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Introduction to US business law

5. Jurisdiction/Civil procedure

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News from last week!

- > War goes on ...
- > Voice of America – Court ordered Trump not to fire employees
- > Attorney General subpoenaed for deposition in Epstein probe before House Oversight committee

Repetition last class (1)

- > Trump and the rule of law
 - > Populist (x)
 - > Cases brought against him
 - > Immunity
 - > impeachment 2x
 - > Instrumentalization of the DoJ
 - > Checks and balances
 - > 3rd presidency?
-

Repetition last class (2)

- > US Court system
 - > 2 court systems
 - > Federal courts
 - > State courts
 - > Structure
 - > Adversary system
 - > Jury system
 - > appeals
-



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Jurisdiction

Jurisdiction

- > Federal Courts/State Courts
 - > Personal jurisdiction (federal employee)
 - > Territorial jurisdiction (traffic accident)
 - > Subject matter jurisdiction (state/federal law)
 - > Diversity jurisdiction (state/federal)
- > Conflicts
 - > exclusive/concurrent (f.e. diversity cases)
- > Where to sue/get sued?
 - > In most cases prima facie clear
 - > But „forum shopping“

As a general rule

- > Claims based on federal law = federal courts
- > Claims based on state law = state courts
- > Diversity jurisdiction = federal courts (min. USD 75'000)
- > Unless specific courts!

Exempel

- > 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

- > **Personal jurisdiction over international defendants**
 - > 1. territorial principle (persons or events in USA)
 - > Effects doctrine (if effects of of extraterritorial behavior affect commerce or harm citizens within USA)
 - > Minimum contact
 - > 2. nationality principle (citizens abroad have to follow US law - tax)
 - > 3. passive personality principle (US citizen victim abroad)
 - > 4. protective principle (national security)
 - > 5. universal principle (jus cogens - genocide)

- > International forum shopping? – to try to bring case to the USA!

jurisdiction – 2 cases

- > **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 - Diversity of citizenship cases

- > Bluegrass Corp., a corporation whose headquarters are in Kentucky, sues a company headquartered in Washington for \$300,000 for breach of contract based on the Washington company's supplying the wrong kind of grass seed (Bluegrass could file the complaint in a federal court in either Kentucky or Washington).
- > A company headquartered in Tennessee sues a Texas Internet news service provider for \$125,000 for publishing false information about the company's business operations (The company could file the complaint in a federal court in either Tennessee or Texas).

Jurisdiction

Differences among the states (1)

- > Texas and Oklahoma have separate courts of last resort for criminal cases and other cases. In all other states, there is a single court of last resort.
- > In Maryland and New York, the Court of Appeals is the highest state court, and in New York the Supreme Court, Civil Court, and Criminal Court collectively are lower.
- > The courts of Louisiana and the Commonwealth of Puerto Rico are organized under a civil law model with significantly different procedures from those of the courts in all other states and the District of Columbia, which are organized on an American version of the common law system established originally in England.
- > The courts of one state are generally not required to follow the decisions of the courts of another state, but in the common law legal system it is customary for the courts of one state to look to decisions of other states as persuasive statements of what the law should be in the state making the decision, where express statutory provisions do not control.

Jurisdiction

Differences among the states (2)

- > Many states lack an intermediate appellate court. In these cases, litigants in general jurisdiction courts have the right to appeal their cases directly to the state supreme court.
- > Many states have rules that permit certain cases such a death penalty cases and election cases directly to the state supreme court, even though most civil cases must be appealed first to an intermediate appellate court.
- > In Utah, civil cases are appealed directly to the state supreme court, which then has the power to refer the case instead to an intermediate appellate court, rather than being appealed first to an intermediate appellate court and then to a state supreme court.

Jurisdiction

State Court Jurisdiction

- > **Example:** Elaine, a New York citizen, sues Officer Kramer (also a New York citizen) for violating her civil rights by falsely arresting her. Elaine bases the suit on a federal statute, 42 United States Code Sec. 1983, and asks for damages of \$10,000. A New York federal court has the power to hear Elaine's case. Because the case is based on (arises under) a federal statute, the New York federal court has jurisdiction even though Elaine and Officer Kramer are citizens of the same state and Elaine seeks less than \$75,000.
- > Alternatively, Elaine could file the lawsuit in New York state court, which would have power to hear the case because the arrest occurred in New York and both Elaine and Officer Kramer live there. The state court has "concurrent jurisdiction" with the federal court and enforces the federal law as it would a state law. Elaine can go "forum shopping" between New York federal and state court.

