

The Right to a Jury Trial in Civil Cases Part 3: Legal and Equitable Claims and Combined Cases

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This Legal Sidebar is the third 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](#) uses the term “common law” to refer to cases in which the right to jury trial was preserved. This term’s use reflected the division of the English and United States’ legal systems into separate law and equity jurisdictions, in which actions subject to the former but not the latter were triable to a jury. In the early federal court system, courts had jurisdiction over suits in both law and equity, but legal and equitable claims had to be filed as separate causes of action on different “sides” of a federal court’s civil docket. Each side of the court was subject to distinct law and equity procedures, including the use or nonuse of the jury.

Under the [old equity rules](#), an absolute right to a trial of the facts by a jury could not be impaired by any blending with a claim seeking equitable relief in aid of the legal action or during its pendency. However, the [Supreme Court](#) interpreted the Seventh Amendment to prohibit the trial of equitable and legal issues in the same suit, so that equitable relief had to be sought in separate proceedings. If an action at law evoked an equitable counterclaim, the trial judge would order the legal issues to be separately tried after

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disposition of the equity issues. In this procedure, however, *res judicata* and collateral estoppel could operate to curtail the litigant's right to a jury finding on factual issues common to both claims. While the priority of scheduling was often discretionary, certain federal statutes prohibited federal courts from sustaining suits in equity if the remedy was complete at law. Such laws served to guard the right of trial by jury and were [liberally construed](#).

The [distinction between law and equity](#) was not to be compromised by state laws. In cases initiated in state court where the court treated the suit as a whole as an equitable proceeding even though it potentially included legal claims, such as a proceeding upon a contract that included determination of validity and of the amount due, the case would have been removed to federal equity jurisdiction. However, the [Supreme Court](#) determined that when an action at law in state court furnished an adequate and complete remedy, the existence of a potential cause of action in courts of equity pursuant to a separate state statute could not enlarge the federal courts' equity jurisdiction. This jurisdictional rule applied even if, under state law, the equity court could summon a jury on occasion. Furthermore, when state law provided an equitable remedy, such as to quiet title to land, [federal courts](#) enforced it if it did not obstruct the parties' rights to trial by jury.

The inclusion of Judicial Code § 274(b) in the Law and Equity Act of 1915 provided more flexibility to determining legal and equitable questions in the two sides of the federal court. The new procedure permitted legal questions arising in an equity action to be determined without sending the case to the law side. This section also permitted equitable defenses to be interposed in an action at law. The same order was [preserved](#) as under the system of separate courts. The equitable issues were disposed of first; if a legal issue remained, it was triable by a jury. There was no provision for legal counterclaims in an equitable action because Equity Rule 30 required the answer to a bill in equity to state any counterclaim arising out of the same transaction. This was not intended to change the line between law and equity, and the [Supreme Court](#) construed the Rule as referring to equitable counterclaims only. Equitable jurisdiction existing at the time of a bill's filing was [not disturbed](#) by the subsequent availability of legal remedies, and the scheduling was discretionary.

Adoption of the *Federal Rules of Civil Procedure* in 1938 [merged](#) law and equity into a single civil jurisdiction and established uniform rules of procedure. Legal and equitable claims that previously were brought as separate causes of action on different "sides" of the court could now be joined in a single action. In some cases, such as those with compulsory counterclaims, the claims had to be joined in one action. However, the courts retained the traditional distinction between law and equity for purposes of determining when there was a constitutional right to trial by jury, which led to some difficulty.

The [Supreme Court](#) resolved the difficulty by stressing the fundamental nature of the jury trial right and protecting it against diminution through resort to equitable principles. In *Beacon Theatres v. Westover*, a plaintiff sought a declaratory judgment and an injunction barring the defendant from instituting an antitrust action against it; the defendant filed a counterclaim alleging violation of the antitrust laws and asking for treble damages. The Supreme Court held that the district court erred in denying the defendant a jury trial on all issues in the antitrust controversy because the complaint for declaratory relief "presented basically equitable issues." The trial court's error, in the Court's view, would compel the defendant to split its antitrust case in two, trying part to a judge and part to a jury, impermissibly delaying and subordinating its counterclaim that the *Federal Rules of Civil Procedure* required it to bring within the same action. Long-standing equity principles, according to the Court, dictated that "only under the most imperative circumstances which in view of the flexible procedures of the Federal Rules we cannot now anticipate, can the right to a jury trial of legal issues be lost through prior determination of equitable claims."

Later, in *Dairy Queen v. Wood*, the Supreme Court reversed a district court's order striking a plaintiff's demand for jury trial. There, the plaintiff-trademark owner sought several types of relief against the defendant-licensee for the licensee's alleged breach of a licensing contract, including an injunction and an

accounting for money damages. The Court held that, even though the claim for legal relief was characterized by the district court as “incidental” to the equitable relief sought, the Seventh Amendment required that the factual issues pertaining to whether there had been a breach of contract to be tried before a jury. Thus, the rule emerged that legal claims must be tried before equitable ones, and before a jury if the litigant so wished.

In *Ross v. Bernhard*, the Court further held that the right to a jury trial depends on the nature of the issue to be tried, rather than the procedural framework in which it is raised. The case involved a stockholder derivative action, which had always been considered to be a suit in equity. The Court agreed that the action was equitable but concluded that it involved two separable claims. The first, the stockholder’s standing to sue for a corporation, was an equitable issue; the second, the corporation’s claim asserted by the stockholder, may be either equitable or legal. Because the *Federal Rules of Civil Procedure* merged law and equity in the federal courts, there was no longer any procedural obstacle to transferring jurisdiction to the law side once the equitable issue of standing was decided. Thus, the Court continued, if the corporation’s claim that the stockholder asserted was legal in nature, it should be heard on the law side before a jury.

This Legal Sidebar is the third in a five-part series that covers the right to a jury trial in civil cases at law. Parts 1 and 2 provide historical background on civil jury trials, the meaning of the Seventh Amendment qualifying language “Suits at common law,” and how civil cases to which the right applies are identified. Part 4 examines 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.

Author Information

Wen W. Shen
Legislative Attorney

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