Variations In Law Among the Jurisdictions
“Right to Jury Trial On Equitable Claims”

By Fred A. Simpson

The Texas Constitution guarantees citizens the right to a jury “in the trial of all causes,” making no distinction between actions in law and actions in equity.¹ Therefore, plaintiffs bringing purely equitable causes of action in Texas civil courts are entitled to jury trials on all factual issues, but if the same plaintiffs go to the federal courthouse a few blocks away, they have no similar right, even in diversity actions involving state law.

The variance is federal practice that follows the English common law system which granted jury trials only for actions in law.² This practice exists in the U.S. even though the wording of the Seventh Amendment to the United States Constitution does not actually forbid jury trials of equitable claims. The Seventh Amendment merely guarantees the right to jury trials in “suits at common law, where the value in controversy shall exceed twenty dollars.”³ But the Seventh Amendment applies only to proceedings in courts of the United States, and does not govern or regulate “in any manner” those trials that take place in state courts.⁴ In fact, the U.S. Supreme Court reiterated in 1938 that “a state may modify trial by jury or abolish it altogether.”⁵ States may therefore

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³ U.S. Const. amend. VII.
extend greater citizen rights to jury trials, such as the prevailing rights of Texans to jury trials of equitable claims.⁶

**The Merger of Law and Equity**

When U.S. jurisdictions began to combine courts of law and equity, some interesting problems arose, as one secondary source observed more than 50 years ago:

Of the fifty independent court systems in the United States twenty-two have attempted to determine the right to trial by jury by the distinction between law and equity, and at the same time to abolish the distinction for all other purposes. It has been pointed out that the more successful they are in the latter attempt the more difficulty they have in the former.


**Mixed Actions of Law and Equity**

Issues arise when actions of both law and equity appear in the same case or in related cases. Many of these issues were addressed in a handful of U.S. Supreme Court cases. State frequently decide their similar issues by using the same logic found in those U.S. Supreme Court cases. Therefore, a brief summary of these few cases is helpful.

A California federal district judge denied the defendant a jury trial for counterclaims in *Beacon Theatres, Inc. v. Westover*.⁷ In a mandamus action against Judge Westover, the U.S. Supreme Court considered the fact that plaintiff brought the lawsuit seeking equitable relief. However, the doctrine of issue preclusion would bar any trial of defendant’s counterclaims brought at law. The solution was for the federal

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⁶ Because he Seventh Amendment prescribes the minimum below which the right to jury trials in federal courts may not be abrogated (but not the maximum), Congress may also create rights greater than those guaranteed by the U.S. Constitution. *See, e.g.*, *Curtis v. Loether*, 415 U.S. 189 (1974).

district court to try all substantive issues in one single lawsuit, but to use proper
discretion so that the defendant’s constitutional right to a jury trial of legal issues was not
lost by any prior determination of equitable claims by the trial court.

_Dairy Queen, Inc. v. Wood_, 8 was another mandamus proceeding to vacate an
order striking a demand for jury trial in a case with mixed legal and equitable issues.
Unless the substantive claim is cognizable only in equity or is such a complicated claim
for legal relief that it can only be unraveled by a court of equity, a party cannot be
deprived of his constitutional right to a jury trial on any “legal” claim in the complaint.

_Katchen v. Landry_ 9 shows that a bankruptcy court (equity) has exclusive
jurisdiction over bankruptcy matters, even though legal issues are involved, and that the
court may adjudicate equitable claims prior to legal claims, even though factual issues
would have been tried first by a jury under the Seventh Amendment. Said the court:

> Both Beacon Theaters and Dairy Queen recognize that there might be
> situations in which the Court could proceed to resolve the equitable claim
> first even though the results might be dispositive of the issues involved in
> the legal claim.