Jurisdiction

Dual Jurisdiction

> When you can file in federal or state court

- > If a plaintiff has a choice of courts **factors** to like:
 - > **Which courthouse is closer to the plaintiff's place of work and business?** For example, a plaintiff may choose to file in a state court simply because the nearest federal court is 250 miles away.
 - > **Which court has a longer statute of limitations?** A plaintiff who has missed the filing deadline under state law would surely choose to file suit in federal district court if federal law provided a longer statute of limitations. (This is true only for federal question cases. Federal courts use a state's statute of limitations in a diversity jurisdiction case.)
 - > **Differences in the judges.** For instance, a plaintiff may think that local state court judges have a judicial philosophy that makes them more likely to sympathize with the plaintiff's claim.
 - > **Differences in the jury panel.** State and federal courts may have different boundaries for jury selection purposes, and a plaintiff may, for example, file suit in federal court because it selects jurors from a wider geographic area.

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

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)

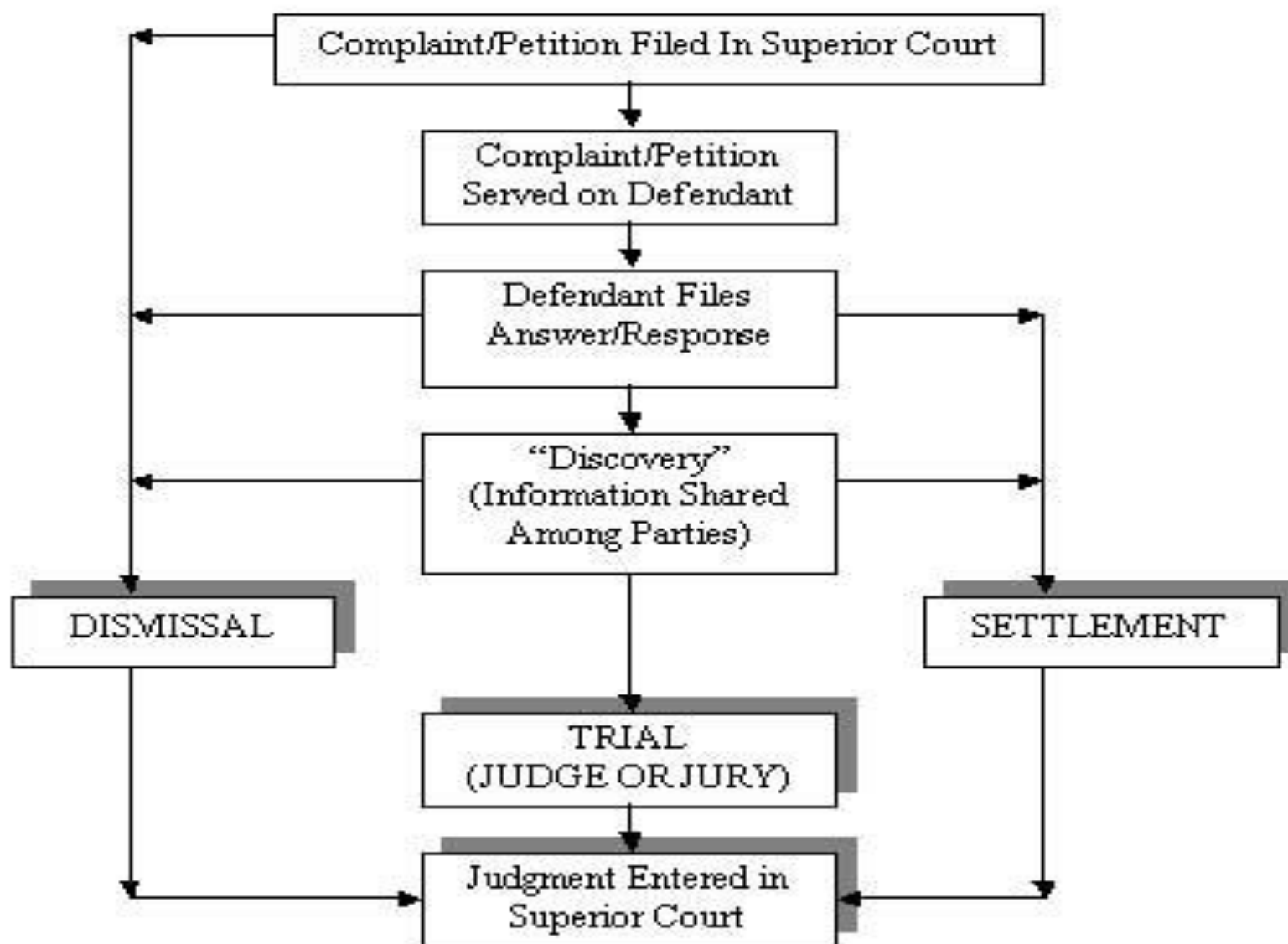
- > Mock Jury-Trial
- > Judge has ultimate decision on admission of evidence
- > What is the judge doing at all?

