

# The Right to a Jury Trial in Civil Cases Part 2: Identifying Civil Cases with a Right to a Jury Trial

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This Legal Sidebar is the second in a five-part series that discusses a unique feature of the American legal system—the constitutional right to a jury trial in federal civil cases at law. During the Constitution’s ratification, the Anti-Federalist, known by the pseudonym the “Federal Farmer,” [argued](#) that the Constitution should expressly provide a right to civil jury trials because “the well born,” who would comprise the judiciary, “are generally disposed, and very naturally too, to favour those of their own description.” Included as part of the Bill of Rights, the right to civil jury trials, according to a [2020 study](#), is seen by many judges as well as plaintiff and defense attorneys as providing a fairer way to resolve lawsuits than bench trials or arbitration. The use of jury trials to resolve civil cases, however, [decreased](#) from 5.5% in 1962 to less than 1% in 2013 with [some attributing](#) this to damage caps and mandatory binding arbitration. Members of Congress interested in civil litigation or federal court operations may find the constitutional right to jury trials in civil cases of interest. (For additional background on this topic and citations to relevant sources, see the [Constitution of the United States of America, Analysis and Interpretation](#).)

The [Seventh Amendment](#) grants a right to a jury trial in “Suits at common law,” which the [Supreme Court](#) has long interpreted as “limited to rights and remedies peculiarly legal in their nature, and such as it was proper to assert in courts of law and by the appropriate modes and proceedings of courts of law.” The drafters of the Seventh Amendment used the term “common law” to clarify that the Amendment does not provide a right to a jury in civil suits involving the types of equitable rights and remedies that courts enforced at the time of the Amendment’s framing.

Two unanimous decisions, in which the Supreme Court held that civil juries were required, illustrate the Court’s treatment of this distinction. In the first suit, a landlord sought to recover, based on District of Columbia statutes, possession of real property from a tenant allegedly behind on rent. The [Court](#) reasoned that whether “a close equivalent to [the statute in question] existed in England in 1791 [was] irrelevant for Seventh Amendment purposes.” Instead, the Court stated that its Seventh Amendment precedents “require[d] trial by jury in actions unheard of at common law, provided that the action involves rights and

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remedies of the sort traditionally enforced in an action at law, rather than in an action at equity or admiralty.” The statutory cause of action, the Court found, had several analogs in the common law, all of which involved a right to trial by jury.

In a second case, the plaintiff sought damages for alleged racial discrimination in the rental of housing in violation of federal law, arguing that the Seventh Amendment was inapplicable to new causes of action Congress created. The Court disagreed: “The Seventh Amendment does apply to actions enforcing statutory rights, and requires a jury trial upon demand, if the statute creates legal rights and remedies, enforceable in an action for damages in the ordinary courts of law.”

In contrast, the Court has upheld the lack of a jury provision in certain actions on the ground that the suit in question was not a suit at common law within the Seventh Amendment’s meaning, or that the issues raised were not particularly legal in nature. When there is no direct historical antecedent dating to the Amendment’s adoption, the court may also consider whether existing precedent and the sound administration of justice favor resolution by judges or juries.

The Seventh Amendment does *not* apply to cases in admiralty and maritime jurisdiction in which the court conducts a trial without a jury, nor does it reach statutory proceedings unknown to the common law, such as an application to a court of equity to enforce an administrative body’s order. For example, Congress, under the Occupational Safety and Health Act, authorized an administrative agency to make findings of a workplace safety violation and to assess civil penalties related to such a violation. Under the statute, an employer that has been assessed a penalty may obtain judicial review of the administrative proceeding in a federal court of appeal. The Supreme Court, in *Atlas Roofing Co. v. Occupational Safety & Health Review Commission*, unanimously rejected the argument that the law violated the Seventh Amendment because it authorized penalties to be collected from an employer without a jury trial:

At least in cases in which “public rights” are being litigated—*e.g.*, cases in which the government sues in its sovereign capacity to enforce public rights created by statutes within the power of Congress to enact—the Seventh Amendment does not prohibit Congress from assigning the factfinding function and initial adjudication to an administrative forum with which the jury would be incompatible.

On the other hand, if Congress assigns such cases to Article III courts, a jury may be required. In *Tull v. United States*, the Court ruled that the Seventh Amendment requires a jury to determine whether an entity is liable for civil penalties under the Clean Water Act, which authorizes the Administrator of the Environmental Protection Agency to initiate a civil action in a federal district court to enforce the Act. In the Court’s view, the penal nature of the Clean Water Act’s civil penalty remedy distinguishes it from restitution-based remedies available in equity courts. Consequently, it is a type of remedy that only courts of law could impose. However, a jury trial is not required to assess the amount of the penalty. Because the Court viewed assessment of the amount of penalty as involving neither the “substance” nor a “fundamental element” of a common-law right to trial by jury, it held permissible the Act’s assignment of that task to the trial judge.

Later, the Court relied on a broadened concept of “public rights” to define the limits of congressional power to assign causes of action to tribunals in which jury trials are unavailable. As a general matter, “public rights” involve “the relationship between the government and persons subject to its authority,” whereas “private rights” relate to “the liability of one individual to another.” In *Granfinanciera, S.A. v. Nordberg*, the Court held that Congress “lacks the power to strip parties contesting matters of private right of their constitutional right to a trial by jury.” The Seventh Amendment test, the Court indicated, is the same as the Article III test for whether Congress may assign adjudication of a claim to a non-Article III tribunal. Although finding room for “some debate,” the Court determined that a bankruptcy trustee’s right to recover for a fraudulent conveyance “is more accurately characterized as a private rather than a public right,” at least when the defendant had not submitted a claim against the bankruptcy estate.

This Legal Sidebar is the second in a five-part series that covers the right to a jury trial in civil cases at law. Part 1 provides a historical background on the right to a jury trial in civil cases at law. Parts 3 and 4 examine the distinction between legal and equitable claims, the treatment of cases that combine elements of both, and the roles of the judge and jury in civil cases. Part 5 concludes with a discussion of the bar on judges from reexamining a jury's factual findings.

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