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Analysis of Civil Procedural Laws in USA, UAE and Germany

Tushar Kumrawat

ABSTRACT

Law broadly is divided into two major heads one is said the substantive law and another is called the procedural law. The former one contains about the bare law, guidelines , rules and regulations , defines various aspects of law and etc. and the latter one helps in implementation of the substantive law, both goes side by side and are of no use without each other.

The judicial structure is essentially separated into two kinds of cases: civil and criminal. Therefore, a study of Civil Procedure is essentially a study of the procedures that smear in cases that are not criminal. In this article we will analyse civil procedural laws of three countries geographically far from each other.

INTRODUCTION

Commonly, criminal trials are used by the government to guard and provide relief to the overall public by trying to punish an individual. Civil hearings can be used by anyone to impose, redress, or safeguard their legal rights through court orders and monetary rewards. The two types of trials are very diverse in character and thus have separate procedural guidelines and practices.

The scholarly author states: (1) Civil hearing involves proceedings before a court of law; (2) The commencement of civil proceedings is a intended act; (3) The plaintiff performances in his own interest; (4) Civil litigation does not arise without the drive of the defendant. It is this type of litigation that is ruled by 'civil procedure'. Of course, this definition, though much more convenient in relative legal studies than the definition stated in the other aspects, is not ideal either, for parts of the law that in some countries are carried under the heading 'civil procedure' cannot be brought under it. Tricky areas are, for example, the directions on judicial organisation, implementation, and the rules on cases which do not contain the adjudication of disputed matter but the performance of acts of an 'administrative' nature by a law court . (for instance, the selection of a guardian).¹

CIVIL PROCEDURE LAW IN USA

American philosophy makes civil procedure specially significant. The importance of civil procedure is associated to wider American norms. This commitment to the ideal of procedural due process mirrors the American faith in individualism which, in the legal framework, promotes a formality intended to declare that every claimant will get individualized justice. It also reflects the American cultural view that there are supposed to be winners and losers, rather than negotiation resolutions. American procedural law has advanced class action measures that have no counterparts in the procedural law of Civil-Law authorities and go well beyond the practices of most other Common-Law authorities.

As a consequence of an administration of intricate legal procedures that is so distinctive of the American legal system, regular citizens are less capable of handling their disagreements on their own, and more reliant on upon engaging the services of lawyers. Many think, for instance, disputes over auto accidents and the acquisition and sale of homes and apartments should be fingered without lawyers. Yet, in most states in the Unites States the unsolved procedures that now mantle what could be simple matters force people to turn these glitches over to lawyers.

Legal action also plays a much wider role in the United States than somewhere else. The U.S. system is well-known for having many rules that are seen as constructive to plaintiffs. For example, each party to a private litigation pays its own legal fees and a loser does not pay a winner's legal charges as in the Germany. The American legal system is well recognised for its especially

¹ Andrews, N. (2003), *English Civil Procedure: Fundamentals of the New Civil Justice System*, Oxford: Oxford University Press

confrontational nature. A greater number of lawyers are in switch of cases in the Unites States than anywhere else in the world.

In the U.S., civil procedure generally takes the form of a sequences of rules and judicial practices. The federal courts follows the Federal Guidelines of Civil Procedure (FRCP); the state courts follows their own state rules of civil procedure. Regularly, state civil procedure reflects many of the federal rules.

In federal courts, evidentiary rules are ruled by the Federal Rules of Evidence. The state courts follow their own state rules of evidence.

CIVIL PROCEDURE LAW IN UAE

United Arab Emirates (UAE) encompasses of seven Emirates, which are Ajman, Umm al-Quwain, Dubai, Abu, Dhabi, Fujayrah, Ras al-Khaymah and Sharjah. In the initial 19th century, the area was stated to as the pirate coastline. The British arrived various pacts in the 1820s to protect vital shipping interests. The perpetual naval treaty that was signed in 1853 permitted the British to handle foreign relationships. The United Emirates acquired its freedom from the British in 1971. Ras al-Khaymah was the last to join the coalition. It entered the Union in 1972.

The main ideologies of the United Arab Emirates are taken from the Sharia. Though, most laws entails a mix of European and Islamic notions of the civil law whose source is the Egyptian legal code created in the 19th and 20th century. The adoption of civil law by a number of states in the area exhibits the French influence.

Besides, having specific legal legislation for the agencies, labour law, company law, and intellectual property, United Emirates has recognised commercial and civil codes. This structure has brought about the expansion of structured and complete legal systems. However, these are inflexible to some extent founding the official procedure linked to various countries in the Middle East.

