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Legal Sidebar

The Right to a Jury Trial in Civil Cases Part 4: The Roles of Judges and Juries in Civil Cases

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This Legal Sidebar is the fourth 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*.)

One of the Seventh Amendment's primary purposes was to preserve the historic line separating the province of the jury from that of the judge without preventing procedural innovations that respect this boundary. In defining this line, the Supreme Court has concluded that it is constitutional for a federal judge, in the course of a trial, to (1) express his opinion upon the facts, provided that all questions of fact are ultimately submitted to the jury; (2) call the jury's attention to parts of the evidence that he or she deems of special importance, being careful to distinguish between matters of law and matters of opinion; (3) inform the jury, when there is insufficient evidence to justify a verdict; (4) require a jury to answer specific interrogatories in addition to rendering a general verdict; (5) direct the jury, after the plaintiff's case is complete, to return a verdict for the defendant on the ground of the insufficiency of the evidence; (6) set aside a verdict that is against the law or the evidence and order a new trial; and (7) refuse the defendant a new trial on the condition, accepted by plaintiff, that the plaintiff remit a portion of the damages awarded him.

In *International Terminal Operating Co. v. N.V. Nederl. Amerik Stoom v. Maats*., however, the Supreme Court held that an appellate court erred in reversing a jury's finding on the issue of the reasonableness of a stevedoring company's conduct in failing to avert an injury to one of its employees. The Court of

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Appeals found that the stevedore acted unreasonably as a matter of law, but the Supreme Court held that "[u]nder the Seventh Amendment, that issue should have been left to the jury's determination."

Nevertheless, the Supreme Court has noted, "In numerous contexts, gatekeeping judicial determinations prevent submission of claims to a jury's judgment without violating the Seventh Amendment." For example, in order to screen out frivolous complaints or defenses, Congress "has power to prescribe what must be pleaded to state the claim, just as it has the power to determine what must be proved to prevail on the merits." It is, the Supreme Court observed, "the federal lawmaker's prerogative ... to allow, disallow, or shape the contours of—including the pleading and proof requirements for—private actions."

Traditionally, the Supreme Court has treated the Seventh Amendment as preserving the right of trial by jury in civil cases as it "existed under the English common law when the amendment was adopted." This right included "a trial by a jury of twelve men, in the presence and under the superintendence of a judge empowered to instruct them on the law and to advise them on the facts and (except in acquittal of a criminal charge) to set aside their verdict if in his opinion it is against the law or the evidence." Decisions of the jury must be unanimous.

In *Colgrove v. Battin*, however, the Court held by a five-to-four vote that rules adopted in a federal district court authorizing civil juries composed of six persons were permissible under the Seventh Amendment and federal statutory law. The Amendment's reference to the "common law," in the Court's view, suggested "the Framers of the Seventh Amendment were concerned with preserving the right of trial by jury in civil cases where it existed at common law, rather than the various incidents of trial by jury."

The Court did not consider what number less than six, if any, would fail to satisfy the Amendment's requirements. Instead, the Court stated that "[w]hat is required for a 'jury' is a number large enough to facilitate group deliberation combined with a likelihood of obtaining a representative cross section of the community," noting that "[i]t is undoubtedly true that at some point the number becomes too small to accomplish these goals." Application of similar reasoning has led the Court to uphold elimination of the unanimity as well as the 12-person requirement for criminal trials.

As discussed, the Supreme Court has held that one of the Seventh Amendment's primary purposes is to preserve "the common law distinction between the province of the court and that of the jury, whereby, in the absence of express or implied consent to the contrary, issues of law are resolved by the court and issues of fact are to be determined by the jury under appropriate instructions by the court." The Supreme Court has further noted that the Seventh Amendment, however, "does not require the retention of old forms of procedure," nor does it "prohibit the introduction of new methods of ascertaining what facts are in issue" or new rules of evidence. According to the Court, matters that were tried by a jury in England in 1791 are to be so tried today. Conversely, matters that fall under equity and admiralty and maritime jurisprudence, which were tried by the judge in England in 1791, are to be so tried today. When new rights and remedies are created, the Supreme Court has stated that "the right of action should be analogized to its historical counterpart, at law or in equity, for the purpose of determining whether there is a right of jury trial," unless Congress has expressly prescribed the mode of trial.

This Legal Sidebar is the fourth in a five-part series that covers the right to a jury trial in civil cases at law. Part 1 provides historical background on the right to a jury trial in civil cases at law. Parts 2 and 3 discuss the meaning of the Seventh Amendment qualifying language "Suits at common law," the distinction between legal and equitable claims, and the treatment of cases that combine elements of both. 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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