SEVENTH AMENDMENT
CIVIL TRIAL RIGHTS

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Amdt7.1 Overview of Seventh Amendment, Civil Trial Rights

The Seventh Amendment guarantees a jury trial in civil cases at law in federal court and limits the circumstances under which courts may overturn a jury's findings of fact.[1] Although this right is rooted in English common law and was important during the colonial era, it was initially omitted from the Constitution. The First Congress, however, ultimately adopted the right as one of the Bill of Rights, which became effective in 1791.[2] Since then, the Supreme Court has interpreted the phrase "Suits at common law" under the Amendment as preserving the right of trial by jury in civil cases as it "existed under the English common law when the amendment was adopted."[3] This means that the Amendment does not guarantee trial by jury in cases under admiralty and maritime law and in other proceedings historically tried by a court instead of a jury, nor does it reach statutory proceedings unknown to the common law concerning the enforcement of statutory "public rights" created by Congress.[4]

The following essays in this section address in more detail the historical background of the right to jury trials in civil cases and the types of civil cases and claims requiring a jury trial. In addition, the essays also address other aspects of this right, including the circumstances under which courts may make gatekeeping juridical determinations that prevent submission of claims to a jury, the composition and functions of a jury in civil cases, and the circumstances under which courts may order the entry of a judgment contrary to a jury's verdict.[5]

Amdt7.2 Right to a Trial by a Jury in Civil Cases

Amdt7.2.1 Historical Background of Jury Trials in Civil Cases

Seventh Amendment:

> *In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.*

The Seventh Amendment guarantees a jury trial in civil cases at law in federal court.[1] The Amendment traces its roots to English common law; some historians trace the origin of the English jury as far back as Ancient Greece.[2] Sir William Blackstone, in his influential treatise on English common law, called the right "the glory of the English law" and necessary for "[t]he

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[1] U.S. Const. amend. VII. The Supreme Court has not held that the Seventh Amendment's guarantee of the right to a civil trial by jury applies to the states through the Fourteenth Amendment. *See* Curtis v. Leother, 415 U.S. 189, 192 n.6 (1974); Minneapolis & St. Louis R. Co. v. Bombolis, 241 U.S. 211 (1916). Most state constitutions, however, include this right. *See* 2 William J. Rich, Modern Constitutional Law § 22:13 (3rd ed. 2011).

[2] *See* Amdt7.2.1 Historical Background of Jury Trials in Civil Cases.

[3] Balt. & Carolina Line v. Redman, 295 U.S. 654, 657 (1935); Parsons v. Bedford, 28 U.S. (3 Pet.) 433, 446–48 (1830).

[4] *See* Amdt7.2.2 Identifying Civil Cases Requiring a Jury Trial and Amdt7.2.3 Cases Combining Law and Equity.

[5] *See* Amdt7.2.4 Restrictions on the Role of the Judge through Amdt7.3.2 Appeals from State Courts to the Supreme Court.

[1] U.S. Const. amend. VII. The Supreme Court has not held that the Seventh Amendment's guarantee of the right to a civil trial by jury applies to the states through the Fourteenth Amendment. *See* Curtis v. Leother, 415 U.S. 189, 192 n.6 (1974); Minneapolis & St. Louis R. Co. v. Bombolis, 241 U.S. 211 (1916). Most state constitutions, however, include this right. *See* William J. Rich, 2 Modern Constitutional L. § 22:13 (3rd ed.).

[2] *See* Richard S. Arnold, *Trial by Jury: the Constitutional Right to a Jury of Twelve in Civil Trials*, 22 Hofstra L. Rev. 1, 5–7 (1993).

impartial administration of justice," which, if "entirely entrusted to the magistracy, a select body of men," would be subject "frequently [to] an involuntary bias towards those of their own rank and dignity."[3]

From England, the colonists brought the right to a jury trial across the Atlantic. The civil jury played an important role during the colonial era.[4] The colonies stoutly resisted the King of England's efforts to diminish this right, and the Declaration of Independence identified the denial of "the benefits of trial by jury" as one of the grievances that led to the American Revolution.[5] Despite this right's prominence in Colonial America, however, a right to a civil jury trial was not included in the original draft of the Constitution.[6]

Records of the Philadelphia Convention show that the delegates twice raised the issue of whether the Constitution should include a right to a jury trial. On September 12, 1787, toward the end of the Convention, Hugh Williamson of North Carolina "observed to the House that no provision was yet made for juries in Civil cases and suggested the necessity of it."[7] Some delegates expressed support for such a provision but observed that the diversity of state courts' practices in civil trials made it impossible to draft a suitable provision.[8] This latter concern appears to have served as the basis for defeating a motion, brought by another delegate on September 15, 1787, to insert a clause in Article III, § 2, to guarantee that "a trial by jury shall be preserved as usual in civil cases."[9]

After the Convention, many opponents of the Constitution's ratification cited the omission of a right to a jury trial with such "urgency and zeal" that they almost prevented the states from ratifying the Constitution.[10] Some opponents of the Constitution claimed that the absence of a provision requiring civil jury trials in a Constitution that mandated jury trials in criminal cases[11] implied that the use of a jury was abolished in civil cases.[12] In the *Federalist Papers*, Alexander Hamilton refuted this assertion, expressing the view that the Constitution's silence on civil jury trials merely meant "that the institution [would] remain precisely in the same situation in which it is placed by the State constitutions."[13]

In ratifying the Constitution, several states urged Congress to provide a right to a jury in civil cases as one of the amendments.[14] The right was included in the list of amendments James Madison proposed to the First Congress, which adopted the right as one of the Bill of

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[3] Blackstone, Commentaries on the Laws of England 379 (1765–1769).

