



How Do People Settle Disputes? How a Civil Trial Works in California

**Just Comment Column by Judge Curtis Karnow
May 2012**

People get into arguments, and sometimes they disagree. If they cannot resolve their disagreements, they may ask someone else to step in and resolve the dispute. They may ask a trusted friend, or kids might ask a parent or favorite aunt to solve the problem. In school, a teacher or administrator may help resolve disagreements. In an office, a supervisor, or perhaps the president of a company, might decide who is right and who is wrong.

Disagreements about who should be elected to Congress or the state legislature, or who becomes President of the United States, are all resolved by voting. Disagreements about which is the best baseball team are resolved by playing in the World Series (admittedly, there are other ways to determine great baseball teams!). Some disagreements can only be worked out through negotiations, a sometime slow process of meeting, discussing, arguing, and compromising to get things done. For example, a lot of work in the legislatures is done this way, as well as many of the disputes brought to the United Nations.

There are other ways to resolve disputes, too. War, or other violence, sometimes resolves disputes over land, natural resources, religion, political power, and so on. Where there are no governing rules, or no higher authority to appeal to, sometimes people do anything they want to get their way, including attacking others who disagree with them. When physical force is used, the person with the best weapon, wins, no matter who is really right, or who has the better argument.

We form governments, and impose rules on ourselves, to (among other things) avoid violence. We form treaties with other nations, and join organizations such as the United Nations, to avoid war. For certain types of disputes, when the parties cannot work out a solution on their own, we provide the court system to provide a final resolution. A trial is the way these disputes get resolved.

Courts provide solutions peacefully, with dignity and respect, and in a way that makes sure everyone is heard, and everyone is treated fairly.

Cases In Court

Not every dispute can be brought into the court system. And even disputes that are ordinarily eligible to be dealt with in court might actually get resolved *outside* of court. I'll discuss those situations later in this note.

Courts provide solutions peacefully, with dignity and respect, and in a way that makes sure everyone is heard, and everyone is treated fairly.

Only certain cases can be the subject of a trial in court. The legislature defines the sorts of cases that can be filed in court. There are two basic types: civil and criminal. Criminal cases are filed when someone violates a criminal law - for example, a law that says you can't drive while you're drunk, or can't steal, or can't hit someone else. Civil cases are usually disputes about money or other property, for example, a dispute whether someone owes another some money (e.g., the boss owes you a salary and never paid it), or failed to abide by an agreement to sell a house or other item. You can also sue if someone hurts you in, for example, a car accident: you sue to recover what you paid for medical treatment, to fix the car, and to compensate you for your pain.

People with these disputes do not, however, *have* to go to court. They might agree to submit the case to a neutral person to get it decided. These neutrals are called arbitrators. If everyone agrees, arbitrators can take over and decide the case. Judges respect the right of people to come up with their own peaceful ways to resolve disagreements. But if they can't agree on a method, the case goes to court.

What Happens at Trial

I'll describe a typical civil jury trial. As I noted above, *civil* cases are lawsuits involving people or companies (or sometimes the government), usually when one side wants money or other property from the other side. Let's assume Bob sells Ann a car. Ann pays money, let's say \$20,000, for the car. A week after the sale, the car breaks down: It turns out the engine is bad: perhaps it's rusted, or too old. Ann doesn't want the car now: she wants her \$20,000 back; but Bob won't give it back. He says she should have inspected the car, and he never said it actually would work anyway. Ann says Bob told her the car was in great shape. They can't agree on how to resolve the dispute, and Ann sues Bob in Superior Court. She claims fraud, breach of contract, and so on.



Ann and Bob show up on a fine Monday to try the case. They (and their lawyers) are assigned to a specific judge in the courthouse for trial. They discuss a few pretrial issues with the judge; perhaps they have an argument about whether a particular piece of paper—say, Bob's notes about his sale to Ann—will be seen by the jury. This poses a legal issue the judge will decide.

Then a group of about 50 people are called up from the jury assembly room—where earlier perhaps 200 people showed up for the various trials to start that day—to the Judge's courtroom. These 50 people are the "panel." The Judge tells the panel a little about the case, and then asks a series of questions designed to find out if they can be fair to both sides. Perhaps one of the panel is in fact right in the middle of her *own* dispute with a car dealer—she might not be fair to Bob. Perhaps one of the

panel is a car dealer, or is married to or lives with a car dealer: he might not be fair to Ann. Someone might not understand enough English, and someone else might have to be at a funeral on a day the trial is supposed to be in session. The judge may have to let these people go.

The lawyers get to ask questions too. This process of asking questions to see how people feel, and to get a sense of whether they can be fair to both sides, is called "voir dire." The judge lets go the people he thinks might not be equally fair to both sides. The lawyers then also get a chance to let some of the people go - they exercise "preemptory challenges" which means they can, for almost any reason, let people go whom they think might be a problem. (They *cannot* excuse people based on race, religion, sexual orientation, and so on).

After the judge and the lawyers have excused those people, the first 12 people left over, picked in random order, are the jury. The judge might also take a couple of people as alternates, to fill in if one of the 12 gets sick during the trial.

Then the lawyers make opening statements, telling the jury what the case is about, why they are there, and what they think the evidence will prove. The plaintiff—the person who brought the suit (here, Ann), puts on her evidence first. (Actually it will be Ann's *lawyer*, if she has one. From here on, I will just say Ann or Bob, although I usually mean they *lawyers*.) Evidence is usually the testimony of witnesses, under oath; or documents. When Ann asks questions of her witnesses it's called "*direct* testimony." The other side (Bob) gets to *cross examine* Ann's witnesses. Ann might then ask some follow up questions of her witnesses (that's *redirect*).