An equitable determination is therefore allowed to have a collateral estoppel effect on a
subsequent legal action with no violation of Seventh Amendment rights. This
proposition was confirmed in a shareholders’ class action lawsuit that was preceded by
and SEC (equity) action in _Parklane Hosiery Co. v. Shore_. 10 A contrasting result to

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8 369 U.S. 469 (1962).
Katchen emerged from *Granfinanciera, S.A. v. Nordberg*\(^{11}\), where a bankruptcy trustee sued third parties to void alleged fraudulent transfers. The district court denied defendants a jury trial because the action appeared to be equitable under bankruptcy statutes. However, the 18th century law of England required this type of action to be brought at common law, therefore the Seventh Amendment will not allow parties to be stripped of their right to a jury trial when contesting their private rights.

*Ross v. Bernard*\(^{12}\) concerned a shareholders’ derivative lawsuit (one kind of “true” class action) where plaintiffs demanded a jury trial. The issues included violations of the Investment Company Act of 1940, directors’ abuse of trust, gross negligence, and breaches of fiduciary duty. The court of appeals wrongfully held that a derivative action was entirely equitable and that no jury could be had. The U.S. Supreme Court reversed on grounds that the right to a jury trial is determined by the corporation’s rights, and that even though derivative actions are equitable, to the extent shareholders bring substantive legal claims on behalf of the corporation, a jury trial is guaranteed. The high court established three factors to be used when considering whether a particular claim gives rise to a jury trial: (1) the customary manner of trying such a cause before the merger of law and equity; (2) the kind of remedy sought by the plaintiff; and (3) the abilities and limitations of a jury in deciding the particular issue.

\(^{11}\) 492 U.S. 33 (1989).
Curts v. Loether,\textsuperscript{13} shows that an award of monetary relief is not necessarily a “legal” relief, but if federal statutes create legal rights and remedies in an action for damages, the Seventh Amendment applies and a jury trial is guaranteed.

Tull v. United States\textsuperscript{14} involved injunctive relief under The Clean Air Act as well as claims for civil monetary penalties. The government’s quest for civil penalties under the statute was found to be analogous to an action in debt which was within the jurisdiction of English courts of law before the Seventh Amendment. A jury trial was therefore required for findings of liability but not for penalties.

However, in Lytle v. Household Mfg., Inc.,\textsuperscript{15} the Court held that the Seventh Amendment precludes collateral-estoppel effect where a court erroneously failed to first try legal claims to a jury (by dismissing them) before resolving equitable claims. The distinction here is that claims at both law and equity were brought in the same lawsuit.

Review of State Handling of Jury Trials of Civil Claims

As for how states other than Texas handle the issues of jury trials for mixed matters of law and equity, here is a sampling of the situation taken from a review of contemporary cases reported out of the various jurisdictions.

Alabama

The Constitution of Alabama of 1901 provides a right to jury trials in cases involving purely legal claims, but not for equitable claims.\textsuperscript{16} Law and equity were

\textsuperscript{13} 415 U.S. 189 (1974).
\textsuperscript{14} 481 U.S. 412 (1987).
\textsuperscript{15} 494 U.S. 545 (1990).
\textsuperscript{16} See Wooten v. Ivey, 877 So.2d 585, 588 (Ala. 2003).
merged in 1973 with the adoption of the Alabama Rules of Civil Procedure, after which jury trials were a constitutional right if the issue was the sort that would have been tried to a jury before the adoption of those rules. Following *Beacon Theatres* and *Dairy Queen*, the Supreme Court of Alabama holds that when both legal and equitable claims are joined in one action, the trial judge must arrange the order of trial so that the judge’s decision on the equitable issues does not operate to deny a jury trial of the legal issues.\(^\text{17}\) Factual issues common to the legal and equitable issues must first be decided by the jury.

