



Procedural Context for Torts

Torts
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Most rights sharable

Court Systems

A generic court system ...

Supreme Court ■■■■■■

more judges

|

Courts of Appeals ■■■

three judges

|

Trial Courts |

one judge

At the trial court ...

You have two deciders:

- Judge (also called “court” or “bench”)
 - The court/judge/bench decides questions of law.
 - The judge can do this because the judge is learned, has a legal education, etc.
 - Things the judge/court/bench does: grant or deny motions, overrule or sustain objections, enter judgment
- Jury
 - The jury decides issues of fact.
 - The jury makes such determinations based on listening to the testimony of witnesses, deciding whom they believe.
 - The jury doesn’t need a legal education to do this.
 - Thing jury does: Produce a verdict (can include answering particular questions about factual issues necessary for the verdict)

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- Actually, it's common that there's something called a "bench trial," where there's no jury. The judge finds facts (making determinations on the basis of credibility) and ruling on questions of law.

- Sometimes instead of "jury" people say "factfinder" to mean the jury, if convened, or judge, if finding facts in the context of a bench trial.

But we'll keep talking about juries for now, because they are the prototypical factfinders.

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This comes up in *Georgetown v. Wheeler*:
The defendants want the judge to enter judgment not withstanding the verdict (motion for JNOV)

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Questions of Law vs. Issues of Fact

Questions of Law vs. Issues of Fact

In litigation, there are two essential categories of things that have to be figured out: questions of law and issues of fact. Generally resolving a lawsuit means settling many questions of law and issues of fact (and sometimes things that are categorized as a “mixed question of law and fact”).

Issues of Fact

What to consider: Put witnesses on the stand, get their testimony (which we call “evidence”).

Who decides: A jury, based on whom they believe. (Or a judge in a “bench trial.” Say “factfinder” to include both.)

Examples:

- Did the defendant intend to kick the plaintiff?
- Was the defendant in town on August 29th?
- Did the plaintiff know the defendant was lying?

Questions of Law

What to consider: Past court opinions (precedent), statutes, treatises, law review articles.

Who decides: A judge. Or, on appeal, a panel of judges.

Examples:

- Can you use the harm-within-the-risk test to prove proximate causation in Nebraska?
- Does contributory negligence bar a plaintiff’s recovery for negligence in Utah?

Questions of Law vs. Issues of Fact

What's this?

Does the tampering with or disabling of an aircraft lavatory smoke detector violate federal law?

Did Carrie put a plastic bag over the lavatory smoke detector?

Does the placing of a plastic bag over a lavatory smoke detector constitute “tampering” under federal law?

Questions of Law vs. Issues of Fact

What's this?

Does the tampering with or disabling of an aircraft lavatory smoke detector violate federal law? ← QoL

Did Carrie put a plastic bag over the lavatory smoke detector? ← IoF

Does the placing of a plastic bag over a lavatory smoke detector constitute “tampering” under federal law? ← QoL

Questions of Law vs. Issues of Fact

What do these generally help with?

Private investigator

Law librarian

Oral argument on a motion

Interviewing an eyewitness

Affidavit

Brief arguing a 12(b)(6) motion

Deposition

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Questions of Law vs. Issues of Fact

What's the essence of their job?

Jury

Judge

Questions of Law vs. Issues of Fact

What's the essence of their job?

Jury ← IoF

Judge ← QoL

Motions and Appeals

Motions

What is a “motion”?

- It’s a party asking the judge/court/bench to do something.

Some facts about motions:

