



ASPECTOS INTRODUTÓRIOS DO SISTEMA JUDICIÁRIO NORTE-AMERICANO

Uma análise
comparatística



ASPECTOS HISTÓRICOS:

- SÉC. XI – INVASÃO NORMANDA;
- *REGIS CURIA ROLLS*;
- TRIBUNAL DE WESTMINSTER;
- *LAW JURISDICTION X EQUITY JURISDICTION*



ASPECTOS HISTÓRICOS:

- *JUDICATURE ACTS DE 1873 E 1875 - CHANCERY COURTS*
- *HISTORICAL JURISPRUDENCE;*
- *SISTEMA DE STARE DECISIS.*



ASPECTOS HISTÓRICOS:

- ESTADOS UNIDOS DA AMÉRICA – COLONIZAÇÃO BRITÂNICA
- *LAW JURISDICTION X EQUITY JURISDICTION;*
- ADOÇÃO DO *JURY* PARA CAUSAS CÍVEIS E CRIMINAIS.



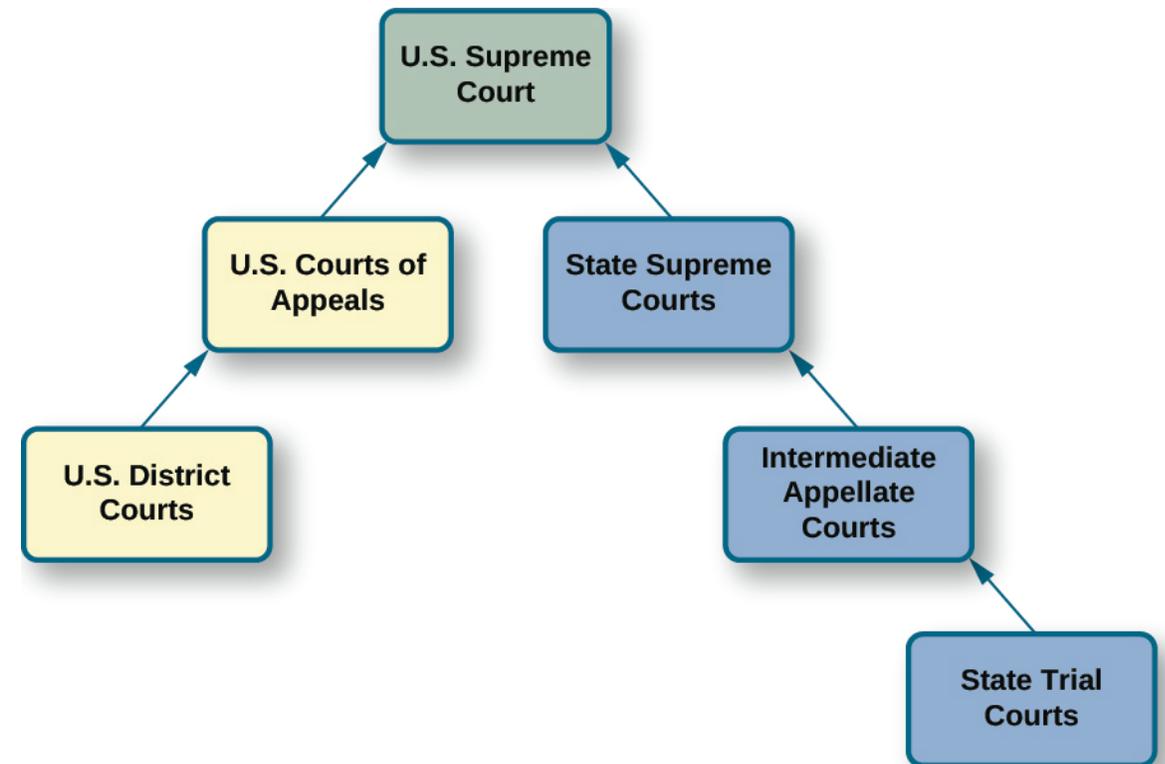
ESTRUTURA GOVERNAMENTAL:

- SEPARAÇÃO DOS PODERES (*SEPARATION OF POWERS*)
- FEDERALISMO (*FEDERALISM*)



ESTRUTURA DO PODER JUDICIÁRIO FEDERAL:

- *U.S. DISTRICT COURTS;*
- *U.S. COURTS OF APPEAL;*
- *THE U.S. SUPREME COURT.*

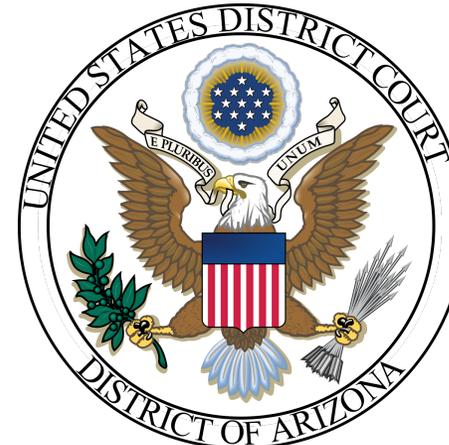




ESTRUTURA DO PODER JUDICIÁRIO FEDERAL:

➤ U.S. DISTRICT COURTS;

➤ MAGISTRATE JUDGES.