**Alaska**

In Alaska, the right to a jury trial in civil cases is preserved to the same extent as the right existed at common law, but only in lawsuits where the amount in controversy is more than $250.\(^\text{18}\) If a case involves both legal and equitable claims, the facts in common must be tried first to a jury, if a proper demand is made, under the adopted reasoning of *Beacon Theatres v. Westover*.\(^\text{19}\)

**Arkansas**

The constitutional right to a jury trial does not extend to a cases in equity.\(^\text{20}\) The right to jury trial in Arkansas extends only to cases which were subject to trial at the common law.\(^\text{21}\) There was no right to a jury trial at the common law in equitable proceedings.\(^\text{22}\)

\(^{17}\) *See Ex parte Thorn*, 788 So.2d 140, 144 (Ala. 2000).
\(^{21}\) *Id.*
\(^{22}\) *Id.*
California

A 2004 case explains the status of California law on mixed actions by first reviewing the right to jury trial. A jury trial is generally a matter of right in a civil action at law, but not in equity. An action in law is one for which a jury trial was permitted by the common law as it existed at the time the first California Constitution was adopted in 1850. When determining whether actions are triable by a jury at common law, courts are not bound by the form of the actions, but rather by the nature of the rights involved and the facts or “gist” of the particular case, which is ordinarily determined by the mode of relief to be afforded, the prayer for relief not being conclusive. If the relief sought depends on the application of equitable doctrines, the parties are usually not entitled to a jury trial. When plaintiff’s claims consist of a “mixed bag” of equitable and legal claims, the equitable claims are properly tried first by the court, because that procedure may moot the legal issues. The trial of equitable issues by the trial court in advance of any legal issues promotes judicial economy: there may be nothing left for a jury to decide.

Colorado

Jury trials are not a matter of constitutional right in Colorado. However, the rules of civil procedure require issues of fact to be tried to a jury unless parties waive that requirement by stipulation. The original complaint fixes the nature of the lawsuit, and if legal and equitable claims are later commingled, the court determines whether the “basic

thrust” of the action is legal or equitable in nature, with the latter characterization not entitling a party to a jury trial, even though a plaintiff seeks money damages.\textsuperscript{26} If a jury trial is properly demanded, the court may find that the right to a jury trial on some of the issues does not exist upon motion or by its own initiative. Also, in all actions not properly triable by a jury, an advisory jury may be impaneled upon motion or the court’s own initiative, with the court being the ultimate trier of fact. The trial court also has the right under principles of \textit{Beacon Theatres} to decide the order in which legal and equitable claims are tried.\textsuperscript{27}

\textbf{Connecticut}

Courts look to federal case law as guidance on whether plaintiffs are entitled to jury trials under the Connecticut Constitution of 1818.\textsuperscript{28} The test for is whether the issue raised is substantially the same nature and involves rights and remedies of the sort traditionally enforced in an action at law or “if its nearest historical analogue is an action at common law.”\textsuperscript{29} Statutory causes of action created after 1818 do not extend the right to jury trial “unless, perhaps, the new remedy constitutes a modification of existing remedies, so vital as to unduly limit and violate the right of trial by jury.”\textsuperscript{30}

\textbf{Delaware}

The system of Delaware’s chancery courts in equity is rather complex. If a controversy contains any equitable feature that gives a chancery court jurisdiction, the

\begin{itemize}
\item \textsuperscript{26} \textit{See National Accept. v. Mars}, 780 P.2d 59 (Colo.App. 1989).
\item \textsuperscript{28} \textit{See Cumberland Farms, Inc. v. Groton}, 262 Conn. 45, 808 A.2d 1107 (2002).
\item \textsuperscript{29} \textit{Id.}
\item \textsuperscript{30} \textit{Assoc. Inv. Co. v. Williams Assoc.}, 230 Conn. 148, 645 A.2d 505 (1994).
\end{itemize}
court may in its own discretion take jurisdiction over the entire controversy, including claims at law. However, the court should consider whether the claims are primarily of the type that are usually heard by a jury and that depriving jurisdiction of the case to a court of law may also deprive a party of a jury trial.

**District of Columbia**

The right to trial by jury derives from the U. S. Constitution or from applicable statutes. The District recognizes *Dairy Queen* and *Beacon Theatres* when following the Seventh Amendment, using pleadings to ascertain the nature of the issues.

