneys time to argue their respective cases and

respond to questions that the reviewing judges may have. At a later point, the court will issue its opinion.

The fifty states and the federal government each have a separate judicial system, including an arrangement of courts and court rules, but all have a system of trial court and review court and most have this three-tier court structure: many trial courts in which the facts are presented; several intermediate courts for reviewing the law used at the trial level, and one sole high level court to review the action of the intermediate appellate court. The high level court is usually called a supreme court; it is also sometimes referred to as "the court of last resort." At the federal level, the court of last resort is the U.S. Supreme Court in Washington, D.C. The Supreme Court may hear cases that originated in a federal trial level court or that originated in a state trial level court and that was reviewed first by the appellate courts in that state. (A party may take a law suit through all the levels of the state court system and, if still not successful, may petition the U.S. Supreme Court to hear the law suit.)

Who or what gives authority for the federal government and the states to create courts? The jurisdiction's constitution will usually give authority for the establishment of the court system. For example, article Ⅲ of the U.S. constitution states:

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.

U.S. Const. Art. Ⅲ, § 1.

An Article Ⅲ ("three") court refers to a federal court that derives its authority from the U.S. Constitution, Article Ⅲ.

The authority to set up courts at the state level is provided in a state's constitution. For example, Wisconsin's constitution states that Wisconsin shall have

> "one supreme court [and] a court of appeals" Wis. Const. Art. Ⅶ, § 2 (as amended 1966 and 1977)

and trial courts. The Wisconsin constitution delegates to the state legislature the authority to create trial courts.

Cases

Much of the law of the United States is based historically on judge-made law; that is, the law stated by judges in deciding cases. This is the "common law" tradition--a legal system in which the law develops incrementally and slowly through accumulated legal decisions made by judges over time. Why is the common law called "common"(that is, "ordinary")? Because, as it developed in England, it applied to all the people "in common," rather than the local customs that applied to just certain regions in England, or the law of the manor that applied only to the people who worked for a lord in feudal England.

The common law was still developing in England when the first colonists settled in North America in the 17th century. The American colonists were subjects of the English king and were governed by English law for well over 100 years; the tradition from England of common law decision making was well-established at the time of the American Revolution in the late 18th century. It continued to be used and to develop its own American characteristics after the United States was established.

In trying to reach a decision to resolve a current dispute, courts still follow the general pattern of looking for other cases that have dealt with similar problems. If there is no statute that applies, a court will make a decision following what previous courts did under somewhat similar situations. When a court does this, basing its decision on the law of previous cases, the court is said to follow the doctrine of *stare decisis*, which is Latin for "let the decision stand." Following the law established by previous cases gives the legal framework of a community consistency and predictability which helps make the legal system reliable and dependable.

A court may locate a previous case that appears to be applicable, but in reading the case, find that the facts or legal issues are significantly different. When this happens, the court will not apply such a case to the current dispute. In this situation, the court is not obligated to follow the doctrine of stare decisis. Instead, the court in its opinion will point out the differences between the facts of the current case and the previous case. In legal parlance, we call this "distinguishing the case."

From time to time, the court will state that the law itself needs to be changed and will overrule a previous decision. Overruling cases causes a certain instability in the law and in society and thus courts are very careful about overruling decisions.

In addition to trying to find cases that have dealt with similar factual and legal issues, courts will evaluate the authority of the previous case. We talk about "mandatory authority" and "persuasive authority." Mandatory authority refers to the situation in which a court in a jurisdiction (for example, a state) must follow a decision

made and reported by a higher level court in the same jurisdiction. An example of mandatory authority is seen when a U.S. circuit (appellate) court follows a decision made by the Supreme Court. The Supreme Court's decision is said to be "binding" on the appellate court. Mandatory or binding authority refers to a situation in which a court must follow the decisions of a previous court dealing with the same legal issue.

Persuasive authority, in contrast, refers to a situation in which a court may, if it wishes, follow the decision of another court, although it does not have to. Persuasive authority is typically found when a court from one jurisdiction looks for guidance from decisions made by courts in other jurisdictions. In this situation, the deciding court is not obligated to follow the other court's decision; however, it may be impressed with how the other court dealt with the legal problem and may want to adopt part or all of the other court's opinion in reaching a decision.

When attorneys working on a legal problem find a case that seems to be helpful, they must remember to see what kind of authority the case has, since the kind of authority will make a difference in the degree of influence the case has in solving the legal problem. It is most desirable to find a case that has similar facts, similar legal issues, and is mandatory authority; cases that have only persuasive authority can still be important and helpful, but their weaker authority must be noted so that a legally accurate conclusion is made.

Now the United States relies heavily on statutory law, law created by legislative bodies, and administrative law, law promulgated by

governmental agencies. Nevertheless, the decisions made by courts are still an essential part of the U.S. legal system and a source of law at both the state and federal levels. Even with statutory law, there is still continued reliance on court decisions to interpret the meanings and application of words of a statute that are in dispute, to decide whether a statute or other law is unconstitutional, and so forth. The decisions of courts at both the state and federal levels are an integral part of American legal culture and an essential element of a lawyer's research process..

Attorneys dealing with a statutory problem will look to see whether there are cases that have interpreted the statute; they dare not base their legal advice on the words of the statute alone, since a case's decision interpreting a statute becomes part of the statute and must be used in reaching a legal conclusion. In other words, case law in the U.S. is a primary source of law and is viewed as legal authority. In addition, it is critical for lawyers, legal scholars, law students, and anyone doing work in the law in the U.S. to confirm that the law that is being relied on is current law. Statutory law is subject to revision as well as case interpretation, and case law is subject to becoming outdated and sometimes overruled. Therefore, in order to ensure that legal conclusions and legal recommendations are accurate and reliable, confirming that the law is current is an absolutely essential step for lawyers in preparing briefs for the courts and generally advising and assisting their clients.

To conclude, let us look at the general role the courts. The most obvious is, of course, to settle disputes, to give aggrieved parties a chance to state the case to the community and, we hope overall, to achieve justice in society.

In addition to these observable functions of the court, in the U.S., we also look to the courts, in part, for working definitions of legal concepts and terms. Legal definitions, as any definitions in a technical area, are essential as a starting point for comprehension and meaningful discussion of a topic. Legal definitions are provided by statutes and regulations, to be sure. Legal definitions also come from cases as a result of the common law tradition, in which judges, over time, refined legal concepts and sharpened (and sometimes confused) definitions. Although in the U.S. we may turn to a legal dictionary or a scholarly treatise to find a definition of a legal term, the underlying basis for that definition is very likely to have roots in case law. This role of giving definition to the law seems to me to be another role of the court system, or at least a "by-product" of the courts' more obvious functions. We rely on our courts to settle disputes, to interpret legislated law, to tell us what the law is, to tell us whether a law complies or goes against a constitution-all these things-and we also rely on our courts to clarify and sometimes to revamp legal definitions. If we think of legal definitions as the "building blocks" of legal thought, we perhaps gain an even deeper appreciation of the role that courts and cases have played and continue to play in shaping the law in the U.S.. Although no one questions the fundamental role that courts have in our society, the importance of courts and case decisions in giving actual definition to the law is not always acknowledged. I would like to suggest that this is another legacy of the common law tradition and the reliance on cases in American law: the provision of definitions of legal concepts that have structured and continue to give shape to our legal thought.