Jury-Trial Rights Under the Seventh Amendment[1]

Civil Procedure—Gómez-Arostegui Fall 2026

I. First part is to analyze each cause of action

1. Cause of the Action

a. Find 18th-century English equivalent of the cause of action.

b. Where would that cause of action have been filed and adjudicated?

i. Equity only, then done. No jury trial at all on this cause of action.

ii. Law only, then done with part I, move to II below.

iii. Potentially both or unclear, move to part I.2 below.

2. Remedy sought on the Cause of Action

a. Find 18th-century English equivalent of the remedy.

b. Where would remedy have been obtained?

i. Equity only (like an injunction).

ii. Law only (like actual damages).

iii. Potentially both, then need to pick the closest one.

c. If more than one remedy requested on the cause of action, do the I.2.a & b analysis more than once, and then walk through the following:

i. If all remedies sought are equitable, then you are done, because this would have been filed in equity. No jury-trial right at all on the cause of action. But the Supreme Court has yet to consider the scenario where someone in equity in the 18th century had a right to have issues decided at law.

ii. If all remedies sought are legal, then you are done with part I, because this cause of action would have been filed at law, so move to II below.

[1] NB: There are many terms of art here whose sense changes depending on the context. When I say "at law" versus "in equity," I'm referring to the two different systems. I mean the same thing when I say "legal" vs. "equitable" remedies, *i.e.*, those available at law versus in equity. But the words "legal" and "law" can also mean something different when the foil is "fact," as in "law versus fact" or "those are legal issues for the judge, versus factual issues for the jury." For part I of this handout, I'm using "legal" and "law" in the first sense. For part II, I'm using "legal" or "law" in the second sense. Courts do too.

iii. If some remedies are legal and some are equitable, then you have a mixed case, and at trial do the "legal" bits first, before doing the "equitable" bits. Typically, this means the jury will decide liability on the cause of action, and any legal remedies; followed by the judge ruling on the equitable remedies, like whether to grant an injunction. This rule rejects equity clean up.

Remember, insofar as you have concluded under part I that some part of a cause of action would end up having been filed at law, and therefore heard before a jury, move to part II below.

II. This next part applies if you have concluded under part I that there is a right to a jury trial on at least part of a claim. So now you must examine the division of labor between judge and jury during a trial. Identify the specific issue on which the parties disagree as being a judge or jury decision and apply the following:

1. Would an English jury in the 18th-century have decided the specific issue or something analogous?

   a. If yes, then the jury will decide it.

   b. If no, then judge will decide it.

   c. If the history is unclear or inconclusive, move to next step.

2. Consider:

   a. American precedents that characterize the issue as one for the judge or jury, typically by labeling it as one of law or of fact.

   b. Functional considerations, meaning consider the judicial actor (judge or jury) best suited to decide the issue, along with the value of a ruling from a judge over a verdict from a jury.