**Introduction**

1. What is Civil Procedure?
   1. Procedure – court law
      1. As distinguished from substantive law – the law governing people’s activities outside courts (torts, contract property)
   2. Civil – refers to *non-criminal* actions in court
   3. So it is about court law concerning non-criminal actions
   4. Focus will be on federal district courts (trial courts)
   5. Mostly about pre-trial procedure (motions practice) not trial
      1. Few cases go to trial
2. Why is it so hard?
   1. You are not just learning the law that regulates an activity but the activity itself
   2. Source of law is central
      1. Torts is all just common law (and don’t even learn law of a particular state)
      2. But civ pro has
         1. Federal constitutional law
         2. Federal statutes
         3. Federal Rules of Civil Procedure
         4. Federal common law
         5. And state law
3. The importance of Civ Pro
   1. Substantive law does not mean much without enforcement
   2. And the substantive civil law is enforced through civil procedure
4. Federal and state court systems
   1. Before Const. was ratified, states were sovereign nations, with the lawmaking powers and adjudicatory powers of nations
   2. They gave only some of their powers to the federal government and retained the rest
   3. They are still nations to some extent
   4. True for lawmaking
      1. E.g. commerce clause power given to Congress (not all lawmaking power)
   5. But also true for power of courts
      1. Art. III spells out the judicial powers that states (eg Virginia) gave to federal gov’t
      2. It is power that the federal government can exercise – if Congress chooses (it does not have to exercise it)
      3. Under Art III there must be a Supreme Court, but Congress can create or not create lower federal courts if it wants
      4. The types of cases federal courts can take (if Congress choses) are in Article III – the main categories are cases arising under federal law and diversity cases
      5. States retained the adjudicative power of nations to the extent that it is not given over to federal government
5. Spelled out appellate structure of federal and state courts (see slides)
   1. An appellate court has the power to reverse the trial court – make its judgment a nullity or replace its judgment with another
6. - suit in Williamsburg/James City County Circuit Court under Virginia battery law. Question is whether VA law was interpreted correctly. Where can there be an appeal?
   1. Only up Va state court system
   2. Not to US SCt, because the issue is only one of VA law – the VA SCt is the final authority on that matter
7. – suit in the Williamsburg/James City County Circuit Court under California battery law. Q is whether CA law was interpreted correctly. Where can there be an appeal?
   1. Only up Va state court system
   2. Why not to CA SCt? After all, it is the final authority of CA law. Yes, but it is a different sovereign and one sovereign cannot have appellate authority over another. It cannot make the judgments of the other courts a nullity.
      1. Thinking of the same story with two nations will help.
8. - Suit in Federal District Court for the Eastern District of Virginia under Virginia battery law. Question is whether VA law was interpreted correctly. Where can there be an appeal?
   1. Only up to 4th Circuit (federal court of appeals)
   2. Not to SCt because it only takes issues of federal law
   3. Why not to CA SCt? After all, it is the final authority of CA law.
   4. Yes but here too it is treated as a different sovereign. A state’s court system can’t make the judgments of federal courts a nullity.
9. – Suit in the Williamsburg/James City County Circuit Court for defamation under Virginia law. The defendant loses - and thinks that the circuit court wrongly rejected her argument that Virginia law violates the First Amendment. Where can there be an appeal?
   1. One might think only up the VA court system – that appeal to the US SCt is impossible, even though it is the final authority on federal law (incl. the Const) because they are different sovereigns. The USSCt will let its views about federal law known through appeal from federal courts, the way that the CA SCt makes its views about CA law known through appeal from CA courts
      1. This was the (plausible) argument of the VA SCt in Martin v. Hunter’s Lessee, 14 U.S. 304 (1816) but the US SCt rejected it
   2. Appeal *is* possible (assuming the SCt takes cert)
   3. One argument for the possibility of appeal is that if there were no lower federal courts (because Congress chose not to create them), to say that appeal from state courts to the US SCt is not possible would mean that US SCt would have nothing to do
      1. The Const. assumes such appeal
   4. Still Green thinks there is something puzzling going on here
10. so…- no appeal from state court to a sister state’s court system, even concerning sister state law- no appeal from federal court to a state court system, even concerning that state’s law - BUT appeal from a state court to the U.S. Supreme Court concerning federal law
11. intro to subject matter jurisdiction (SMJ)
    1. distinguishing it from personal jurisdiction (PJ) and venue (V)
12. Suit in Ohio state court under Virginia battery law concerning a battery that took place in VA - is there SMJ?
    1. Yes – state courts are courts of general subject matter jurisdiction
    2. Think of a nation’s courts (like Germany). German courts can take cases under any sovereign’s law – e.g. Russian. Russia cannot tell them not to.
    3. Same thing for Ohio.
    4. how might defendant object to the Ohio state court’s taking the case? Isn’t there *something* wrong?
    5. The problem in our example is that the defendant is a Virginian and has no contact with Ohio. The Ohio court has not adjudicative power over his *person*. That is a problem of PJ.
13. State courts also have SMJ over actions under federal law (unless Congress specifically says that the federal action can only be brought before a federal court)
    1. Examples of federal actions that can only be brought before federal courts are patent, copyright and federal antitrust
14. State courts also have SMJ over actions under foreign law
15. Sometimes there are SMJ problems in particular state courts because of how the state chooses to divide subject matters among its courts
    * 1. Eg a family court cannot take a tort case
      2. But the system as a whole has SMJ over every cause of action except those federal actions that Congress has given exclusive federal SMJ
16. – suit between two Californians in the Federal District Court for the Eastern District of Virginia under California battery law. Is there SMJ?
    1. No - a suit under federal law and no diversity
    2. Will discuss in much created detail later
    3. defendant cannot consent to SMJ because the question is about VA’s retained rights and powers, not his
17. suit by two people living in the Federal District Court for the **Eastern** District of Virginia brought in the Federal District Court for the **Western** District of Virginia for violation of his federal constitutional rights that occurred in NJ  
      
    is there SMJ? Yes suit is under federal law  
    Is there PJ? Yes – the sovereign is the United States and the defendant has sufficient connections with the US
    * 1. So there is PJ as a constitutional matter

The problem is venue

* + - * + E.D. Va. is not the proper district in the federal court system

subject matter jurisdiction concerns whether the case is of a **type** that can be entertained by a court system  
  
personal jurisdiction concerns whether a court system has adjudicative power over a **person**  
  
venue concerns whether the case is in the right court **within** a court system