

Lesson 2

What are the steps of the litigation process? Are these court procedures fair?

Lesson Objectives

Students will be able to:

- Identify criteria for fair decision-making.
- Describe civil court procedure.
- Make an argument about the degree to which court procedural rules reflect the rule of law, justice, due process, and equality.

Materials

- Handout 2: The Litigation Process
- Handout 3: Introduction to America's Core Democratic Values
- Handout 4: Court Procedure and Core Democratic Values and accompanying answer key

Lesson Assessments

- Handout 4
- Students write their initial thoughts about the question, “Does civil litigation procedure adequately reflect the values and principles of American constitutional government?”

Instructional Activities

Anticipatory Set

- Ask a few students to share cases they found for homework and discuss what makes each case a criminal case or a civil case. Guide students to remember that:
 - *Criminal litigation* happens when an individual (or corporation) harms society by breaking the law as laid out in the federal or state criminal code. The person who files the complaint in court is called the *prosecutor*. The person accused of wrongdoing is called the *defendant*. Potential penalties if the defendant is found guilty/convicted of a crime can include a fine, imprisonment, or capital punishment. If the defendant wins, the judgment is called an *acquittal*, or a *not-guilty* verdict.
 - *Civil litigation* involves disputes among individuals, groups of individuals, or institutions. Civil litigation has two sides. The plaintiff is the party who feels that he/she has been wronged in some way. The plaintiff initiates the lawsuit—or *sues*—the party he or she feels is responsible for that wrong. The *suit* begins with

the plaintiff filing a *complaint* in a trial court accusing an individual or institution of violating the law.

- Now ask students to consider the following scenario:
 - A student, John Doe, attended Any City High School. Principal Smith was concerned about marijuana use at the school, so she conducted a search of all the students’ lockers. Principal Smith’s search of John’s locker turned up no marijuana or other drugs. But when she was looking for pot, Principal Smith came across a smartphone in the locker, labeled with the name Richard Roe. She confiscated the phone and investigated. It took her just one conversation with Richard, another Any City High School student, to learn that he had reported the phone stolen the day before. The next day, Principal Smith suspended John from school for two weeks. John and his parents were warned not to talk about the matter with Richard or his parents; in fact, Principal Smith said, if they did, the suspension would be converted to expulsion.
 - John and his parents contended that he did not steal the phone. They asked for the matter to be reviewed by the School Board, whose next scheduled meeting was two days later. The Doe family asked for a chance to explain John’s side of the story, but the Board refused to allow them any opportunity to speak. Among the school board’s members were Principal Smith’s husband and Richard Roe’s mother. The Board approved John’s suspension based on Principal Smith’s statement that she found the phone in John’s locker, and Richard Roe’s report to the Principal that his phone had been stolen.
- Solicit students’ responses to this scenario. Explain to them that whether or not the principal was right to search lockers in the first place, the law is clear that students do not have privacy rights against searches of school property—including their school lockers. (Fourth Amendment protections outside of school are much stronger.) The issue is not whether the search was lawful, but whether the process used to punish him, by both Principal Smith and the School Board, was fair. What about the situation seems unfair; what seems fair about what happened, and what might be changed to make it a fairer process?
- As students are sharing their ideas, create a list of “criteria for fair process.” Try to structure your questions so that you have a list that includes at least the following:

<u>Principle</u>	<u>Satisfied here?</u>
People accused of misconduct should receive notice of the accusation against them, and of the evidence on which that accusation is based.	Yes.
The accused should have an opportunity to adequately research the facts, evidence, and laws.	No. The Does were forbidden to talk to the Roes, and were also given only two days to prepare for the School Board meeting.

<u>Principle</u>	<u>Satisfied here?</u>
Parties must have an opportunity to present the relevant facts and arguments to the decision maker in the case.	No. The Does were not allowed to address the School Board, either to present facts (for example, an alternative explanation of where the cell phone came from) or arguments (for example, a plea for a more lenient punishment).
The decisionmaker should be neutral , without self-interest in the dispute, and not likely to play favorites.	No. Principal Smith may have been neutral, but the Board was not; two members had some kind of interest in the matter.
A decision should be based solely on the evidence presented .	Maybe: hard to say from the description.
Sufficient evidence must support the decision.	Maybe: there's good evidence that the phone was stolen, but none how it got into John's locker.

