



# EuropaInstitut

AN DER UNIVERSITÄT ZÜRICH

RECHT BERATUNG WEITERBILDUNG

## Introduction to US business law

### 6. Civil procedure

FS 2026

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## News from last week!

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- > The war is over.....?
- > Demokratieabbau in den USA?
- > Neuer „Minister“ für innere Sicherheit - Mullin

# Repetition last class (1)

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- > US Court system
    - > 2 court systems
      - > Federal courts
      - > State courts
    - > Structure
  - > Adversary system
  - > Jury system
  - > appeals
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# Repetition last class (2)

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- > Jurisdiction
    - > 2 court systems
    - > Federal Courts
      - > Federal matter jurisdiction
      - > Diversity jurisdiction (\$75`000)
    - > State Courts
      - > General jurisdiction (state law)
      - > 90-95% of all cases
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# Exempel

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- > 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?
- > International (effects doctrine, minimum contact)
- > Forum shopping

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## jurisdiction – 2 cases

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- > **Cases that arise under a federal law (called "federal question" cases).** Federal district courts have subject matter jurisdiction if a case is based on (arises under) any federal law. Examples include:
  - > You sue a police officer for violating a federal civil rights statute that authorizes civil damages lawsuits by persons who are unlawfully arrested.
  - > A patent owner sues an individual for manufacturing an item that violates the patent (Federal law creates patent rights).
  - > An owner of a small business sues a large company for violating federal antitrust laws.
  - > Under a federal law aimed at eliminating discrimination by businesses, a civil rights organization sues a restaurant chain for maintaining a policy of discouraging patronage by members of ethnic minority groups.

# Jurisdiction

## Wegelin case

### > Facts

- > In January 2013, Wegelin & Co. pleaded guilty to conspiracy in a New York court to assisting more than 100 American citizens to hide \$1.2 billion from the Internal Revenue Service over a 10-year period.
- > Although the bank's practice is legal under Swiss law, the bank agreed to pay \$57.8 million in fines to US authorities

### > Why submit to US court at all?





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## Civil Procedure

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# Civil Procedure (I)

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- > Federal/States Courts (5% vs. 95%)
- > 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>

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# US Civil Procedure (III)

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- > **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)

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# Federal Rules of Civil Procedure (I)

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- > 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).

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# Federal Rules of Civil Procedure (II)

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- > 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)

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

# Stages of the Trial (II)

## 1. Pleading (I)

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- > 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)

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- > 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)

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- > 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)

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- > Pre-trial conference
  - > Discussions with parties lawyers
  - > First impression by judge
  - > Final attempt at settlement
- > Default judgement
  - > failure to plead or to appear – often granting plaintiff full claimt amount

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# Stages of the Trial (VI)

## 3. Trial (I)

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- > 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 (limites by Supreme Court)

# Stages of the Trial (VII)

## 3. Trial (II)

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- > 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)

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

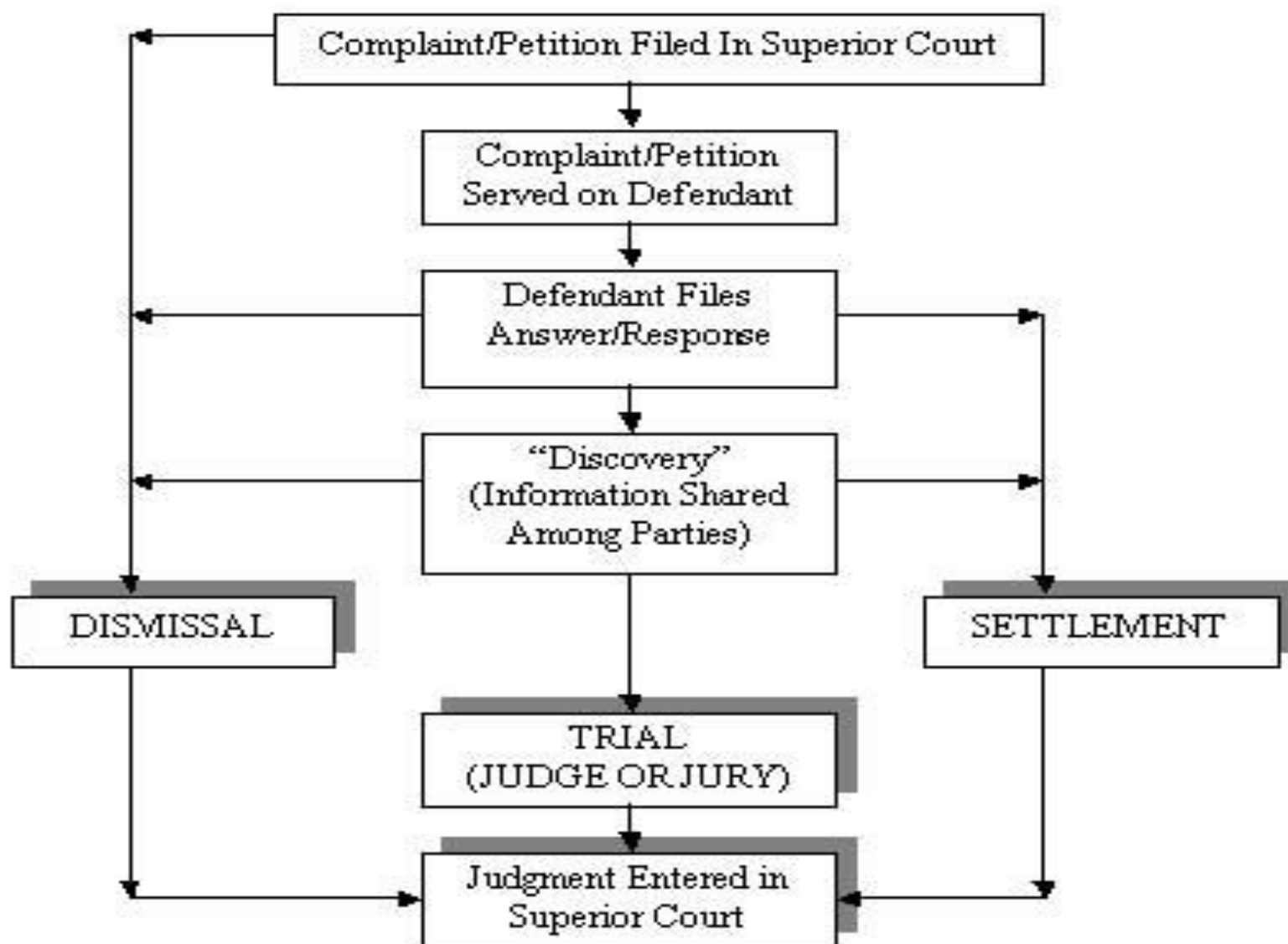
# Stages of the Trial (IX)