Stages of the Trial (IX)

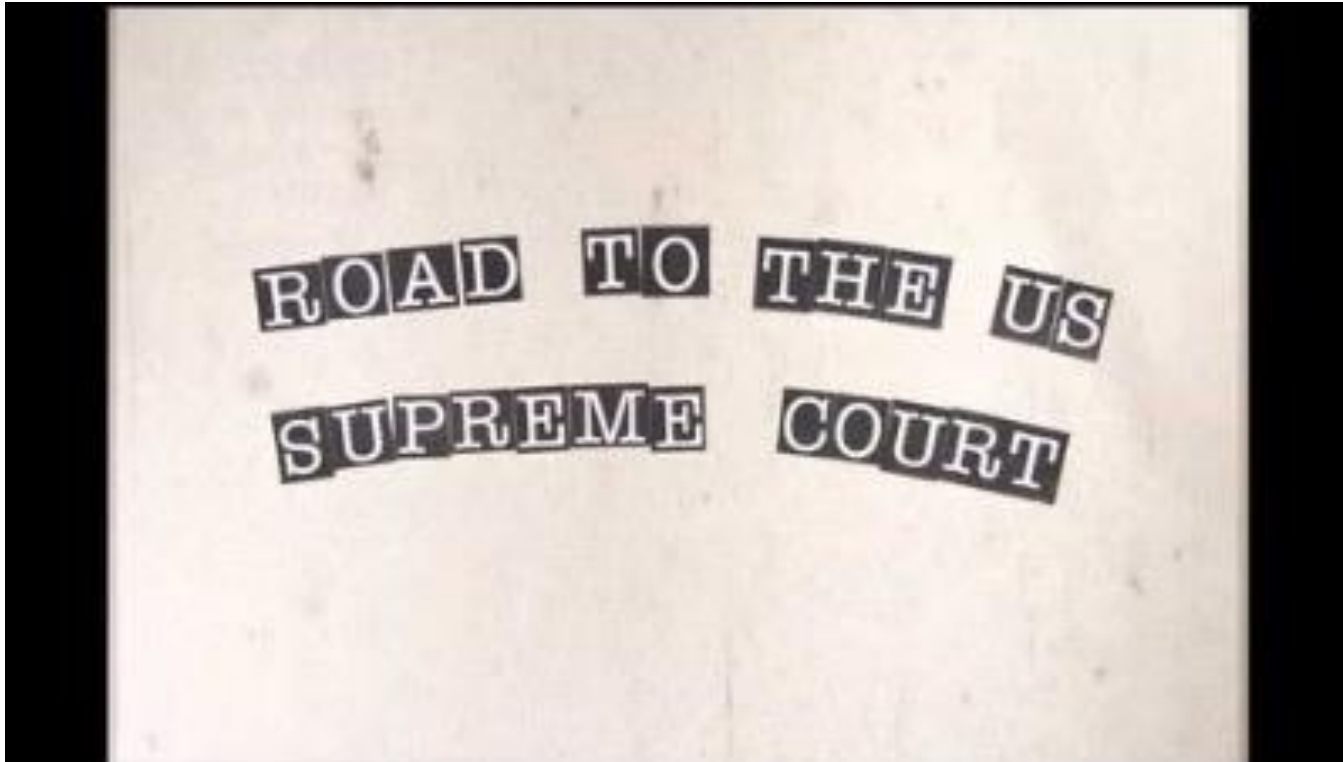
4. Post-Trial

- > 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?