[4] *See* Arnold, *supra* note 2, at 13–14.

[5] *See id.* at 14.

[6] *See id.*

[7] 2 Records of the Federal Convention of 1787, at 587 (Max Farrand ed., 1937).

[8] *Id.*

[9] *Id.* at 628.

[10] 3 Joseph Story, Commentaries on the Constitution of the United States § 1757 (1833). Justice Story observed: "[I]t is a most important and valuable amendment; and places upon the high ground of constitutional right the inestimable privilege of a trial by jury in civil cases, a privilege scarcely inferior to that in criminal cases, which is conceded by all to be essential to political and civil liberty." *Id.* § 1762.

[11] U.S. Const. art. III, § 2.

[12] The Federalist No. 83 (Alexander Hamilton).

[13] *See id.*

[14] Jonathan Elliott, The Debates in the Several State Conventions on the Adoption of the Federal Constitution 326 (1836) (New Hampshire); 2 *id.* at 399–414 (New York); 3 *id.* at 658 (Virginia).

Rights.[15] It does not appear that the proposed amendment's text or meaning was debated during its passage.[16] The Seventh Amendment became effective as part of the Bill of Rights in 1791.

Amdt7.2.2 Identifying Civil Cases Requiring a Jury Trial

Seventh Amendment:

> *In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.*

The Seventh Amendment grants a right to a jury trial in "Suits at common law," which the Supreme Court has long interpreted as "limited to rights and remedies peculiarly legal in their nature, and such as it was proper to assert in courts of law and by the appropriate modes and proceedings of courts of law."[1] The drafters of the Seventh Amendment used the term "common law" to clarify that the Amendment does not provide a right to a jury in civil suits involving the types of equitable rights and remedies that courts enforced at the time of the Amendment's framing.[2]

Two unanimous decisions, in which the Supreme Court held that civil juries were required, illustrate the Court's treatment of this distinction. In the first suit, a landlord sought to recover, based on District of Columbia statutes, possession of real property from a tenant allegedly behind on rent. The Court reasoned that whether "a close equivalent to [the statute in question] existed in England in 1791 [was] irrelevant for Seventh Amendment purposes."[3] Instead, the Court stated that its Seventh Amendment precedents "require[d] trial by jury in actions unheard of at common law, provided that the action involves rights and remedies of the sort traditionally enforced in an action at law, rather than in an action at equity or admiralty."[4] The statutory cause of action, the Court found, had several analogs in the common law, all of which involved a right to trial by jury.[5]

In a second case, the plaintiff sought damages for alleged racial discrimination in the rental of housing in violation of federal law, arguing that the Seventh Amendment was inapplicable to new causes of action Congress created. The Court disagreed: "The Seventh

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[15] 1 Annals of Cong. 436 (1789). "In suits at common law, between man and man, the trial by jury, as one of the best securities to the rights of the people, ought to remain inviolate." *Id.*

[16] The *Annals of Congress* note that on August 18, 1787, the House "considered and adopted" the committee version: "In suits at common law, the right of trial by jury shall be preserved." 1 Annals of Cong. 760 (1789). On September 7, the *Senate Journal* states that this provision was adopted after insertion of "where the consideration exceeds twenty dollars." 2 Bernard Schwartz, The Bill of Rights: A Documentary History 1150 (1971).

[1] Shields v. Thomas, 59 U.S. (18 How.) 253, 262 (1856).

[2] Parsons v. Bedford, 28 U.S. (3 Pet.) 433, 447 (1830); Barton v. Barbour, 104 U.S. 126, 133 (1881). Formerly, the Amendment did not apply to cases where recovery of money damages was incidental to equitable relief even though damages might have been recovered in an action at law. Clark v. Wooster, 119 U.S. 322, 325 (1886); Pease v. Rathbun-Jones Eng'g Co., 243 U.S. 273, 279 (1917). *But see* Dairy Queen v. Wood, 369 U.S. 469 (1962) (legal claims must be tried before equitable ones).

[3] Pernell v. Southall Realty Co., 416 U.S. 363, 375 (1974).

[4] *Id.*

[5] *Id.* at 375–76.

Amendment does apply to actions enforcing statutory rights, and requires a jury trial upon demand, if the statute creates legal rights and remedies, enforceable in an action for damages in the ordinary courts of law."[6]

In contrast, the Court has upheld the lack of a jury provision in certain actions on the ground that the suit in question was not a suit at common law within the meaning of the Amendment, or that the issues raised were not particularly legal in nature.[7] When there is no direct historical antecedent dating to the Amendment's adoption, the court may also consider whether existing precedent and the sound administration of justice favor resolution by judges or juries.[8]

The Seventh Amendment does *not* apply to cases in admiralty and maritime jurisdiction in which the court conducts a trial without a jury.[9] Nor does it reach statutory proceedings unknown to the common law, such as an application to a court of equity to enforce an administrative body's order.[10] For example, Congress, under the Occupational Safety and Health Act, authorized an administrative agency to make findings of a workplace safety violation and to assess civil penalties related to such a violation. Under the statute, an employer that has been assessed a penalty may obtain judicial review of the administrative proceeding in a federal court of appeal.[11] The Supreme Court, in *Atlas Roofing Co. v. Occupational Safety & Health Review Commission*, unanimously rejected the argument that the law violated the Seventh Amendment because it authorized penalties to be collected from an employer without a jury trial:

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[6] Curtis v. Loether, 415 U.S. 189, 194–95 (1974) (reasoning that "[a] damage action under the statute sounds basically in tort-the statute merely defines a new legal duty and authorizes the court to compensate a plaintiff for the injury caused by the defendants' wrongful breach" such that "this cause of action is analogous to a number of tort actions recognized at common law." *See also* Chauffeurs, Teamsters & Helpers Loc. 391 v. Terry, 494 U.S. 558 (1990) (suit against union for back pay for breach of duty of fair representation is a suit for compensatory damages, hence plaintiff is entitled to a jury trial); Wooddell v. Int'l Bhd. of Elec. Workers Loc. 71, 502 U.S. 93 (1991) (similar suit against union for money damages entitles union member to jury trial; a claim for injunctive relief was incidental to the damages claim); Feltner v. Columbia Pictures Television, 523 U.S. 340 (1998) (jury trial required for copyright action with close analog at common law, even though the relief sought is not actual damages but statutory damages based on what is "just").