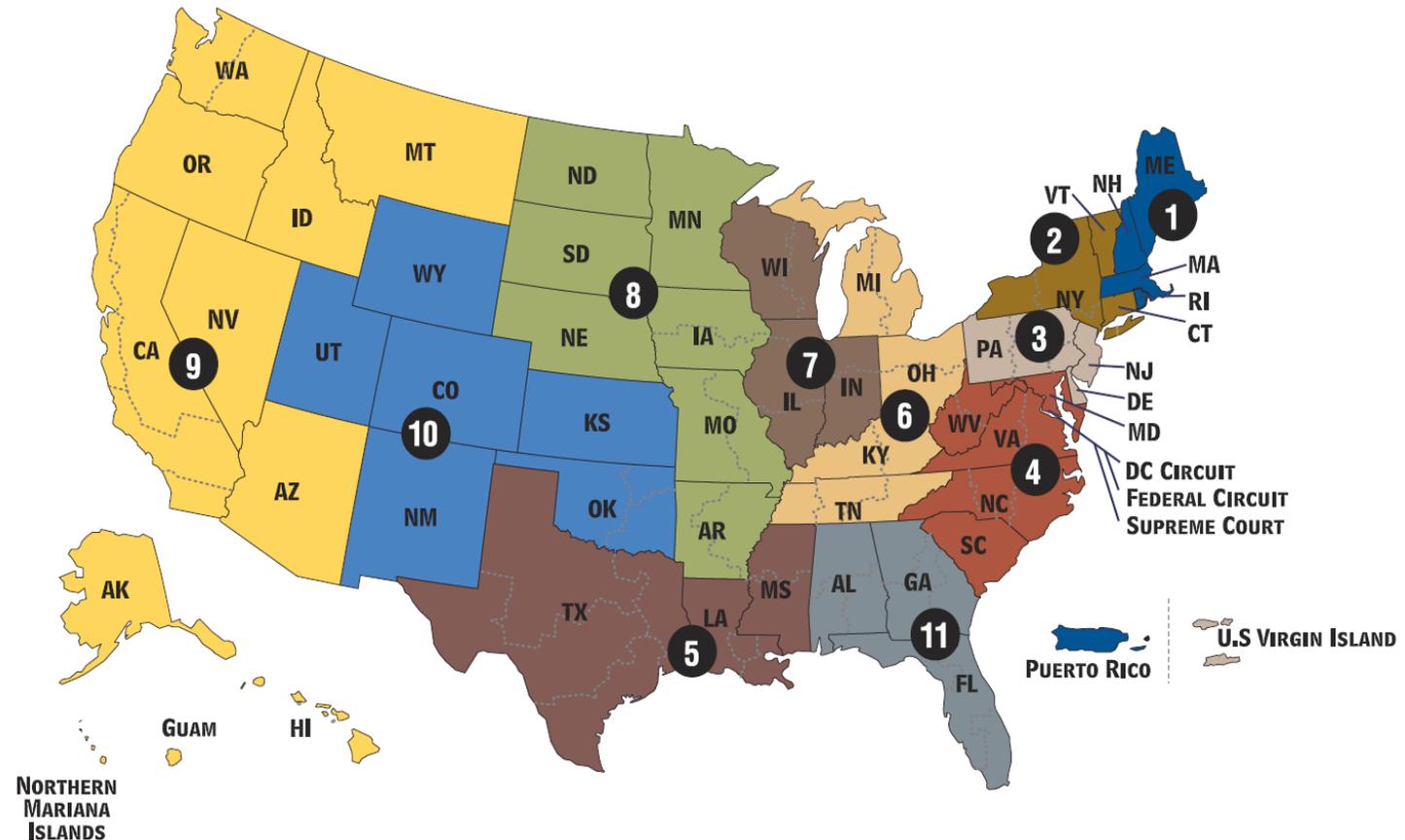


ESTRUTURA DO PODER JUDICIÁRIO FEDERAL:

- U.S. COURTS OF APPEAL;
- 13 CIRCUITS.