... lawyers make opening statements, telling the jury what the case is about, why they are there, and what they think the evidence will prove.

When Ann has finished obtaining testimony from all her witnesses, she "rests," and Bob gets his chance to put on his case. He calls witnesses on direct, asking them questions. Ann gets to cross examine them. Bob gets to ask follow up questions of his witnesses. When Bob is finished, he rests, and Ann gets one last chance (in a part of the trial that is called "rebuttal") to put on evidence that contradicts what Bob's witnesses said.

When Ann is done, the judge instructs the jury on what the law is. He will consult with Ann and Bob in trying to find out what the law is, and Ann and Bob might have a disagreement on the law. It's the judge's job to figure out the law. He does this by reading approved jury instructions, from cases written by other judges, and from reading the statutes passed by the legislature. Then the judge instructs the jury. For example, the Judge might tell the jury that to prove fraud, Ann must prove that (1) Bob said something about the car (2) which was false, (3) Bob knew it was false (4) Bob intended that Ann rely on what he said, and (5) what Bob said would be important to anyone buying a car. (I don't mean this is actually the law—I just made this up as an example).

When the Judge is done with instructions, the lawyers get one last chance to talk directly to the jury in their *closing arguments*. Here, the lawyers can argue anything that is supported by the evidence. They ask the jury to use common sense. They

ask the jury to believe, or disbelieve, various witnesses. They try to convince the jury to see the case in a certain way.



The jury then leaves the courtroom to go to the jury deliberation room, guarded by a bailiff, so that no one can influence or have any effect on the jury. The jury discusses and debates the case in private. It's up to the jury to decide who told the truth, what actually happened, who said what to whom and when, and what Ann and Bob intended. In a California civil case, 9 of the 12 people must agree on a verdict. The jury will decide whether, for example, Ann proved the elements of fraud (i.e. 1-5 above). If yes, they decide how much money is fair compensation for Ann. If no, then they say so, and Ann loses the case. The jury indicates its decision on a written form called the *verdict form*. They come back into court when they are ready, and the written form is read out loud. And so the trial ends.

Trials are public—everyone has the right to watch. Everyone can see the process. Lawyers are never allowed to talk to the judge (or the jury) out of the hearing of the other side, so the people involved in a case know exactly what the other side has said, and what arguments they made to the judge and jury. Everyone has a opportunity to be heard, to object, to argue against the other side's evidence, to make his position known. Everyone has a right to fair and impartial jury, and the judge has a strict obligation to protect that right. If the losing party thinks the judge made a legal mistake, the party can appeal, and then an appellate court will review the law.

Thus, when in the end one side wins and the other side loses, people at least know what the evidence against them was, and they know they had a fair shot, a fair process. They are therefore willing to accept the final result, and move on with their lives. The dispute is over.

Key Vocabulary

| Word | Meaning |
|-----------------------------|---|
| legal dispute | A legal dispute is a disagreement over the existence of a duty or right defined in the law, or over the amount and kind of compensation and injured person has the right to claim because of that duty. |
| evidence | Evidence is the documentary or oral statements and the material objects admissible as testimony in a court of law. |
| trial | Trials are formal examination of evidence by a judge, typically before a jury, in order to decide guilt in a case of criminal or civil dispute. |
| civil case | Civil cases are those that involve disputes between people about such things as money or other property |
| criminal case | Criminal cases are those that involve someone who violates a criminal law (assault, murder, theft, etc.) |
| arbitrator | A neutral person chosen to settle the issue between parties engaged in a dispute |
| preemptory challenge | Dismiss someone from jury service without reason or cause |

Online Lessons to Support How Civil Trials Work

Elementary

Graffiti on Trial

http://www.courts.ca.gov/Graffiti_on_Trial.pdf

Mock Trials

<http://www.courts.ca.gov/5174.htm>

School to the bottom of page for the list of mock trials ranging from those based on fairy tales to those based in historical time periods suitable for grade 2-6.

Middle School

Jury Trial

http://www.courts.ca.gov/Jury_Trial.pdf

Salem Witch Mock Trial

http://www.courts.ca.gov/SalemWitchMockTrial_2scripts.pdf

Murder Self Defense Mock Trial

http://www.courts.ca.gov/documents/Mock_Trial_Peo_v_Casey_San_Francisco.pdf

Case of the Stolen Car

<http://www.courts.ca.gov/documents/mocktrialsript-contra.pdf>

Verdict Form

<http://www.courts.ca.gov/documents/mocktrial-contra.pdf>

High School

The Trial Process

http://www.courts.wa.gov/education/lessons/?fa=education_lessons.display&displayid=Triapro

Mock Trial Cases from Oregon Classroom Law Project

<http://www.classroomlaw.org/programs/mock-trial/#cases>

Tort Liability: Mock Trial

http://www.courts.wa.gov/education/lessons/?fa=education_lessons.display&displayid=Tortmt

These curricula do not necessarily reflect the views of the Judicial Council, the Administrative Office of the Courts (AOC), or the Court Programs and Services Division/CPAS. Furthermore, the authors, the Judicial Council, the AOC, and the Court Programs and Services Division/CPAS do not provide any warranties regarding the currency or accuracy of the information in these works. Users are reminded to check the subsequent history of any case and changes to statutes and Rules of Court cited in the works before relying on them. These works are provided for the personal noncommercial use of teachers.