[7] Such actions or issues include, for example: (1) enforcement of claims against the United States, McElrath v. United States, 102 U.S. 426, 440 (1880); *see also* Galloway v. United States, 319 U.S. 372, 388 (1943); (2) suit under a territorial statute authorizing a special nonjury tribunal to hear claims against a municipality having no legal obligation, but based on moral obligation only, Guthrie Nat'l Bank v. Guthrie, 173 U.S. 528, 534 (1899); *see also* United States v. Realty Co., 163 U.S. 427, 439 (1896); New Orleans v. Clark, 95 U.S. 644, 653 (1877); (3) cancellation of a naturalization certificate for fraud, Luria v. United States, 231 U.S. 9, 27 (1913); (4) reversal of an order to deport an alien, Gee Wah Lee v. United States, 25 F.2d 107 (5th Cir. 1928), *cert. denied*, 277 U.S. 608 (1928); (5) damages for patent infringement, Filer & Stowell Co. v. Diamond Iron Works, 270 F. 489 (2d Cir. 1921), *cert. denied*, 256 U.S. 691 (1921); (6) reversal of an award under the Longshoremen's and Harbor Workers' Compensation Act, Crowell v. Benson, 285 U.S. 22, 45 (1932); (7) reversal of a decision of customs appraisers on the value of imports, Auffmordt v. Hedden, 137 U.S. 310, 329 (1890); (8) a summary disposition by referee in bankruptcy of issues regarding voidable preferences as asserted and proved by the trustee, Katchen v. Landy, 382 U.S. 323 (1966); (9) a determination by a judge in calculating just compensation in a federal eminent domain proceeding of the issue as to whether the condemned lands were originally within the scope of the government's project or were adjacent lands later added to the plan, United States v. Reynolds, 397 U.S. 14 (1970); and (10) fair use determinations in copyright cases, Google v. Oracle, No. 18-956, slip op. at 20–21 (U.S. Apr. 2021).

[8] *See* Markman v. Westview Instruments, Inc., 517 U.S. 370, 389–90 (1996) (holding that patent construction is exclusively within the court's province, taking into account, among other considerations, whether "as a matter of the sound administration of justice, one judicial actor is better positioned than another to decide the issue in question").

[9] Parsons v. Bedford, 28 U.S. (3 Pet.) 433 (1830); Waring v. Clarke, 46 U.S. (5 How.) 441, 460 (1847); Romero v. Int'l Terminal Operating Co., 358 U.S. 354 (1959). *But see* Fitzgerald v. U.S. Lines Co., 374 U.S. 16 (1963).

[10] NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1, 48 (1937). *See also* ICC v. Brimson, 154 U.S. 447, 488 (1894); Yakus v. United States, 321 U.S. 414, 447 (1944).

[11] *See* Atlas Roofing Co. v. OSHRC, 430 U.S. 442, 445–46 (1977).

> At least in cases in which "public rights" are being litigated—*e.g.*, cases in which the government sues in its sovereign capacity to enforce public rights created by statutes within the power of Congress to enact—the Seventh Amendment does not prohibit Congress from assigning the factfinding function and initial adjudication to an administrative forum with which the jury would be incompatible.[12]

On the other hand, if Congress assigns such cases to Article III courts, a jury may be required. In *Tull v. United States*,[13] the Court ruled that the Seventh Amendment requires a jury to determine whether an entity is liable for civil penalties under the Clean Water Act, which authorizes the Administrator of the Environmental Protection Agency to initiate a civil action in a federal district court to enforce the Act. In the Court's view, the penal nature of the Clean Water Act's civil penalty remedy distinguishes it from restitution-based remedies available in equity courts.[14] Consequently, it is a type of remedy that only courts of law could impose.[15] However, a jury trial is not required to assess the amount of the penalty. Because the Court viewed assessment of the amount of penalty as involving neither the "substance" nor a "fundamental element" of a common-law right to trial by jury, it held permissible the Act's assignment of that task to the trial judge.

Later, the Court relied on a broadened concept of "public rights" to define the limits of congressional power to assign causes of action to tribunals in which jury trials are unavailable. As a general matter, "public rights" involve "'the relationship between the government and persons subject to its authority,'" whereas "private rights" relate to "'the liability of one individual to another.'"[16] In *Granfinanciera, S.A. v. Nordberg*,[17] the Court held that Congress "lacks the power to strip parties contesting matters of private right of their constitutional right to a trial by jury." The Seventh Amendment test, the Court indicated, is the same as the Article III test for whether Congress may assign adjudication of a claim to a non-Article III tribunal.[18] Although finding room for "some debate," the Court determined that a bankruptcy trustee's

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[12] *Id*. at 450.

[13] 481 U.S. 412 (1987).

[14] *Id*. at 422–25.

[15] The statute specified only a maximum amount for the penalty; the Court derived its "punitive" characterization from indications in the legislative history that Congress desired consideration of the need for retribution and deterrence in addition to the need for restitution. *Id*. at 422–23.