**Florida**

In the absence of specific statutory authority, the Florida Constitution guarantees the right to jury trial for actions traditionally cognizable at law. Where both legal and equitable issues are presented in a single case “only under the most imperative circumstances can the right to a jury trial of legal issues be lost through prior determination of equitable claims,” consistent with *Beacon Theatres*. Where issues common to mixed equitable claims and legal counterclaims are tried to the jury, the results are binding on the equity issues. If a compulsory counterclaim at law is brought in the trial of an equitable claim, the counterclaim is tried first to the jury in order not to deprive the counter-claimant of his constitutional right to trial by jury. However, if

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33 See *Hanna v. JPC, Inc.*, 538 So.2d 958 (Fla.App. 3 Dist. 1989).
34 *Cerrito v. Kovitch* 457 So.2d 1021 (Fla. 1984).
35 See *Hanna v. JPC, Inc.*, 538 So.2d 958 (Fla.App. 3 Dist. 1989).
permissive counterclaims present legal issues against equitable charges, matters are tried to the court (or counter-claimants can file separate lawsuits).  \(^{37}\)

**Georgia**

Georgia allows no trial by jury for claims that lie in equity.  \(^{38}\) However, a demand for jury trial must be honored with respect to claims for damages that are raised in the same lawsuit as equity claims. The jury trial in the damage questions is held before the trial on the nonjury questions of equity in order to preserve the right to jury trial.

**Hawaii**

The Hawaiian Constitution preserves the right to jury trial of lawsuits at common law where the value in controversy exceeds $1,000.  \(^{39}\) The rules provide for advisory juries in cases not triable by right, and with the consent of the parties, that jury verdict has the same effect as if trial by jury was a matter of right.  \(^{40}\) Mixed actions are tried under rules consistent with the federal rules with the order of trial arranged so that issues common to legal and equitable claims are tried first to the jury.  \(^{41}\)

**Idaho**

The Supreme Court of Idaho embraces *Beacon Theatres* and *Dairy Queen* when construing the state constitution which allows a jury trial of legal claims even if the issues are “incidental” to equitable claims.  \(^{42}\) A party to an equity action has a right to jury trial

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40 Id.
on the legal causes of action raised in a compulsory counterclaim, unless there is a clear showing of “imperative circumstances” which would cause the equity claimant “irreparable harm while affording a jury trial in the legal cause.”

Illinois

The right to trial by jury in Illinois is guaranteed only if there was such a right under the English common law as it existed when the Illinois Constitution was adopted. Under that common law, equitable claims were creations of the courts of chancery and were tried without a jury. Where mixed claims are brought, the trial court determines whether the legal and equitable claims are severable and, if so, mandates a jury trial on the legal claims if a party demands such a trial. If not severable, legal claims must be tried to the jury before equitable claims based on the same facts are decided by the court. This procedure prevents an equitable remedy from depriving a party of his constitutional right to a jury trial if there exists an adequate remedy at law.

Indiana

The Indiana Constitution of 1852 preserves the right to jury trial as it existed at common law. When both equitable and legal causes of action or defenses are joined in a single case, the equitable causes of action are to be tried to the court while the legal causes of action are to be tried to a jury. Such mixed actions of equity and law may be tried at the same time or at different times, as the court may direct. However, where

43 Id.
equity takes jurisdiction of the essential features of a cause, equity will determine the whole controversy under the “equitable cleanup doctrine” even though there are incidental questions of a legal nature.\textsuperscript{48}

**Kansas**

The constitutional right to jury trial of legal claims in Kansas is determined from the pleadings as they may be modified by the pretrial order after discovery is completed.\textsuperscript{49} The Supreme Court of Kansas expressly declined to follow *Beacon Theatres* and *Dairy Queen*.\textsuperscript{50} A jury trial is not required on legal issues arising in a proceeding that is essentially equitable in nature. “The existence of legal claims (or counterclaims) does not alter the essential nature of the action.”\textsuperscript{51}