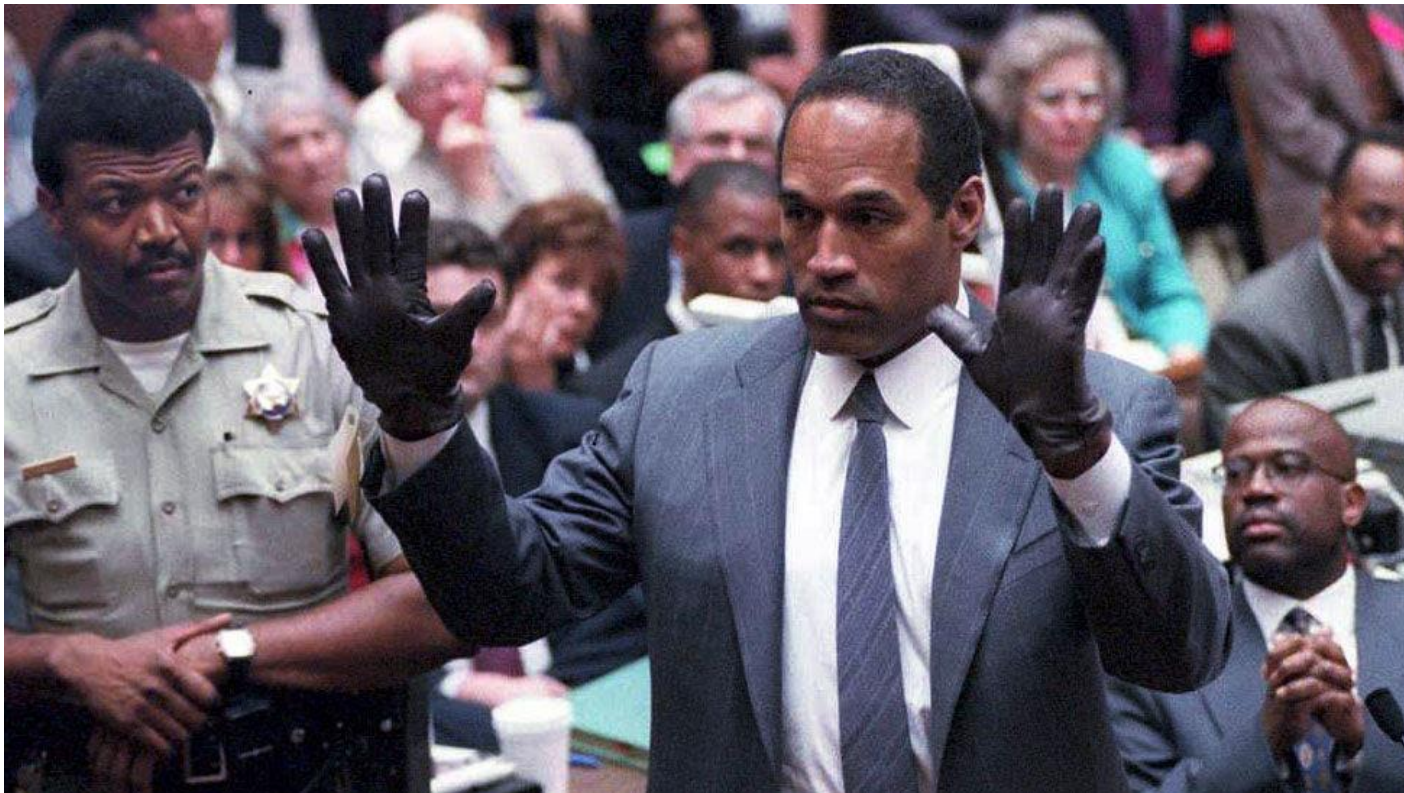
Civil trial – criminal trial

- > 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
- > Died 2024



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

Next time

Contracts

Thank you!