[16] Granfinanciera, S.A. v. Nordberg, 492 U.S. 33, 51 n.8 (1989) (quoting Crowell v. Benson, 285 U.S. 22, 50, 51 (1932)). *Granfinanciera* qualified certain statements in *Atlas Roofing* and in the process refined its definition of "public rights." There are some "public rights" cases, the Court explained, in which "the Federal Government is not a party in its sovereign capacity," but which involve "statutory rights that are integral parts of a public regulatory scheme." *Id*. at 55 n.10. The Court further noted that, in cases of this nature, Congress may "dispense with juries as factfinders through its choice of an adjudicative forum." *Id*. However, Congress may not assign "initial factfinding in all cases involving controversies entirely between private parties to administrative tribunals or other tribunals not involving juries" even "if they are established as adjuncts to Article III courts." *Id*. (emphasis added).

[17] *Id*. at 33, 51–52.

[18] The *Granfinanciera* Court stated: "[I]f a statutory cause of action . . . is not a 'public right' for Article III purposes, then Congress may not assign its adjudication to a specialized non-Article III court lacking 'the essential attributes of the judicial power.' If the action must be tried under the auspices of an Article III court, then the Seventh Amendment affords the parties the right to a jury trial whenever the cause of action is legal in nature. Conversely, if Congress may assign the adjudication of a statutory cause of action to a non-Article III tribunal, then the Seventh Amendment poses no independent bar to the adjudication of that action by a nonjury factfinder." *Id*. at 53–54 (citation omitted). *See also* Oil States Energy Servs., LLC v. Greene's Energy Grp., LLC, 138 S. Ct. 1365, 1379 (2018) ("This Court's precedents establish that, when Congress properly assigns a matter to adjudication in a non-Article III tribunal, 'the Seventh Amendment poses no independent bar to the adjudication of that action by a nonjury factfinder.'" (quoting *Granfinanciera*, 492 U.S. at 53–54)).

right to recover for a fraudulent conveyance "is more accurately characterized as a private rather than a public right," at least when the defendant had not submitted a claim against the bankruptcy estate.[19]

Amdt7.2.3 Cases Combining Law and Equity

Seventh Amendment:

> *In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.*

The Seventh Amendment uses the term "common law" to refer to cases in which the right to jury trial was preserved. This term's use reflected the division of the English and United States legal systems into separate law and equity jurisdictions, in which actions subject to the former but not the latter were triable to a jury. In the early federal court system, courts had jurisdiction over both suits in law and equity, but the suits occupied separate sides of a federal court's civil docket and were subject to distinct law and equity procedures, including the use or nonuse of the jury.[1]

Adoption of the *Federal Rules of Civil Procedure* in 1938 merged law and equity into a single civil jurisdiction and established uniform rules of procedure.[2] Legal and equitable claims that previously were brought as separate causes of action on different "sides" of the court could now be joined in a single action, and in some cases, such as those with compulsory counterclaims, had to be joined in one action.[3] However, the courts retained the traditional distinction between law and equity for purposes of determining when there was a constitutional right to trial by jury, which led to some difficulty.[4]

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[19] *Granfinanciera*, 492 U.S. at 55. The Court later held, however, that a creditor who submits a claim against the bankruptcy estate subjects himself to the bankruptcy court's equitable power, and is not entitled to a jury trial when subsequently sued by the bankruptcy trustee to recover preferential monetary transfers. Langenkamp v. Culp, 498 U.S. 42 (1990).

[1] *See* Kristin A. Collins, *"A Considerable Surgical Operation": Article III, Equity, and Judge-Made Law in the Federal Courts*, 60 Duke L.J. 249, 253 (2010).

[2] *See* Ross v. Bernhard, 396 U.S. 531, 539 (1970).

[3] *See* 8 Moore's Federal Practice - Civil § 38.12 (2022).

[4] Under the old equity rules, an absolute right to a trial of the facts by a jury could not be impaired by any blending with a claim, properly cognizable at law, of a demand for equitable relief in aid of the legal action or during its pendency. Hipp v. Babin, 60 U.S. (19 How.) 271, 278 (1857). The Supreme Court interpreted the Seventh Amendment to prohibit the trial of equitable and legal issues in the same suit, so that aid in the federal courts had to be sought in separate proceedings. Scott v. Neely, 140 U.S. 106, 109 (1891); Bennett v. Butterworth, 52 U.S. (11 How.) 669 (1850); Lewis v. Cocks, 90 U.S. (23 Wall.) 466, 470 (1874); Killian v. Ebbinghaus, 110 U.S. 568, 573 (1884); Buzard v. Houston, 119 U.S. 347, 351 (1886). If an action at law evoked an equitable counterclaim, the trial judge would order the legal issues to be separately tried after the disposition of the equity issues. In this procedure, however, res judicata and collateral estoppel could operate so as to curtail the litigant's right to a jury finding on factual issues common to both claims. However, priority of scheduling was considered to be a matter of discretion. Federal statutes prohibiting courts of the United States from sustaining suits in equity if the remedy was complete at law served to guard the right of trial by jury and were liberally construed. Schoenthal v. Irving Trust Co., 287 U.S. 92, 94 (1932). Nor was the distinction between law and equity to be obliterated by state legislation. *See* Thompson v. Railroad Cos., 73 U.S. (6 Wall.) 134 (1868). If state law, in advance of judgment, treated the whole proceeding upon a simple contract, including determination of validity and of amount due, as an equitable proceeding, it brought the case within the federal equity jurisdiction upon removal. However, the Supreme Court determined that when an action at law in state court furnished an adequate and complete remedy, the existence of a potential cause of action in courts of equity pursuant to a separate state statute could not enlarge the federal courts' equity jurisdiction. This jurisdictional rule applies even if, under state law, the equity court could summon a jury on occasion. Whitehead v. Shattuck, 138 U.S. 146 (1891); *Buzard*, 119 U.S. 347; Greeley v. Lowe, 155 U.S. 58, 75 (1894). Furthermore, when state law provides an equitable remedy, such as to quiet title to land, the federal courts enforce it, if it does not obstruct the rights of the parties as to trial by jury.

