**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
   3. Relationship between sovereigns (state, federal, even foreign) is central
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
      1. Dual sovereignty theory
      2. Simply because a country has a federal structure does not mean it has dual sovereignty
      3. The usual view (e.g. Mexico) is that one sovereign (the people of Mexico) gave over power to the federal and state governments
         1. The states are not nations but just administrative units (like counties are in Virginia)
         2. Single sovereign view
   4. Although the dual sovereignty view is the official one, often the single sovereignty view will intrude
   5. Under dual sovereignty view states gave over certain power for lawmaking to United States, but not others
      1. E.g. commerce clause power given to Congress (not all lawmaking power)
   6. Also gave over some judicial power but not others
      1. Art. III spells out the judicial powers that states (eg Virginia) gave to United States
      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/alienage 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 appeal is a continuation of the proceedings in which a higher court in the legal system corrects legal errors of the inferior court
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.
      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.
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 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. Even afterward, through the 1850s, state supreme courts (California, Ohio) rejected the idea that the US SCt can have appellate jurisdiction over state courts
   2. And yet the US SCt has held appeal *is* possible
      1. This is a possible example of the intrusion of a single sovereignty view
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 under Virginia battery law in Chinese legal system – is there SMJ?
    1. Yes – a nation’s court system can take any type of case it wants – it has general SMJ under international law
13. Suit in Virginia legal system under Chinese law
    1. Same point – Virginia is a nation and a nation’s court system can take any type of case it wants
14. *Within* a nation’s court system SMJ might come up because the system gives certain subject matters to certain courts (e.g. family court)
    1. So an action might be dismissed for lack of SMJ for that reason
    2. But the legal system as a whole has SMJ for anything
    3. That is true of state legal systems too with one exception
15. Suit in Virginia legal system under federal law
    1. SMJ?
    2. Gut response should be yes – state courts are courts of general SMJ
    3. BUT no SMJ if Congress specifically says that the federal action can only be brought before a federal court