Unit 4 Conflict Resolution

- Adversary system
- Inquisitorial system
- Alternative dispute resolution

The Parties to Litigation

- Plaintiff (petitioner)
- Defendant (respondent)
- Intervenor
- Amicus curiae (not a party to the lawsuit)

Types of Courts

- Administrative
- Trial
  - Power to decide issues of fact and law
- Appellate
  - Confined to trial record
  - Limited to questions of law
Initiation of the Case

- Administrative
  - Petition
    - Administrative fine, Compliance order, Final regulation or determination
- Criminal
  - Indictment by grand jury (Federal & some states)
  - Information (Some states, never federal)
- Civil
  - Service of process

Jurisdiction

- As to the parties
  - Personal
  - Over property
    - In rem
    - Quasi in rem

Jurisdiction

- Inherent in the court
  - General
  - Limited
    - By dollar amount
    - By subject matter
    - By geography
Venue

- Convenience
  - Parties
  - Witnesses

Preliminary matters

- Standing
- Mootness
- Ripeness
- Discovery
  - Written interrogatories
  - Depositions
  - Documents & physical evidence

Pretrial motions

- Motion to dismiss
- Motion for summary judgment
Jury selection/Role of the Fact Finder

- Petit jury
- Facts found by jury
  - Judge if jury waived
  - Bench trial

Standard/Burden of Proof

- Most civil trials
  - Preponderance of the evidence
    - > 50% of the evidence must favor the plaintiff, for jury (or judge) to find for plaintiff
  - Criminal trials
    - Beyond a reasonable doubt (> 99%) to convict
  - Some civil matters require a higher standard of proof
    - Clear & convincing evidence

Trial

- Opening arguments
- Plaintiff’s case in chief
  - Direct
  - Cross
  - Redirect
Trial (continued)

- Defendant
  - Direct
  - Cross
  - Redirect
- Closing arguments

Post-trial motions

- Motion for a judgment notwithstanding the verdict (j.n.o.v.)
  - Federal: Motion for a judgment as a matter of law
- Motion for a new trial

Judgments and orders

- Docketing judgment
- Executing upon the judgment
- Enforcement of orders
  - Civil contempt
  - Criminal contempt
Appeals

- As of right
- Discretionary

Distinction between law and equity

- Originally separate courts
- Law - Relief usually confined to money damages
- Equity - Relief usually injunctive
- Equitable issues tried to judge

Equitable (injunctive) relief

- Temporary restraining order (tro)
  - Ex parte
  - Short duration
- Preliminary injunction
  - Preserve relative position of parties during litigation
Equitable (injunctive) relief
- Permanent injunction

Multiparty Litigation
- Class action
  - Many plaintiffs with nearly identical claims
- Interpleader
  - Brought by a holder of funds not claimed by the holder
    - Determine ownership
    - Avoid paying twice

The Federal Court System
- Jurisdiction
  - Federal question
    - Exclusive
    - Concurrent
    - Pendant
  - Diversity
    - $75,000 or more
    - Complete diversity
U.S. Supreme Court

- Original
  - Ambassadors, other public ministers & consuls
  - States
- Appellate
  - All other matters
  - Usually by writ of certiori

Other Article III Courts

- Circuit Courts of Appeal
  - 4th - NC, DM, SC, VA, WV
  - Eleven, + DC and Federal Circuit
    - 11 geographic
    - DC geographic + subject matter
    - Federal circuit - subject matter

Other Article III Courts

- District Courts
  - Three district courts in NC
  - Original jurisdiction (trial courts)
Article I Courts

- Judges serve for fixed terms
- Standard of review lower
  - De novo, etc.
- Examples
  - Bankruptcy courts
  - U.S. Court of Federal Claims

NC Courts

- Appellate Division
  - Supreme Court
  - Court of Appeals
- Superior Court Division
  - Courts of general jurisdiction

NC Courts

- District Court Division
  - Civil actions < $10,000
  - Juvenile matters
  - Divorce, child support, etc.
  - Small claims
    - $4,000 or less
    - de novo review available