The Supreme Court resolved the difficulty by stressing the fundamental nature of the jury trial right and protecting it against diminution through resort to equitable principles. In *Beacon Theatres v. Westover*, a plaintiff sought a declaratory judgment and an injunction barring the defendant from instituting an antitrust action against it; the defendant filed a counterclaim alleging violation of the antitrust laws and asking for treble damages.[5] The Supreme Court held that the district court erred in denying the defendant a jury trial on all issues in the antitrust controversy because the complaint for declaratory relief "presented basically equitable issues."[6] The trial court's error, in the Court's view, would compel the defendant to split its antitrust case in two, trying part to a judge and part to a jury, impermissibly delaying and subordinating its counterclaim that it was required by the *Federal Rules of Civil Procedure* to bring within the same action.[7] Long-standing equity principles, according to the Court, dictated that "only under the most imperative circumstances which in view of the flexible procedures of the Federal Rules we cannot now anticipate, can the right to a jury trial of legal issues be lost through prior determination of equitable claims."[8]

Later, in *Dairy Queen v.Wood*, the Supreme Court reversed a district court's order striking a plaintiff's demand for jury trial.[9] There, the plaintiff-trademark owner sought several types of relief against the defendant-licensee for the licensee's alleged breach of a licensing contract, including an injunction and an accounting for money damages.[10] The Court held that, even though the claim for legal relief was characterized by the district court as "incidental" to the equitable relief sought, the Seventh Amendment required that the factual issues pertaining to

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Clark v. Smith, 38 U.S. (13 Pet.) 195 (1839); Holland v. Challen, 110 U.S. 15 (1884); Reynolds v. Crawfordsville Bank, 112 U.S. 405 (1884); Chapman v. Brewer, 114 U.S. 158 (1885); Cummings v. Nat'l Bank, 101 U.S. 153, 157 (1879); United States v. Landram, 118 U.S. 81 (1886); More v. Steinbach, 127 U.S. 70 (1888). *Cf. Ex parte* Simons, 247 U.S. 321 (1918). The transfer of cases to the other side of the court was made possible through the inclusion in the Law and Equity Act of 1915 of § 274(b) of the Judicial Code, 38 Stat. 956. The new procedure permitted legal questions arising in an equity action to be determined without sending the case to the law side. This section also permitted equitable defenses to be interposed in an action at law. The same order was preserved as under the system of separate courts. The equitable issues were disposed of first; if a legal issue remained, it was triable by a jury. Enelow v. N.Y. Life Ins. Co., 293 U.S. 379 (1935). *See also* Liberty Oil Co. v. Condon Bank, 260 U.S. 235 (1922). There was no provision for legal counterclaims in an equitable action because Equity Rule 30 required the answer to a bill in equity to state any counterclaim arising out of the same transaction, which was not intended to change the line between law and equity and was construed as referring to equitable counterclaims only. Am. Mills Co. v. Am. Sur. Co., 260 U.S. 360, 364 (1922); Stamey v. United States, 37 F.2d 188 (W.D. Wash. 1929). Equitable jurisdiction existing at the time of a bill's filing was not disturbed by the subsequent availability of legal remedies, and the scheduling was discretionary. Am. Life Ins. Co. v. Stewart, 300 U.S. 203 (1937).

[5] 359 U.S. 500, 501–04 (1959).

[6] *Id*. at 504–07.

[7] *Id*. at 509. The Supreme Court later observed, in Parklane Hosiery Co. v. Shore, 439 U.S. 322, 334 (1979), that Beacon Theatres reflected the Court's concern that when legal and equitable claims are joined in the same action, res judicata or collateral estoppel may foreclose relitigation of an issue common to both sets of claims before a jury if such an issue was first determined by a judge. The Court explained, however, that this concern merely reflected a general prudential rule that a trial judge "has limited discretion in determining the sequence of trial and that discretion must, wherever possible, be exercised to preserve jury trial." *Parklane*, 439 U.S. at 334 (internal quotations omitted). Thus, in *Parklane*, the Court held that the plaintiff stockholders' use of offensive collateral estoppel in that case—which precluded the defendants from relitigating certain issues that had resolved adversely against them in a prior governmental enforcement action—did not violate the defendants' Seventh Amendment right to a jury trial. *Id*. at 336–37.

[8] *Beacon Theatres*, 359 U.S. at 510–11.

[9] 369 U.S. 469, 479–80 (1962).

