



# Legal Updates: Anatomy of a Lawsuit

Friday, October 6, 2006

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# Why Are Lawsuits Important?

- The Good :
  - Civilized resolution of disputes
  - Accessible to all
  - Fair, objective, governed by rules of procedure
  - Judgment by impartial jury of your peers

# Why Are Lawsuits Important?

- The Good (continued) :
  - Predictable because includes process for learning the facts before trial
  - Remedies enforceable by power of the state
  - Open to the public (fairness, transparency)
  - Create precedents that are binding in future cases (allows planning in society; deters bad conduct in the future)

# Why Are Lawsuits Important?

- The Bad:
  - Acrimonious; process is adversarial by design
  - Expensive; most accessible to the wealthy
  - Lawyers involved
  - Judgment by jury of your peers (who may be uninformed, prejudiced, etc.)

# Why Are Lawsuits Important?

- The Bad (continued) :
  - Unpredictable and risky
  - Time-consuming and slow
  - Open to the public (no confidentiality, embarrassing)
  - Create precedents that are binding in future cases (restrain future freedom of action)

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# The Litigation Process

2/18/2009

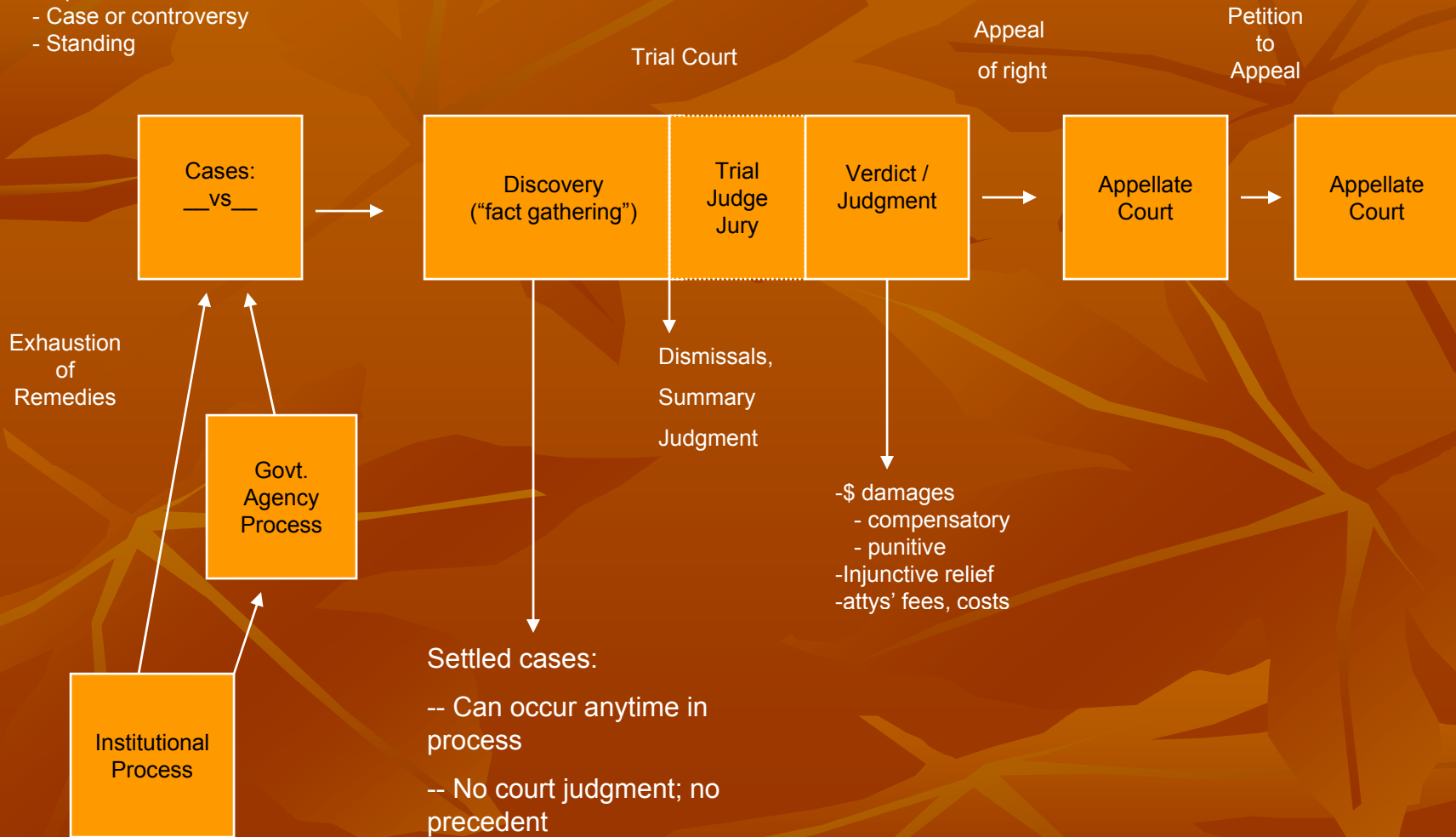
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# The Function of Civil Courts