**Maine**

The right to jury trial in a particular type of civil matter depends on whether a jury trial was guaranteed in 1820, before the Maine Constitution was adopted.\textsuperscript{52} Equitable claims, for which no jury is available, are not “magically” converted into actions at law for purposes of jury trial by simple requests for money damages.\textsuperscript{53} Conversely, the right to a jury trial on a legal claim is not waived by joining it with either a related or an independent equitable claim.\textsuperscript{54} In complex actions, unless parties specify which issues

\textsuperscript{48} *Id.* See also Levinson v. Citizens Nat. Bank, Evansville, 644 N.E.2d 1264 (Ind.App. 1994).


\textsuperscript{51} *Id.*

\textsuperscript{52} See Thermos Co. v. Spence, 735 A.2d 484 (Me. 1999).


\textsuperscript{54} See *Avery v. Whatley*, 670 A.2d 922 (Me. 1996).
they wish tried by a jury, the court deems the parties are demanding jury trials on all issues triable of right to a jury. If any issue is not triable of right by jury, the court may try the issue with the assistance of an advisory jury, or may order a trial on that issue without an advisory jury, but only if the parties consent.  

**Maryland**

After Maryland’s merger of law and equity in 1984, the equitable “clean-up” doctrine began to be carefully used, consistent with *Ross v. Barnard.* When mixed issues in the same case require an election between the jury and the court as the determiner of common issues, the discretion of the trial court is very narrowly limited and must, wherever possible, be exercised to preserve the jury trial. The test to determine the proper finder of fact focuses on the nature of the relief that is requested rather than the nature of the factual questions at issue.

**Massachusetts**

The Massachusetts Declaration of Rights states that the right to trial by jury of common law cases “shall be held sacred,” and *Beacon Theatres* is recognized. The “sacred” method for resolving all manner of cases and controversies is by jury trial unless the case was one in which a court of equity in either England or Massachusetts would have exercised jurisdiction in 1780. “Boundaries of equity jurisdiction ought not to be

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55 *See Bowden v. Grindle, 651 A.2d 347 (Me. 1994).*  
57 *Id.*  
widened by judicial decision because the constitutional right to trial by jury would thereby become correspondingly narrowed."^61 Where claims are mixed, the trial judge has the choice of (1) letting the jury find the facts on both types of claims, (2) deciding himself/herself all aspects of the non-jury claims, (3) asking the jury for nonbinding findings as to the non-jury claims.^62

**Michigan**

The Michigan Constitution preserves the right to jury trial for causes of action which were previously part of the common law.^63 The guarantee applies to cases arising under statutes subsequently adopted if those cases are similar in character to cases in which jury trials were of right before the constitution was adopted.^64 Trial courts determine the sequence in which mixed issues are to be tried but only while “preserving at all times the constitutional right to trial by jury.”^65 Where mixed issues coexist, the proper procedure is to hold trial before a jury and have two separate factual determinations after presentation of evidence; court factfinding on the equitable claims and jury factfinding on the other claims.^66 If parties consent to a jury trial in equitable actions, the jury is an appropriate factfinder.^67

**Minnesota**

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^61 Id.
^62 Id.
^64 Id.
^65 Id.
^66 Id.
The Minnesota Constitution guarantees a jury trial in “all cases at law” without regard to the amount in controversy, and the rules allow trial by jury on actions for the recovery of money or specific property which “neither enlarges nor diminishes the historical right to a jury trial. No jury trials are allowed unless the cause of action is one that entitled a party to a jury trial when the Minnesota Constitution was adopted. In mixed actions, the legal issues are triable by a jury and the equitable issues are tried by the court. The “nature and character of the controversy” determines whether the action is pleaded as a legal or equitable matter, not the remedy sought. However, trial courts have the discretion to appoint juries as fact finders in equitable actions.