Geographic Boundaries

of United States Courts of Appeals and United States District Courts





ESTRUTURA DO PODER JUDICIÁRIO FEDERAL:

➤ *U.S. SUPREME COURT;*

➤ *9 JUSTICES*





ESTRUTURA DO PODER JUDICIÁRIO FEDERAL:

- JUÍZES FEDERAIS INDICADOS E NOMEADOS PELO PRESIDENTE DA REPÚBLICA;
- APROVAÇÃO PELO SENADO FEDERAL;
- GARANTIAS DE VITALICIEDADE E IRREDUTIBILIDADE DE VENCIMENTOS.



ESTRUTURA DO PODER JUDICIÁRIO FEDERAL:

ÓRGÃOS ADMINISTRATIVOS:

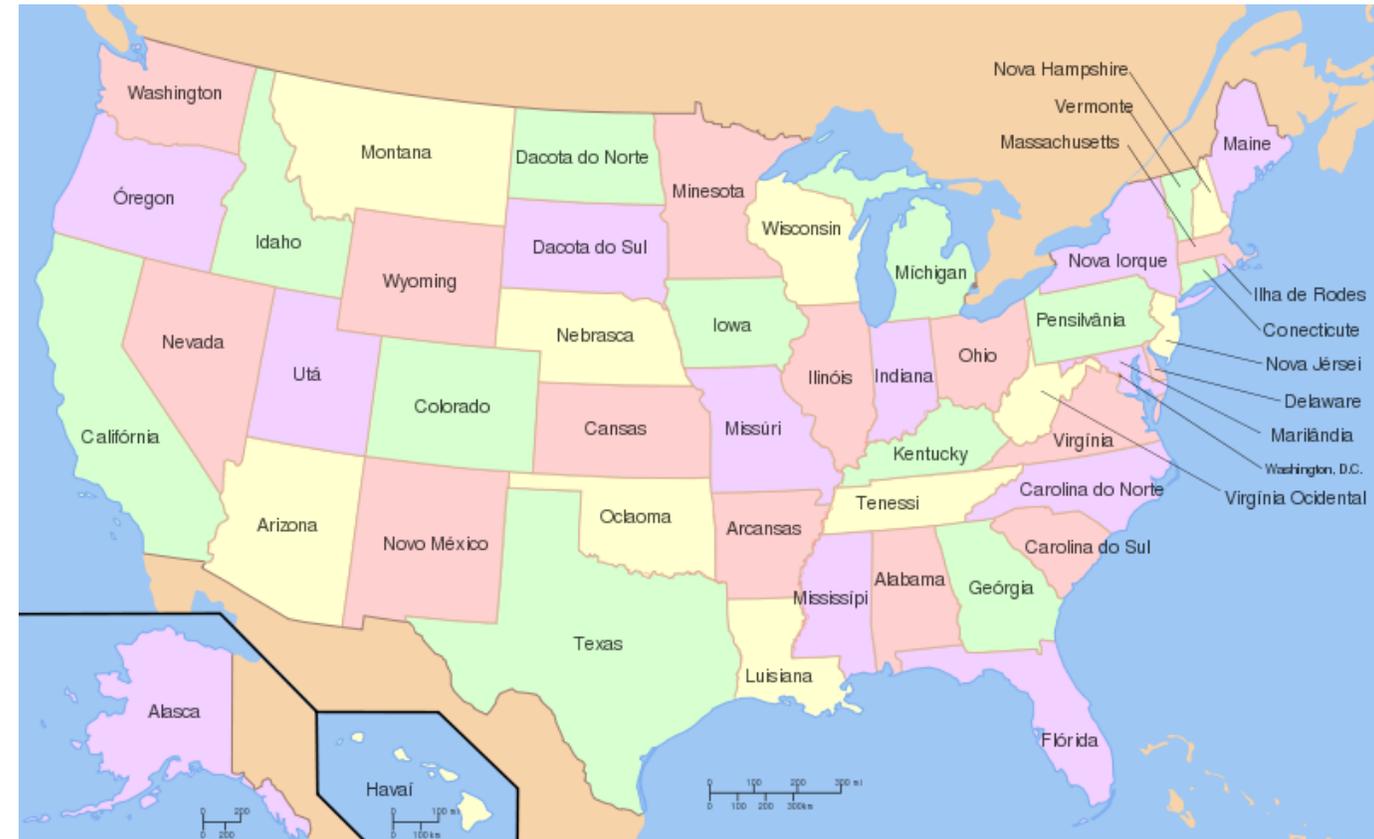
- *ADMINISTRATIVE OFFICE OF THE U.S. COURTS;*
- *FEDERAL JUDICIAL CENTER;*
- *THE U.S. SENTENCING COMISSION.*





