

3.2: The Parties, Attorneys, and Jury

3.2.1 The Parties

The litigation system relies on parties to bring forth and defend their respective claims. The party that begins a civil lawsuit is called the **plaintiff**. The plaintiff sues the **defendant** to recover damages for, or to stop, a legal wrong. In a criminal trial, the party that initiates litigation is the prosecution, representing the people within a state or federal government. In a criminal trial the accused wrongdoer is also called the defendant.

Cases may involve multiple plaintiffs and multiple defendants. Civil procedure encourages parties to bring their complaints against each other at once. All parties, and every possible **claim** (each claim is a separate violation of law) arising out of a single incident or series of related incidents, should be identified and raised in a lawsuit.

Except in some small claims courts, parties may hire attorneys to represent them. Individuals who represent themselves are called **pro se litigants**. The complexities of litigation require knowledge and objectivity to succeed. Courts hold pro se litigants to the same standards as they do attorneys. Therefore, a pro se litigant is expected to understand and follow all the rules of the court and applicable laws.

3.2.2 Attorneys

In the United States, law school is a graduate-level program that usually takes three years to complete. Law school graduates earn a Juris Doctorate degree, or JD. Graduates then take the bar exam in the state where they wish to practice. If they pass the exam and background check, they can apply to be licensed in that state. Because the practice of law in the United States varies widely by jurisdiction, attorneys are only permitted to practice in jurisdictions where they are licensed.

Attorneys are bound by a professional code of ethics that is overseen by the supreme court of the state where they are licensed. One of the most important rules of professional responsibility is the obligation to keep a client's secrets. The communications between a client and his or her attorney are absolutely confidential under the attorney-client privilege doctrine. The privilege belongs to the client, and the attorney is not permitted to reveal any of these communications without the client's consent. A narrow exception exists for clients who tell their attorneys they intend to harm others or themselves. Attorneys must avoid violating the privilege because it exists for the client's benefit. Someone who cannot communicate with his or her attorney freely is unable to help the attorney prepare the best possible case.

In spite of an attorney's professional obligations to his or her client, it's important to remember that ultimately an attorney's first duty is to the administration of justice. The requirements for attorneys to be civil, honest, and fair are written to ensure that attorneys represent the very best aspects of the judicial system. For example, a client admits to his attorney that he is guilty of a crime. The client then wants to testify under oath that he is innocent. Although an attorney cannot reveal what her client has told her, the attorney is prohibited from knowingly suborning perjury. The attorney must either convince the client to not testify or withdraw from the case.

An attorney owes her client zealous advocacy, but her zeal must be constrained within the bounds placed on her as an officer of the Court and under the Court's rules. Attorneys cannot assert legal claims or arguments that are not well-founded under existing law or through the modification or expansion of law. Attorneys are also prohibited from using the courts for a purpose unrelated to the resolution of a legitimate legal cause of action.

3.2.3 The Jury

In the US legal system, the jury has a very special role of citizen participation in the administration of justice. As the trier of fact, the jury has the duty of determining the truth in any given situation: who said and did what, why, and when. The litigation system is a process in which each side gets to present its case to a group of unbiased citizens, and then ask them to decide who wins the case.

There are two types of juries. A **grand jury** is a group of citizens convened by the prosecution in serious criminal cases to determine (1) whether probable cause exists to believe that a crime has occurred, and (2) whether it's more likely than not that the defendant committed the crime. If the grand jury decides probable cause exists, then the government may bring criminal charges against the defendant. The grand jury prevents prosecutors from abusing their powers of arrest and indictment. The grand jury requirement exists at the federal level and in most states. A grand jury typically meets for an extended period of time and hears several different cases.

The grand jury does not determine guilt or innocence. A **petit jury** does that. This jury is impaneled for a specific trial. During the trial, members of the jury listen to the evidence presented and then deliberate as a group on the facts of the case. They then apply the law, as instructed by the judge, to the facts. There are typically twelve members in a petit jury in criminal trials and from six to twelve members in civil trials. In a criminal trial, a jury must arrive at a unanimous verdict to convict a defendant of the crimes charged.

The jury system is incredibly important because ordinary citizens adjudicate all sorts of disputes. There are problems with administering this system, however.

Both grand and petit juries are drawn from citizen voter and driver license rolls. In high-profile cases, it may be difficult to find citizens who have not heard about the case or who can be impartial. Another problem arises from the burdens placed on jurors' personal lives through their service. While most states have laws that prevent an employer from firing a worker or taking any negative action against workers on jury duty, there is no legal requirement that an employer continue to pay a worker on jury duty. Some citizens, such as those who are self-employed, risk losing personal income by serving on juries.

Another potential problem arises in the composition of the jury. To provide a fair jury, courts attempt to draw from a cross-section of society to reflect the diversity of the surrounding community. Local court rules typically allow judges to excuse potential jurors for hardship or extreme inconvenience. The only professions that are automatically exempt are active-duty military members, police officers, firefighters, and public officers. In spite of these administrative problems, the jury system remains a cornerstone of the US legal system.

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