Missouri

For over 100 years, where equitable claims were brought to court in Missouri, they remained under the absolute jurisdiction of the trial judge until either (a) legal relief alone was sought, or (b) plaintiff’s equitable claims were dismissed or terminated adversely. However, in 2004 the Supreme Court of Missouri took a new approach by allowing a jury trial to a defendant who brought counterclaims for damages. The court noted that the Missouri Constitution does not prohibit jury trials of equitable claims or mixed claims.

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72 Id.
73 Id.
74 Id.
76 Id.
and adopted reasoning of *Beacon Theatres* and *Dairy Queen* that allows trial judges the discretion to decide which issues of fact should be tried to a jury and in which order they should be tried.

**Montana**

Mixed and common issues involving legal issues are tried to a jury, consistent with *Ross v. Bernhard.* Factual issues related solely to equitable claims are tried to the court.

**New Hampshire**

The state’s constitutional provision on the right to a trial by jury extends to all cases for which the right existed when the constitution was adopted in 1784, but not special, statutory of summary proceedings unknown to the common law. Where those rights may have been codified, courts consider the comprehensive nature of the statutory framework to determine whether there is a right to jury trial to the action, examining in all instances the nature of the case and the relief sought.

**New Jersey**

New Jersey safeguards the right to jury trials against attrition by either the Legislature or the courts, but guarantees jury trials only as to types of action that were known to the common law at the time the state constitution of 1776 was adopted. Unlike federal courts, the central cause of action, rather than the remedy sought, usually

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77 *Farm Credit Bank of Spokane v. District Court*, 26, Mont 1, 881 P.2d 594 (1994).
78 *Id.*
determines entitlement to a jury trial. New Jersey uses courts of equity extensively, trying legal issues without a jury where the legal issues are held to be “ancillary” or “incidental” to cognizable equitable claims, meaning “germane to or grow[ing] out of the subject-matter of the equitable jurisdiction.”\textsuperscript{81} New Jersey Courts follow neither \textit{Beacon Theatres} nor \textit{Dairy Queen}, consistent with the manner in which law and equity were “merged” in 1947 when a single “Superior Court” was established with branches known as “Law Division” and “Chancery Division.”\textsuperscript{82} Contemporary New Jersey cases show that once a lawsuit is filed in the Chancery Division because of its “core issue” presented at the outset of the case, a jury trial of legal issues (in the Law Division) is possible but unlikely.\textsuperscript{83}

\textbf{New Mexico}

The right to jury trial under the New Mexico Constitution remains the same as it was in the Territory of New Mexico just before statehood.\textsuperscript{84} If defendants file counterclaims arising out of the same subject matter, they have rights to jury trials of their legal issues.\textsuperscript{85} \textit{Beacon Theatres} is followed in that legal issues are tried first.\textsuperscript{86}

\textbf{New York}

Jury trials are guaranteed in New York (under a complex system) for matters traditionally triable before a jury at common law or to which the right was extended by

\textsuperscript{83} \textit{Id.} See also \textit{Environmental Ins. Declaratory Judgment Actions}, 149 N.J. 278, 693 A.2d 844 (1997).
statute prior to 1894 even though the fact issues relate to equitable claims.\textsuperscript{87} However, if plaintiffs join purely equitable claims with legal claims arising from the same transaction, plaintiffs may waive their rights to jury trials may, but defendants may still claim their rights to jury trials.\textsuperscript{88} Where plaintiffs bring legal claims and defendants assert counterclaims not triable to juries, defendants may waive their rights to jury trials.\textsuperscript{89} When legal claims are met with equitable defenses or equitable counterclaims, issues of fact are tried to the jury and equitable defenses and counterclaims are tried to the court.\textsuperscript{90}

**North Dakota**

North Dakota’s constitution preserves the right to jury trials in all cases where that right existed under the common law, with no rights to jury trials for equitable proceedings absent express statutory provisions.\textsuperscript{91} In mixed actions, there is no right to jury trial on claims or counterclaims if those claims are incidental or dependent on a primary claim on which a jury trial is not allowed.\textsuperscript{92} Whenever issues are so interrelated that a decision on the nonjury claims might affect the issues triable to a jury, the jury trial goes first.\textsuperscript{93} In all actions not triable of right by jury, the court may try any issue with an advisory jury, or with consent of all parties, the court may order a trial by a jury whose verdict has the same effect as if trial by jury had been a matter of right.\textsuperscript{94}


\textsuperscript{88} Id.