ESTRUTURA DO PODER JUDICIÁRIO ESTADUAL:

- *TRIAL COURTS;*
- *COURTS OF APPEAL;*
- *THE STATE SUPREME COURT.*





FONTES DO DIREITO:

- CONSTITUIÇÃO;
- LEIS FEDERAIS; TRATADOS E REGRAS DOS TRIBUNAIS;
- NORMAS DAS AGÊNCIAS ADMINISTRATIVAS FEDERAIS;
- CASOS JULGADOS NO ÂMBITO DAS CORTES FEDERAIS.



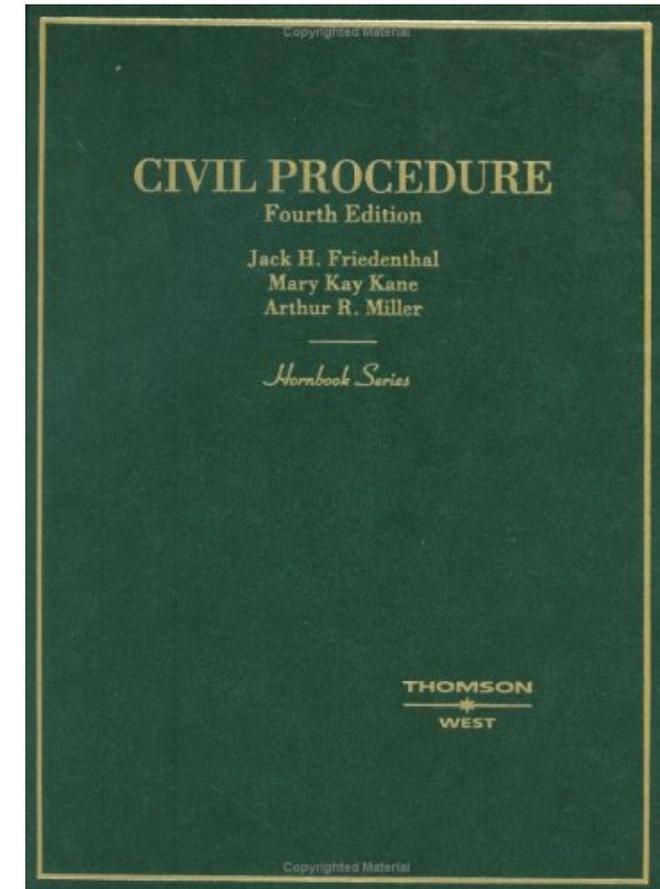
FONTES DO DIREITO:

- CONSTITUIÇÃO DOS ESTADOS;
- LEIS ESTADUAIS E REGRAS DOS TRIBUNAIS;
- NORMAS DAS AGÊNCIAS ADMINISTRATIVAS ESTADUAIS;
- CASOS JULGADOS NO ÂMBITO DAS CORTES ESTADUAIS.



PROCESSO CIVIL: NOÇÕES GERAIS

- *FEDERAL RULES OF CIVIL PROCEDURE;*
- *MODELO ADVERSARIAL;*
- *PROCEDIMENTO: PRETRIAL / TRIAL*





PROCESSO CIVIL: NOÇÕES GERAIS

➤ **PRETRIAL**



PLEADINGS



DISCOVERY

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2 JUDY ALEXANDER #116515
3 824 Bay Avenue, Suite 10
4 Capitola, CA 95010
5 Telephone: (408) 479-3488
6
7 Attorneys for Defendant
8 STEVEN PRESSMAN
9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 CITY AND COUNTY OF SAN FRANCISCO
12
13 LANDMARK EDUCATION CORPORATION, Case No: 989890
14 CORPORATION, Plaintiff, OPPOSITION TO MOTION FOR SANCTIONS
15 vs. Date: January 16, 1998
16 STEVEN PRESSMAN, Time: 9:30 A.M.
17 Defendant. Dept: 301
18 Judge: Hon. David A. Garcia
19 Date Action Filed: September 26, 1997
20 Trial Date: Not set
21
22 I. INTRODUCTION.
23 In 1994 plaintiff Landmark Education Corporation ("Landmark") filed suit against Cult
24 Awareness Network ("CAN") and certain affiliates in Cook County, Illinois, case number 94-L-
25 11478 ("the Illinois action"). Steven Pressman ("Pressman") is not a defendant in the Illinois
26 action. Moreover, the only mention of Pressman in the voluminous complaint is in an exhibit
27 reproducing content from CAN's website, where Pressman's book, Outrageous Betrayal: The
28 Dark Journey of Werner Erhard from Est to Exile, was offered for sale. Declaration of Judy
Alexander filed in connection with Defendant's Motion to Strike Complaint ("First Alexander
Decl."), ¶2 and Exh. A. The complaint contains no allegation that any facts in Outrageous
Betrayal are false or that Outrageous Betrayal in any other way injured Landmark. *Id.*