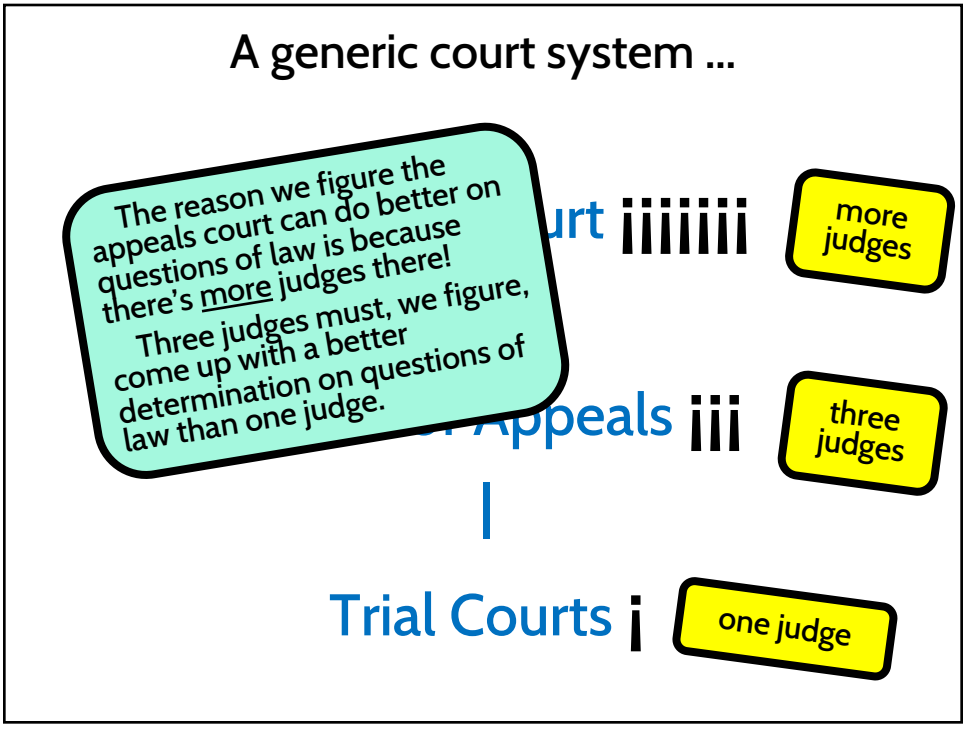
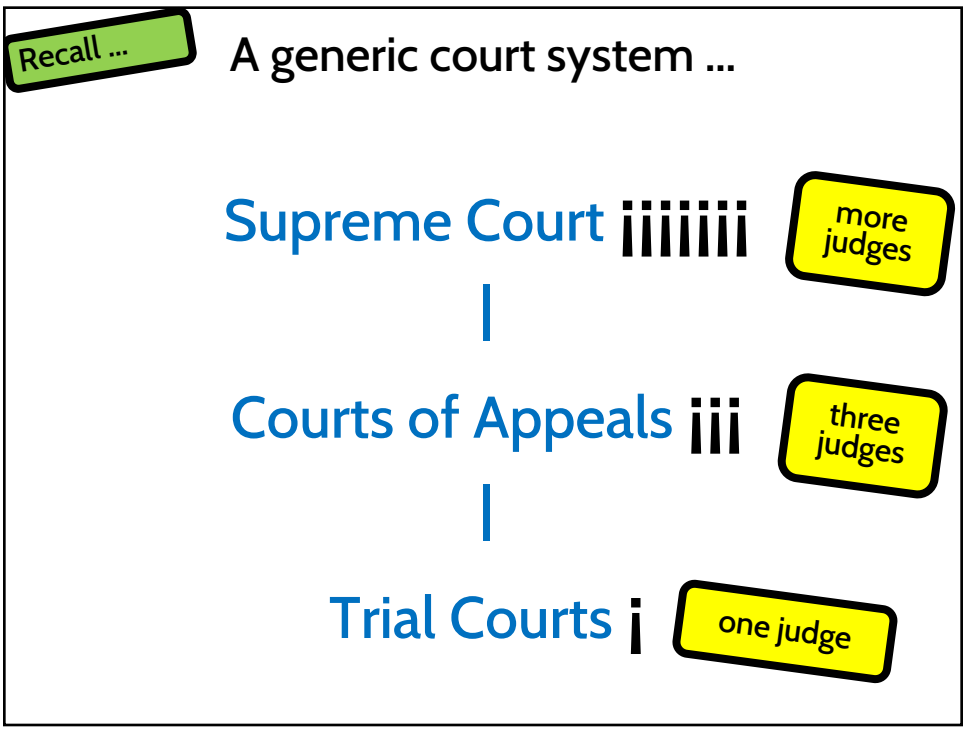
- We use the words “granted” and “denied” to describe how a motion is ruled on.
- Motions can be big or small.
- (A motion that determines the outcome of the whole litigation or at least one cause of action is often called “dispositive.”)

Examples of motions

- **Motion to extend a deadline**
 - (asking the court to give you more time to file something)
- **Motion to dismiss for failure to state a claim**
 - (defendant asking to win the case just on the basis of the complaint)
- **Motion for summary judgment**
 - (asking the whole case to be decided without going to trial)
- **Motion for JNOV (judgment notwithstanding verdict)**
 - (asking the court to enter judgment for you despite the fact that the jury's verdict was against you)
- **Motion in limine**
 - (asking the court to rule ahead of trial that certain evidence is or is not admissible)
- **Motion for a new trial**
 - (asking the court to disregard the jury's verdict and have a do-over on the trial with a new jury)

Appeals

- If you want to appeal, you have to appeal a motion.
- You can't appeal a verdict—at least not directly—because there's no higher jury or jury of appeals.



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- You can't appeal a verdict—at least not directly—because there's no higher jury or jury of appeals.
- So if your problem is what the jury decided, then you need to move for JNOV or a new trial and then appeal the denial of that.
- If your problem is what you think the jury would decide if allowed to do so, then you file a motion for summary judgment, and, if necessary, appeal the denial of that.
- If your problem is what you think the jury would decide if they were allowed to hear certain evidence (or not allowed to hear certain evidence), then you file a motion in limine and, if necessary, appeal the denial of that.

Why we went over all of this ...

- It's so you understand what you're reading when you read an appellate opinion—a “case” as it's often called in law school for shorthand.
- Ultimately, in the real world, all of the substantive law you learn has to be applied in some particular procedural context to have effect.

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If you want a context where tort law — or other substantive law — is applied without any procedural context, I suppose that is how you could describe small claims court. There, the judge asks questions of witnesses to get the facts, applies the law to those facts right then and there, and then renders a judgment — all without any motions, jury instructions, or any other real procedural context.

But that's sort of irrelevant to us, because lawyers generally aren't involved in small claims cases, and they don't result in opinions for us to read.

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- It's so you understand what you're reading when you read an appellate opinion—a “case” as it's often called in law school for shorthand.
- Ultimately, in the real world, all of the substantive law you learn has to be applied in some particular procedural context to have effect.
- Substantive tort law may be applied ...
 - to decide a motion for summary judgment
 - to decide a motion to dismiss
 - to decide a motion in limine
 - to know how to instruct the jury
 - etc.