\textsuperscript{89} Id.


\textsuperscript{91} See Murphy v. Murphy, 595 N.W.2d 571 (N.D. 1999).

\textsuperscript{92} Id.

\textsuperscript{93} Id. See also Schumacher v. Schumacher, 469 N.W.2d 793 (N.D. 1991).

\textsuperscript{94} Id.
Ohio

Ohio limits jury trial to those civil actions recognized by the common law prior to adoption of the state constitution, or as granted by statute.\(^{95}\) When pleadings seek a mixture of legal and equitable relief, the right to a jury trial depends on the actions’ primary and predominant objective.\(^{96}\) The right to a jury trial exists for a legal counterclaim that would extinguish the original equitable claim, but does not exist for a legal counterclaim that is incidental or ancillary to an original equitable claim.\(^{97}\) Juries decide legal issues before courts determine equitable claims, consistent with *Beacon Theatres, Dairy Queen*, and *Lytle*,\(^ {98}\) with the jury determination of common issues binding on the court.

Oklahoma

A party’s right to jury trial in Oklahoma is determined by the character of the action and the issues framed by the pleadings.\(^ {99}\) Mixed actions do not require a jury trial if the equitable issues are paramount or if legal issues are only incidental to or dependent on equitable issues. An equitable counterclaim converts an action at law into an equitable one when the counterclaim asks for affirmative relief which, if granted, would cut out the foundations of plaintiff’s right to recover, therefore destroying plaintiff’s case.\(^ {100}\) (Oklahoma law also provides for advisory juries in equity matters.)\(^ {101}\)


\(^{96}\) Id.

\(^{97}\) Id.


Oregon

The Oregon Constitution provides the right to jury trial in actions at law where the value and controversy exceeds $200. Issues of fact are tried to a jury unless parties stipulate to a nonjury trial or waive a jury trial by failure to timely assert the right. Where mixed or overlapping matters of law and equity exist, trial courts have discretion to dispose of either the factual or equitable issues first, giving consideration to principles of *Beacon Theatres* and *Dairy Queen*.

Rhode Island

When law and equity were merged in 1965, the right to trial by jury was preserved to include all cases that were triable to a jury at the time the 1842 Rhode Island Constitution was adopted, or as given thereafter by statute, favoring jury trials even though certain issues in the case may be equitable. In mixed actions, courts look to the historical distinctions between law and equity and “substantially parallel” *Beacon Theatres* and *Dairy Queen*, determining legal issues by jury trial before equitable issues, only partially following *Tull* by allowing statutory damages to be determined by a jury. The rules provide for the court to try any issue to an advisory jury where there is no right to jury trial, but that jury verdict can be non-advisory and as binding as a customary jury verdict if all parties consent.

South Carolina

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101 *Id.*
103 *See also Egidio DiPardo & Sons, Inc. v. Lauzon*, 708 A.2d 165 (R.I. 1998).
104 *See also Conner v. Sullivan*, 826 A.2d 953 (2003).
The Supreme Court of South Carolina prescribes a specific analysis to determine how to try legal and equitable issues in complaints and counterclaims: (1) If both the complaint and counterclaim are in equity, the entire matter is tried by the court; (2) If both are at law, the issues are triable by jury; (3) If the complaint is equitable and the counterclaim is legal and permissive, the defendant waives his right to jury trial; (4) If the complaint is equitable and the counterclaim legal and compulsory, the plaintiff or the defendant each has rights to jury trial on the counterclaim by these procedures: (a) The trial judge may order separate trials of the legal and equitable claims, or may order the claims tried in a single proceeding; (b) If separate trials are ordered, the judge must determine the sequence of issues to be tried. If there are common issues, absent the “most imperative circumstances” (*Beacon Theatres*) the “at law” claims are tried first. If there are no common factual issues, the trial judge has discretion as to which claim is tried first; (c) If claims are tried in a single proceeding, the jury tries common factual issues first and the court determines equitable issues but is bound by jury findings on the common issues.  