- 1 -
MFA Opposition to Motion for Sanctions



PROCESSO CIVIL: NOÇÕES GERAIS

PLEADINGS

RULE 8:

(a) Claim for Relief. A pleading that states a claim for relief must contain:

(1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;

(2) a short and plain statement of the claim showing that the pleader is entitled to relief;

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MFA: Opposition to Motion for Sanctions



PROCESSO CIVIL: NOÇÕES GERAIS

PLEADINGS

CONLEY V. GIBSON 355 U.S. 41 (1957):

“[...] All the rules require is a short and plain statement of the claim that will give the defendant fair notice of what the plaintiff’s claim is and the grounds upon which it rests.”

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7 STEVEN PRESSMAN

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9 CITY AND COUNTY OF SAN FRANCISCO

10 LANDMARK EDUCATION CORPORATION, 11 Plaintiff,	Case No: 989890
12 vs.	<u>OPPOSITION TO MOTION FOR SANCTIONS</u>
13 STEVEN PRESSMAN, 14 Defendant.	Date: January 16, 1998 Time: 9:30 A.M. Dept: 301 Judge: Hon. David A. Garcia Date Action Filed: September 26, 1997 Trial Date: Not set

17 1. INTRODUCTION.

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MFA - Opposition to Motion for Sanctions



PROCESSO CIVIL: NOÇÕES GERAIS

PLEADINGS

BELL ATL. CORP V. TWOMBLY 550 U.S. 544 (2007):

➤ **Plausibilidade da alegação inicial.**

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MFA- Opposition to Motion for Sanctions



PROCESSO CIVIL: NOÇÕES GERAIS

DISCOVERY

- *ADVISABILITY* - ELEMENTO SURPRESA;
- PARTICIPAÇÃO ATIVA DE PARTES E ADVOGADOS.



PROCESSO CIVIL: NOÇÕES GERAIS

DISCOVERY

➤ RULE 26:

(1) Initial Disclosure.

(A) In General. Except as exempted by Rule 26(a)(1)(B) or as otherwise stipulated or ordered by the court, a party must, without awaiting a discovery request, provide to the other parties:

(i) the name and, if known, the address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;



PROCESSO CIVIL: NOÇÕES GERAIS

DISCOVERY

- DEPOSITIONS;
- INTERROGATORIES;
- PHYSICAL AND MENTAL EXAMINATIONS;
- ADMISSIONS.



"I ask the witness to quit taking advantage of the fact that his deposition is not being videotaped."



PROCESSO CIVIL: NOÇÕES GERAIS

DISCOVERY

➤ RULE 34:

A party may serve on any other party a request within the scope of [Rule 26\(b\)](#):

(1) to produce and permit the requesting party or its representative to inspect, copy, test, or sample the following items in the responding party's possession, custody, or control:

(A) any designated documents or electronically stored information—including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations—stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form;



PROCESSO CIVIL: NOÇÕES GERAIS

DISCOVERY

- *RESTRICT OR EXPAND THE FLOW;*
- *MOTION FOR SUMMARY JUDGEMENT.*



PROCESSO CIVIL: NOÇÕES GERAIS

COMPLAINT

➤ *TRIAL BY JUDGE/ TRIAL BY JURY.*

AN ESSAY
ON THE
TRIAL BY JURY
BY LYSANDER SPOONER.
BOSTON:
JOHN P. JEWETT AND COMPANY,
CLEVELAND, OHIO;
JEWETT, PROCTOR & WORTHINGTON,
1812.



LEGISLAÇÃO TRABALHISTA

- *NATIONAL LABOR RELATIONS ACT (1935);*
- *LABOR MANAGEMENT RELATIONS ACT (1947).*



LEGISLAÇÃO TRABALHISTA

- *NATIONAL LABOR RELATIONS BOARD;*
- *NATIONAL MEDIATION AND CONCILIATION SERVICE*





ARBITRAGEM

- ALEXANDER V. GARDNER-DENVER CO. 415 U.S. 36 (1974);
- GILMER V. INTERSTATE/JOHNSON LANE 500 U.S. 20 (1991).