[10] *Id*. at 475.

whether there had been a breach of contract to be tried before a jury.[11] Thus, the rule emerged that legal claims must be tried before equitable ones, and before a jury if the litigant so wished.[12]

In *Ross v. Bernhard*, the Court further held that the right to a jury trial depends on the nature of the issue to be tried, rather than the procedural framework in which it is raised.[13] The case involved a stockholder derivative action, which had always been considered to be a suit in equity.[14] The Court agreed that the action was equitable, but concluded that it involved two separable claims. The first, the stockholder's standing to sue for a corporation, was an equitable issue; the second, the corporation's claim asserted by the stockholder, may be either equitable or legal.[15] Because the *Federal Rules of Civil Procedure* merged law and equity in the federal courts, there was no longer any procedural obstacle to transferring jurisdiction to the law side once the equitable issue of standing was decided. Thus, the Court continued, if the corporation's claim that the stockholder asserted was legal in nature, it should be heard on the law side and before a jury.[16]

Amdt7.2.4 Restrictions on the Role of the Judge

Seventh Amendment:

> *In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.*

One of the primary purposes of the Seventh Amendment was to preserve the historic line separating the province of the jury from that of the judge, without preventing procedural innovations that respect this boundary. In defining this line, the Supreme Court has concluded that it is constitutional for a federal judge, in the course of trial, to: (1) express his opinion upon the facts, provided that all questions of fact are ultimately submitted to the jury;[1] (2) call the

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[11] *Id*. at 479–80.

[12] If legal and equitable claims are joined, and the court erroneously dismissed the legal claims and decides common issues in the equitable action, the plaintiff cannot be collaterally estopped from relitigating those common issues in a jury trial. Lytle v. Household Mfg., Inc., 494 U.S. 545 (1990).

[13] 396 U.S. 531 (1970).

[14] The stockholders' derivative action is a creation of equity made necessary by the traditional concept of the "corporate entity" or the "concept of separate personality." That is, the corporation is an entity distinct and separate from its shareholders. Thus, while shareholders were relieved from unlimited liability for corporate liabilities, the complementary result was that harm to the corporation did not confer any right of action upon a shareholder to sue to right that harm. However, if the harm were caused by the abuse of those who managed and controlled the corporation, the corporation naturally would not proceed against them, and the common law courts would not allow the shareholders to bring an action running to the "separate personality" of the corporation. Accordingly, equity permitted a derivative action in which the shareholder was permitted to set in motion the adjudication of a cause of action belonging to the corporation. Bert S. Prunty, *The Shareholders' Derivative Suit: Notes on Its Derivation*, 32 N.Y.U. L. Rev. 980 (1957).

[15] *Ross*, 396 U.S. at 538.

[16] *Id*. at 539–41. Justices Potter Stewart and John Marshall Harlan and Chief Justice Warren Burger dissented, arguing that the Seventh Amendment did not expand the right to a jury trial, that the *Rules* simply preserved the right as it had existed, and that it was error to think that the two could somehow "magically interact" to enlarge the right in a way that neither did alone. *Id*. at 543 (Stewart, J., dissenting).

[1] Vicksburg & Meridian R.R. v. Putnam, 118 U.S. 545, 553 (1886); United States v. Phila. & Reading R.R., 123 U.S. 113, 114 (1887). *But see* Quercia v. United States, 289 U.S. 466, 700 (1933) (holding that the trial judge exceeded "the bounds of fair comment" when he told the jury, referring to the defendant, that "'wiping' one's hands while testifying was 'almost always an indication of lying'"; in doing so, the trial judge impermissibly added to the evidence and "put his own experience, with all the weight that could be attached to it, in the scale against the accused").

jury's attention to parts of the evidence that he or she deems of special importance,[2] being careful to distinguish between matters of law and matters of opinion;[3] (3) inform the jury, when there is insufficient evidence to justify a verdict;[4] (4) require a jury to answer specific interrogatories in addition to rendering a general verdict;[5] (5) direct the jury, after the plaintiff's case is complete, to return a verdict for the defendant on the ground of the insufficiency of the evidence;[6] (6) set aside a verdict that is against the law or the evidence and order a new trial;[7] and (7) refuse the defendant a new trial on the condition, accepted by plaintiff, that the plaintiff remit a portion of the damages awarded him.[8]

In *International Terminal Operating Co. v. N.V. Nederl. Amerik Stoomv. Maats*., however, the Supreme Court held that an appellate court erred in reversing a jury's finding on the issue of the reasonableness of a stevedoring company's conduct in failing to avert an injury to one of its employees.[9] The Court of Appeals found that the stevedore acted unreasonably as a matter of law, but the Supreme Court held that, "[u]nder the Seventh Amendment, that issue should have been left to the jury's determination."[10]

Nevertheless, the Supreme Court has noted: "In numerous contexts, gatekeeping judicial determinations prevent submission of claims to a jury's judgment without violating the Seventh Amendment."[11] For example, in order to screen out frivolous complaints or defenses, Congress "has power to prescribe what must be pleaded to state the claim, just as it has the power to determine what must be proved to prevail on the merits."[12] It is, the Supreme Court observed, "the federal lawmaker's prerogative . . . to allow, disallow, or shape the contours of-including the pleading and proof requirements for-[ ] private actions."[13]

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[2] *Vicksburg & Meridian R.R.*, 118 U.S. 545 (citing Carver v. Jackson, 29 U.S. (4 Pet.) 1, 80 (1830); Magniac v. Thompson, 32 U.S. (7 Pet.) 348, 390 (1833); Mitchell v. Harmony, 54 U.S. (13 How.) 115, 131 (1852); Transp. Line v. Hope, 95 U.S. 297, 302 (1877)).

[3] Games v. Dunn, 39 U.S. (14 Pet.) 322, 327 (1840).

[4] Sparf & Hansen v. United States, 156 U.S. 51, 99–100 (1895); Pleasants v. Fant, 89 U.S. (22 Wall.) 116, 121 (1875); Randall v. Balt. & Ohio R.R., 109 U.S. 478, 482 (1883); Meehan v. Valentine, 145 U.S. 611, 625 (1892); Coughran v. Bigelow, 164 U.S. 301 (1896).

[5] Walker v. N.M. So. Pac. R.R., 165 U.S. 593, 598 (1897).