## 4. Post-Trial

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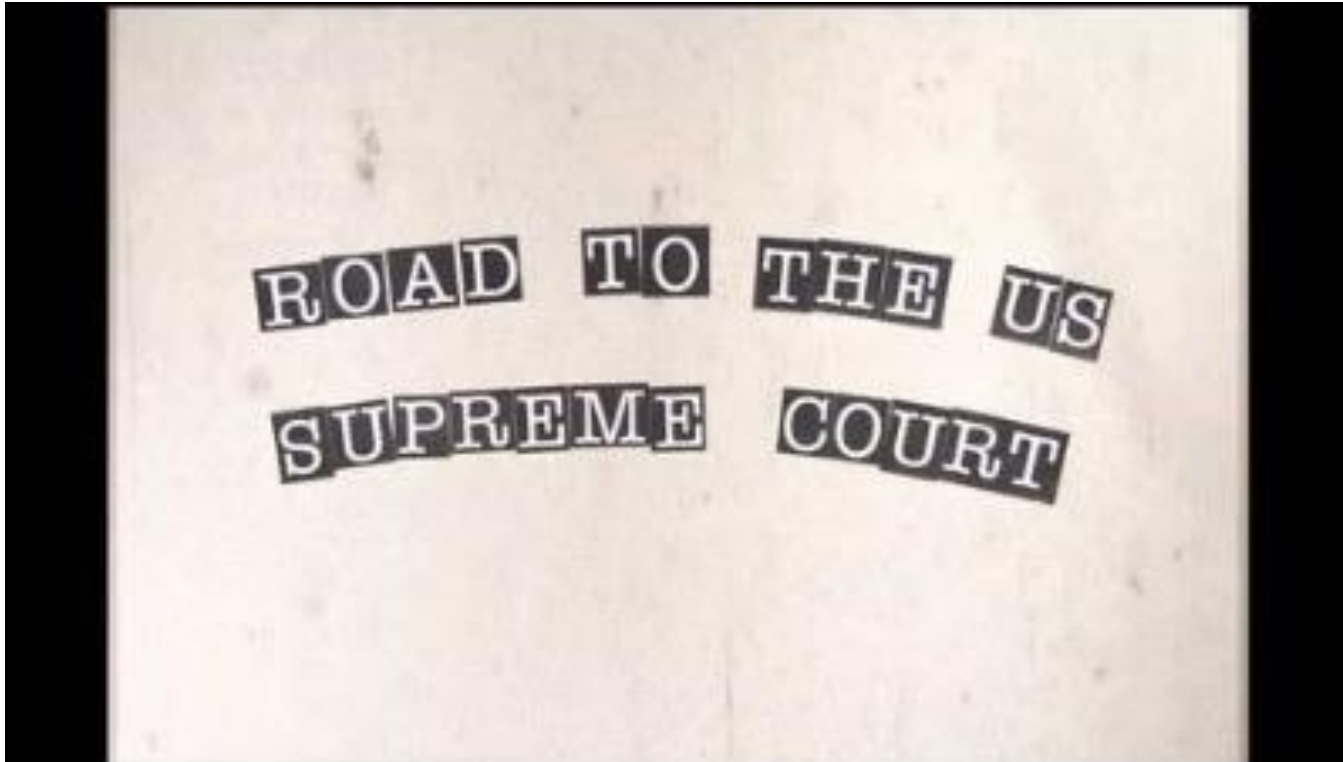
- > Right to appeal to the Court of Appeal
  - > Generally only issues of law
  - > Written submissions and oral argument before three-judge panel
- > US Supreme Court
  - > Only right to *writ of certiorari*