- When a dispute is in a court—rather than, like this one, in front of a school principal or school board—these protections still apply, and others are added. Additional procedural protections that are required for court proceedings include:
 - Rules governing what kind of evidence can be considered
 - A record of the proceeding to facilitate appeal
 - A chance to appeal to a different court to correct serious errors

Guided Practice

- Introduce students to the concept of court procedure—a body of rules that outline the process of civil litigation from beginning to end. Explain that court procedure is put in place to ensure that the litigation process is fair, whatever the lawsuit is about.
- Provide them with **Handout 2: The Litigation Process**. Depending on the needs of your students, you may want to break the reading up and discuss it in segments. For example, you could assign students to read Part I and discuss before moving on to read about what happens during a trial.
- After students have read, do a check for understanding either through whole group discussion or by giving students a brief reading quiz. For example, you might ask students to list in order the main steps in the litigation process and explain each step, or you could have students walk through each part and create a chart for the core concepts, as shown below.

The Litigation Process: Core Concepts (Summary of Handout 2)

Part I: Pretrial

- ***Complaint:*** *The plaintiff uses this to start the litigation process*
- ***Answer:*** *Defendant's response to complaint. Defendant specifically responds to each allegation and can deny, admit, or assert lack of knowledge with respect to facts*

- **Motions for judgment:** Both parties can argue that, given the state of the law and whatever uncontested evidence exists, it is clear one side should win
- **Discovery:** gathering evidence from other side (deposition- witness interviews, interrogatories- written questions give to opposing party)
- **Theory of case/developing a theme:** an outline of what the attorneys hope to prove, evidence to support the facts, strategy to get others to that conclusion; want a coherent story to tell in trial
- **Settlement:** an agreement that is acceptable to all that ends the dispute

Part II: Trial

- **Evidence:** To be usable at trial, evidence must be relevant, and cannot be hearsay, character evidence, or privileged information. Witnesses can give facts but not opinions
- Plaintiffs usually have **burden of proof:** Must convince judge or jury of their version of the facts. In civil cases, the standard is “preponderance of the evidence” – the plaintiff must show that their version of events is more likely than not
- **Jury Election:** In damage cases, usually either party can choose to have jury make factual decisions; otherwise judge hears case.
- **Jury Selection:** judge/attorneys asks jurors questions about their views and experiences in process called voir dire. Either party can exclude jurors by challenge for cause (excludes biased jurors) or peremptory challenge (excludes jurors without reason)
- **Opening Statements:** Both parties introduce facts of case as clearly as possible
- **Plaintiff’s case:** Plaintiff presents evidence through witness testimony or introducing documents or physical evidence
 - **Direct Examination:** plaintiff’s lawyers asks the witnesses questions – the goal is for the questions and evidence to tell a compelling story to convince judge/jury that defendant violated the law
 - **Cross Examination:** defendant’s lawyers ask questions and show weakness in witness testimony.
- **Defendant’s case:** direct examination and cross examination
- **Plaintiff’s rebuttal:** plaintiff can respond to issues presented in defendant’s case that weren’t in plaintiff’s
- **Closing argument:** attorneys from each side summarize their arguments
- **Deliberation and verdict:** judge or jury considers the evidence and deliver their decision, the verdict.

Part III: Post-trial

- In civil cases, the losing party generally has a right to **appeal**. (In criminal cases, only the criminal defendant can appeal).
- **Appellate courts** look at legal questions without deferring to the trial court’s views. But on questions of fact, appellate courts are highly deferential to the trial court’s decision; the appellate court cannot overturn the findings of a jury unless there was no reasonable basis, and cannot overturn the findings of a judge unless they were clearly erroneous.
- Party can further appeal the appellate decision.

Unit 1: Lesson 2

Introduction to Civil Rights and Litigation

- Tell students that court procedure is supposed to be guided by core democratic principles and values that will make the procedure fair for everyone. Four of the particularly important ones are ***rule of law***, ***justice***, the right to ***due process***, and the right to ***equality***. Provide students with **Handout 3: Introduction to America's Core Democratic Values** and review the meaning of these concepts with students. An additional lesson or lessons may be necessary, and several other helpful sources are listed under *Additional Links* in this handout.
- Explain to students that they will work in small groups to go back through court procedural rules and decide if and how they reflect democratic ideals and values. Students should work in class to complete **Handout 4: Court Procedure and Core Democratic Values**. Students may work in one group to complete the entire worksheet, or you could assign students to jigsaw groups that are assigned to one or two sections before joining with students assigned to the other sections.

Independent Practice/Homework

- Ask students to write an informal response to the question: *Do court procedural rules adequately reflect the values and principles of American constitutional government?* This can begin the pre-writing process for students to complete the cumulative argumentative writing assignment for this unit.