[6] Treat Mfg. Co. v. Standard Steel & Iron Co., 157 U.S. 674 (1895); *Randall*, 109 U.S. at 482.

[7] Cap. Traction Co. v. Hof, 174 U.S. 1, 13 (1899).

[8] Ark. Cattle Co. v. Mann, 130 U.S. 69, 74 (1889). A federal judge, however, may not deny the plaintiff a new trial on the condition that the defendant consent to an increase of the damage award. Dimick v. Schiedt, 293 U.S. 474, 476–78 (1935).

[9] 393 U.S. 74, 75 (1968) (per curiam).

[10] *Id. But see* Neely v. Martin K. Eby Constr. Co., 386 U.S. 317, 322 (1967) (holding held that the Seventh Amendment does not bar an appellate court from granting a judgment notwithstanding the verdict insofar as "there is no greater restriction on the province of the jury when an appellate court enters judgment [notwithstanding the verdict] than when a trial court does." A federal appellate court may also review a district court's denial of a motion to set aside an award as excessive under an abuse of discretion standard. Gasperini v. Ctr. for Humanities, Inc., 518 U.S. 415 (1996) (holding that a New York law that requires appellate courts to order a new trial when a jury award "deviates materially from what would be reasonable compensation" may be applied by a federal district court exercising diversity jurisdiction, "with appellate control of the trial court's ruling limited to review for 'abuse of discretion'").

[11] Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308, 327 n.8 (2007).

[12] *Id*. at 327.

[13] *Id*. at 327–28 (explaining that a "heightened pleading rule simply 'prescribes the means of making an issue,' and . . . when '[t]he issue [is] made as prescribed, the right of trial by jury accrues.'" (quoting Fid. & Deposit Co. of Md. v. United States, 187 U.S. 315, 320 (1902))).

Amdt7.2.5 Composition and Functions of a Jury in Civil Cases

Seventh Amendment:

> *In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.*

Traditionally, the Supreme Court has treated the Seventh Amendment as preserving the right of trial by jury in civil cases as it "existed under the English common law when the amendment was adopted."[1] This right included "a trial by a jury of twelve men, in the presence and under the superintendence of a judge empowered to instruct them on the law and to advise them on the facts and (except in acquittal of a criminal charge) to set aside their verdict if in his opinion it is against the law or the evidence."[2] Decisions of the jury must be unanimous.[3]

In *Colgrove v. Battin*,[4] however, the Court held by a 5-4 vote that rules adopted in a federal district court authorizing civil juries composed of six persons were permissible under the Seventh Amendment and federal statutory law. The Amendment's reference to the "common law," in the Court's view, suggested "the Framers of the Seventh Amendment were concerned with preserving the right of trial by jury in civil cases where it existed at common law, rather than the various incidents of trial by jury."[5]

As discussed, one of the Seventh Amendment's primary purposes is to preserve "the common law distinction between the province of the court and that of the jury, whereby, in the absence of express or implied consent to the contrary, issues of law are resolved by the court and issues of fact are to be determined by the jury under appropriate instructions by the court."[6] The Amendment, however, "does not require the retention of old forms of procedure"; nor does it "prohibit the introduction of new methods of ascertaining what facts are in issue" or new rules of evidence.[7] According to the Court, matters that were tried by a jury in England in 1791 are to be so tried today.[8] Conversely, matters that fall under equity and admiralty and maritime jurisprudence, which were tried by the judge in England in 1791, are to be so tried today. When new rights and remedies are created, "the right of action should be analogized to

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[1] Balt. & Carolina Line v. Redman, 295 U.S. 654, 657 (1935); Parsons v. Bedford, 28 U.S. (3 Pet.) 433, 446–48 (1830).

[2] Cap. Traction Co. v. Hof, 174 U.S. 1, 13 (1899).

[3] Maxwell v. Dow, 176 U.S. 581 (1900); Am. Publ'g Co. v. Fisher, 166 U.S. 464 (1897); Springville v. Thomas, 166 U.S. 707 (1897).

[4] 413 U.S. 149 (1973). Justices Marshall and Stewart dissented on constitutional and statutory grounds, *id*. at 166, while Justices Douglas and Powell relied only on statutory grounds without reaching the constitutional issue. *Id*. at 165, 188.

[5] *Id.* at 155–56. The Court did not consider what number less than six, if any, would fail to satisfy the Amendment's requirements. "What is required for a 'jury' is a number large enough to facilitate group deliberation combined with a likelihood of obtaining a representative cross section of the community. . . . It is undoubtedly true that at some point the number becomes too small to accomplish these goals . . . ." *Id*. at 160 n.16. Application of similar reasoning has led the Court to uphold elimination of the unanimity as well as the twelve-person requirement for criminal trials. *See* Williams v. Florida, 399 U.S. 78 (1970) (jury size); Apodaca v. Oregon, 406 U.S. 404 (1972) (plurality opinion) (unanimity); and Sixth Amendment discussion, Amdt6.4.3.2 Right to Trial by Jury Generally.

[6] Balt. & Carolina Line v. Redman, 295 U.S. 654, 657 (1935); Walker v. N.M. & So. Pac. R.R., 165 U.S. 593, 596 (1897); Gasoline Prods. Co. v. Champlin Ref. Co., 283 U.S. 494, 497–99 (1931); Dimick v. Schiedt, 293 U.S. 474, 476, 485–86 (1935).

[7] *Gasoline Prods. Co.*, 283 U.S. at 498; Ex parte Peterson, 253 U.S. 300, 309 (1920).