The UAE functions under a civil law system and acts are the primary source of law. Judgments of the higher courts are not obligatory on the lower courts (although they can be a beneficial guide and often cited in backing of a position). Each case is decided on its own advantages and facts.

All court proceedings are in Arabic. All non-Arabic papers filed in court by the litigants must be converted into Arabic by a translator certified by the Ministry of Justice.

The judicial system in the UAE is fundamentally interrogational in nature. In each case, the judge will investigate the facts (generally through a court allotted expert) and apply the law to the details in reaching his or her judgment. There is no thought of a jury trial.

All proceedings in UAE civil cases are based on the written pleadings of the parties, reinforced by documentary evidence. In general, there is no oral hearing in civil cases. There is a prevalent practice for both the federal and the Dubai courts to mention matters to court-appointed experts for conclusions of fact in a variety of areas, including:

- Finance.
- Accounting.

- Banking.
- Other technical matters.

Experts' reports are not obligatory and can be challenged by the parties, but they are usually measured persuasive by the courts. In situations where the judge decides that he/she will not trail the expert report, the judge is required to specifically provide explanations for the decision. Oral evidence can only be agreed to establish a fact in a civil case with the consent of the court and the right to cross-examine witnesses is sternly restricted.²

CIVIL PROCEDURE LAW IN GERMANY

In civil cases, the system is aggressive. The court usually only contemplates facts presented by the parties. The parties are responsible for collecting evidence to support their case. The court is resolutely bound to what the parties present it with, and cannot perform on its own.

In some civil cases, like custody cases and cases concerning matrimonial law, this standard is substituted by the principle of authorised investigation. This is because these types of case may have things on individuals who are not parties to the proceedings.

Hearings and other court dates (for example, the delivery of decisions) are open to the public (*section 169, Court Constitution Act*). This is envisioned to ensure that the courts are administered by the public, and to prevent arbitrary proceedings.

Certain matters where the secrecy interest of the parties is deemed to exceed the interest of the public, for instance in family law matters, are not open to the public.

Judges department and control civil proceedings (*section 139, German Code of Civil Process*). Generally, judges must converse relevant matters of fact and law with the counsel and connect a (preliminary) assessment of the case. Judges ask witnesses questions that they consider relevant to the case.

There are no juries in civil proceedings. Proceedings before specialized commercial courts are led by a panel consisting of one career judge and two viable lay judges, who are specially appointed business people (*section 109, Court Constitution Act*) The use of lay judges is proposed to ensure the appropriate deliberation of commercial usages, the standards of a fair and assiduous businessperson and so on.

In civil law cases, the burden of proof normally lies with the party asserting the claim. They must substantiate their case beyond reasonable doubt.

The burden of proof can be shifted, for example in claims for damages due to breach of contractual compulsions. The defendant's duty for the contractual breach is presumed by the law, and the defendant tolerates the burden of proving otherwise (*section 280 subsection 1 second sentence, German Code of Civil Law*).

As there are no disclosure-like proceedings, the party with the onus of proof may need to validate a fact that they have had no chance to obtain information of, while the other party can present this material easily (for example, information regarding the opposing party's properties or tax

² BASHIR AHMED, CHATURA RANDENIYA AND MEVAN KIRIELLA BANDARA, AFRIDI & ANGELL, "LITIGATION AND ENFORCEMENT IN THE UNITED ARAB EMIRATES: OVERVIEW", [HTTPS://UK.PRACTICALLAW.THOMSONREUTERS.COM/4-501-9686?TRANSITIONTYPE=DEFAULT&CONTEXTDATA=\(SC.DEFAULT\)&FIRSTPAGE=TRUE](https://uk.practicallaw.thomsonreuters.com/4-501-9686?transitiontype=default&contextdata=(sc.default)&firstpage=true), ACCESSED ON 10/10/2020 , 11:20 AM

burden). In this case, the burden of proof does not shift, but the other party has a duty to deliver sufficient information for the first party to validate their submission. This is known as the "secondary burden of proof".

Verdicts in civil proceedings be contingent on the form of action. The court is generally bound by the parties' requests and may not give verdicts beyond that possibility. If, for example, the claimant is suing for recital and his or her claim is justified, the court will order the defendant to execute the respective obligation. In case of a vindicated declaratory action, the court will declare as entreated by the claimant.

However, the court verdict may fall short of the preliminary request, if the court is convinced that the claim is only partially defensible.

CONCLUSION

To conclude after analysing civil codes of all three nations there exists no major distinctive feature in them , only the dependency is a distinctive point that could be found.