## How a Civil Case is Processed



# The way up to the US Supreme Court!

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

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# Criticism

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- > 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?

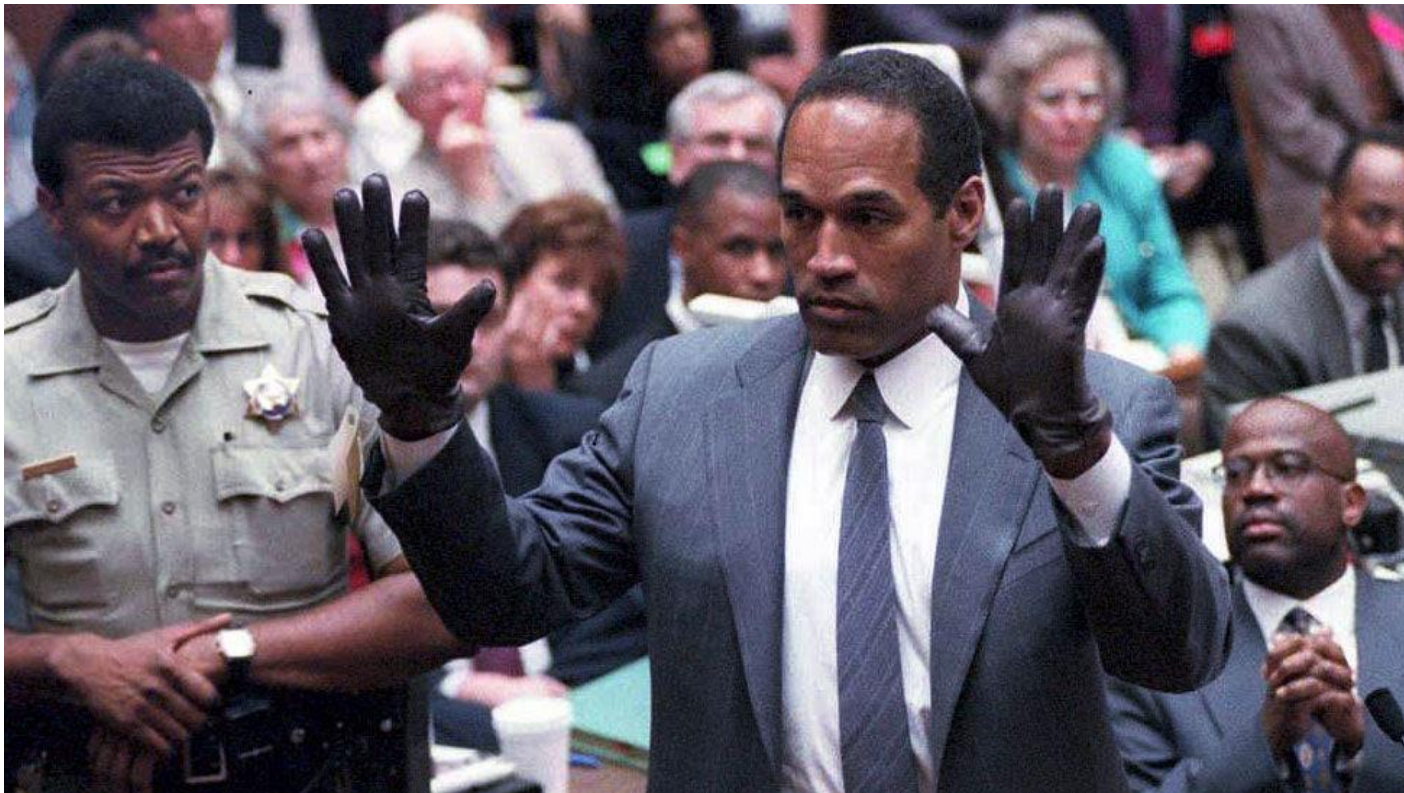
# O.J. Simpson case (I) – 1994/95 criminal case



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## O. J. Simpson case (III)

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# Civil case 1997 – 33.5 million damage compensation

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## 2008 – robbery case

- > 33 year in jail
- > Released in 2017
- > Died 2024



- > Until his death he has never paid his debts!

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**Next time (only in 3 weeks – We 15.4.!!)  
Anpassung Semesterdatenblatt!**

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**Contracts**

Thank you!