[8] Parsons v. Bedford, 28 U.S. (3 Pet.) 433, 446–47 (1830); Slocum v. N.Y. Life Ins. Co., 228 U.S. 364, 377–78 (1935); *Balt. & Carolina Line*, 295 U.S. at 657; Dimick v. Schiedt, 293 U.S. 474, 476 (1935).

its historical counterpart, at law or in equity, for the purpose of determining whether there is a right of jury trial," unless Congress has expressly prescribed the mode of trial.[9]

Amdt7.3 Reexamination Clause

Amdt7.3.1 Review of Evidentiary Record

Seventh Amendment:

> *In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.*

The Seventh Amendment's Reexamination Clause prohibits reexamination in any federal court of a "fact tried by a jury" other "than according to the rules of the common law."[1] In 1913, in *Slocum v. New York Life Insurance Co.*,[2] the Supreme Court held that a federal appeals court lacked authority to order the entry of a judgment contrary to a trial court's verdict. Even though the Court agreed that the trial court should have directed a verdict for the defendant before the case was submitted to the jury, the Court reasoned that, once the trial court declined to do so and the jury found for the plaintiff contrary to the evidence, the only course open to either court was to order a new trial.[3] Although plainly in accordance with the common law as it stood in 1791, the 5-4 decision was subjected to significant criticism.[4] *Slocum*, however, was then limited, if not completely undermined, by subsequent holdings.[5]

In the first of these cases, the Court in *Baltimore & Carolina Line v. Redman*[6] held that a trial court had the right to enter a judgment for the plaintiff on the verdict of the jury after having reserved decision on the defendant's motion for directed verdict. The Court distinguished *Slocum*, noting its ruling qualified some of its assertions in *Slocum*.[7]

In *Lyon v. Mutual Benefit Ass'n*,[8] the Court sustained a district court in rejecting the defendant's motion for dismissal and in peremptorily directing a verdict for the plaintiff. The Supreme Court held that there was ample evidence to support the verdict and that the trial court, in following Arkansas's procedure in the diversity action, acted consistently with the Federal Conformity Act.[9]

In *Galloway v. United States*,[10] which involved an action against the government for benefits under a lapsed war risk insurance policy, the trial court directed a verdict for the

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[9] Luria v. United States, 231 U.S. 9, 27–28 (1913).

[1] U.S. Const. amend. VII.

[2] 228 U.S. 364 (1913).

[3] *Id*. at 399.

[4] *See, e.g.*, Fleming James, Civil Procedure 332–33 & n.8 (1965); Austin W. Scott, *The Progress of the Law, 1918–1919 Civil Procedure*, 33 Harv. L. Rev., 236, 246 (1919).

[5] *But see* Hetzel v. Prince William Cnty., 523 U.S. 208 (1998) (when an appeals court affirms liability, but orders the level of damages to be reconsidered, the plaintiff has a Seventh Amendment right either to accept the reduced award or to have a new trial).

[6] 295 U.S. 654 (1935).

[7] *Id.* at 661. Justice Willis Van Devanter authored the Court's opinions in *Redman* and *Slocum*.

[8] 305 U.S. 484 (1939).

[9] Ch. 255, § 5, 17 Stat. 197 (1872), now superseded by the Federal Rules of Civil Procedure.

[10] 319 U.S. 372, 389 (1943). The *Galloway* Court wrote: "the practice has been approved explicitly in the promulgation of the Federal Rules of Civil Procedure" (citing Berry v. United States, 312 U.S. 450 (1941)). In *Berry*, the Court remarked that the new rule has given "district judges, under certain circumstances, . . . the right (but not the mandatory duty) to enter a judgment contrary to the jury's verdict without granting a new trial. But that rule has not

government on the ground of insufficiency of evidence. Both the appeals court and the Supreme Court affirmed the trial court's order.[11] Justice Hugo Black, joined by Justices William Douglas and Frank Murphy asserted in dissent: "Today's decision marks a continuation of the gradual process of judicial erosion which in one-hundred-fifty years has slowly worn away a major portion of the essential guarantee of the Seventh Amendment."[12] Perhaps unsurprisingly, the Court has occasionally experienced difficulty in harmonizing the historic common law covering the relations of judge and jury with the notion of a developing common law.[13]

Amdt7.3.2 Appeals from State Courts to the Supreme Court

Seventh Amendment:

> *In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.*

The Seventh Amendment clause prohibiting re-examination of any fact found by a jury is not restricted in its application to suits at common law tried before juries in federal courts. It applies equally to cases tried before a jury in a state court and brought to the Supreme Court on appeal.[1] However, the Supreme Court has indicated that, in cases involving a claim of a denial of constitutional rights, it is free to examine and review the evidence upon which the lower court based its conclusions, a position that under some circumstances could conflict with the principle of jury autonomy.[2]

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taken away from juries and given to judges any part of the exclusive power of juries to weigh evidence and determine contested issues of facts—a jury being the constitutional tribunal provided for trying facts in courts of law." *Id*. at 452–53.

[11] *See id*. at 373.

[12] *Id*. at 397 (Black, J., dissenting). Because the case involved a claim against the United States, it did not need to be tried by a jury except for to the extent that Congress had allowed.

[13] *See, e.g*., Neely v. Martin K. Eby Construction Co., Inc., 386 U.S. 317 (1967) (interpreting Rules 50(b), 50(c)(2) and 50(d) of the Federal Rules of Civil Procedure, as well as the Seventh Amendment).

[1] The Justices v. Murray, 76 U.S. (9 Wall.) 274, 278 (1870); Chi., B. & Q. R.R. v. Chicago, 166 U.S. 226, 242–46 (1897).

[2] *See* Time, Inc. v. Pape, 401 U.S. 279, 284–92 (1971).