**South Dakota**

When the action is at law, either party has a right to a jury trial. Where pleadings seek equitable relief or the legal relief is incidental, a jury trial is a matter of the trial court’s discretion. In cases involving both claims for relief, a trial court may bifurcate the equitable issues for a trial to the court and the legal claims for trial by jury.

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Disposition of equitable claims which resolves legal claims as a matter of law does not violate the right to a jury trial.

**Utah**

In general, parties bringing legal claims have a right to a jury trial, while parties bringing equitable claims do not.\(^\text{108}\) Even so, in all actions not triable by right by a jury, the court, with the consent of both parties, may order a trial by a jury whose verdict has the same effect as if trial by jury had been a matter of right.\(^\text{109}\) Utah courts honor *Beacon Theatres*.\(^\text{110}\)

**Vermont**

Vermont adopted the rule of *Beacon Theatres* requiring related mixed legal and equitable claims to be tried first to a jury to protect the right to trial by jury, but if the mixed claims can be severed, that is “the better policy.”\(^\text{111}\) When common issues are tried to both the judge and the jury simultaneously, the jury findings with respect to those common issues is binding on the trial judge.\(^\text{112}\)

**Virginia**

The Virginia Constitution states that “controversies respecting property, and in suits between man and man, trial by jury is preferable to any other, and ought to be held sacred.”\(^\text{113}\) This provision applies to common law actions seeking damages, including


\(^{109}\) *Id.*

\(^{110}\) *Id.*


punitive damages, “but has no application to ordinary suits in chancery.”114 The reported cases show how complex and esoteric issues arise when lawsuits are brought to or transferred to or from “the wrong side of the court,” however. It is therefore difficult to summarize the rules on jury trials where both legal and equitable claims are asserted.115

Wisconsin

The right to trial by jury is preserved for those at law causes of action that existed in 1848 when the Wisconsin Constitution was adopted.116 If a civil action that did not exist on that date is created by statute, there is no right to jury trial, even if the civil action is one at law. Equitable claims are properly.117

Wyoming

Wyoming abolished the distinction between actions at law and lawsuits in equity over 40 years ago.118 Purely equitable actions are now tried by courts unless those courts choose to have issues tried to a jury. The right to a jury trial in cases involving mixed issues of law and equity are resolved by examining the entire pleadings and all the issues to determine whether the action is primarily legal in nature or primarily equitable in nature. “This test requires that we take a hard look at the substance of the issues raised rather than blindly swallowing one party’s characterization of them as inherently or historically equitable.”119

114 Stanardsville at 583, 469.
118 See Hyatt Bros., Inc. v. Hyatt, 769 P.2d 329, 333 (Wyo. 1989)(stockholders derivative lawsuit held to be primarily legal in nature under the totality of the pleadings, issues and remedies presented).
119 Id.
Conclusion

This sample from 37 jurisdictions shows a variety of views on the right to trial by jury in civil cases. Most jurisdictions grant a historical right to trial by jury as it existed under the common law of England. However, the similarity stops there. The merger of law and equity is believed to generally enhance the right to trial by jury in civil actions, but the range of how to achieve that enhancement extends from a jealous protection of the right to jury trial to a clear preference for having trial judges decide all issues where there is any proper equitable claim under doctrines such as equitable “clean-up.” The only instances coming close to the situation in Texas is in those jurisdictions where, by mutual consent of the parties, juries may be used as the ultimate trier of fact.