- Resolving disputes by:
  - Deciding facts in dispute
  - Applying the law
- Reviewing challenges to government action (judicial review)

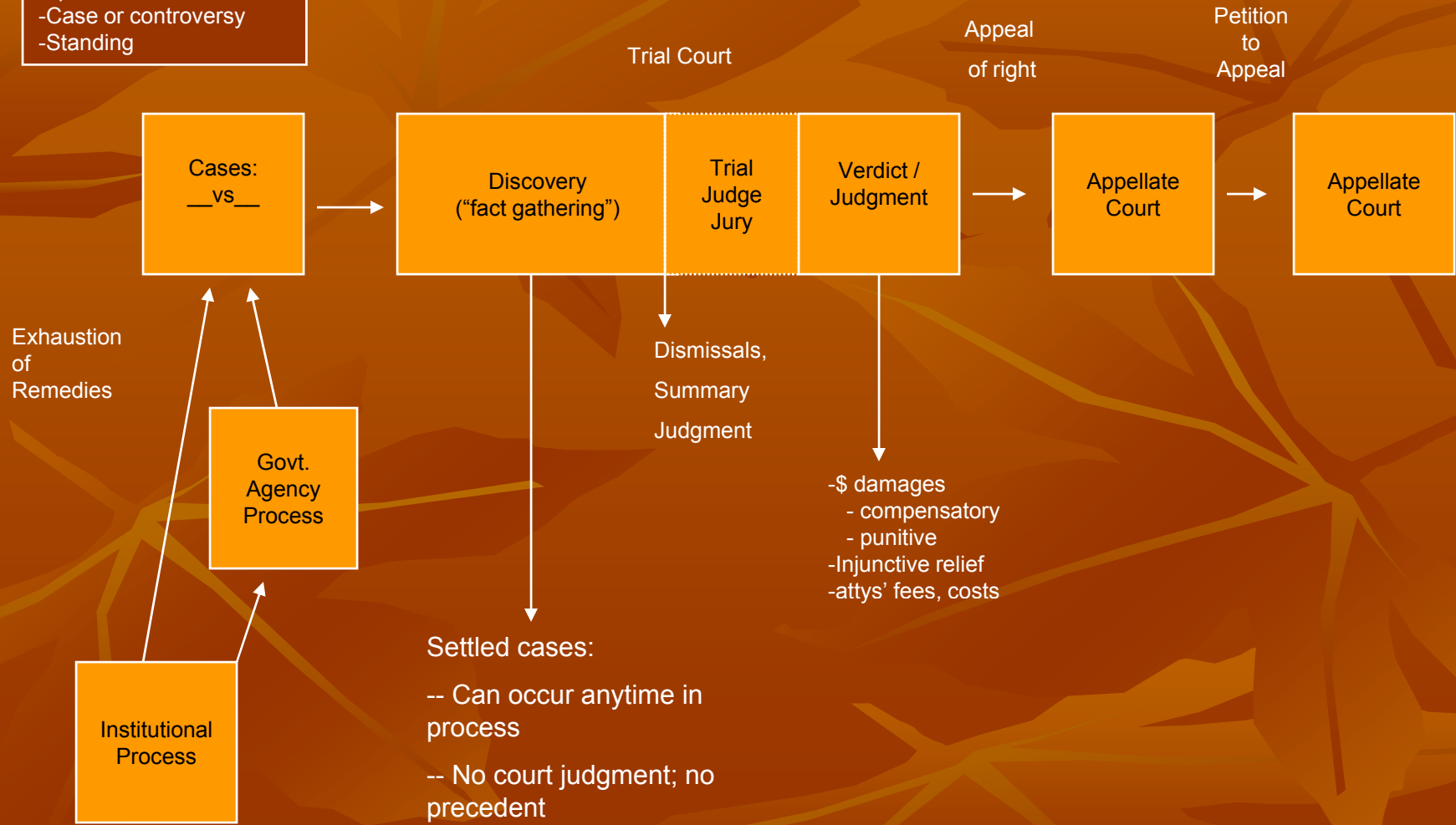
Prerequisites:

- Jurisdiction
- subject matter
- personal
- Case or controversy
- Standing





Prerequisites:  
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# Before you can go to Court....

## The Prerequisites to a Lawsuit

- Must have a “Case or Controversy”
  
- Timeliness
  - Ripeness
  - Mootness
  - Statute of Limitations
  
- Jurisdiction
  - Subject Matter
  - Personal

# Jurisdiction

- Subject matter jurisdiction:
  - What the case is about
  - State courts have general jurisdiction
  - Federal courts have limited jurisdiction

A court must decide whether it has jurisdiction; it's not up to the parties

# Jurisdiction

- Personal jurisdiction:
  - A court must have power over all the parties to a lawsuit
  - Since the plaintiff chooses to bring the lawsuit in a specific court, the defendant is the party that may challenge personal jurisdiction
  - Usual bases for personal jurisdiction: residency, place of business, conducting business, injuring someone (committing a tort)

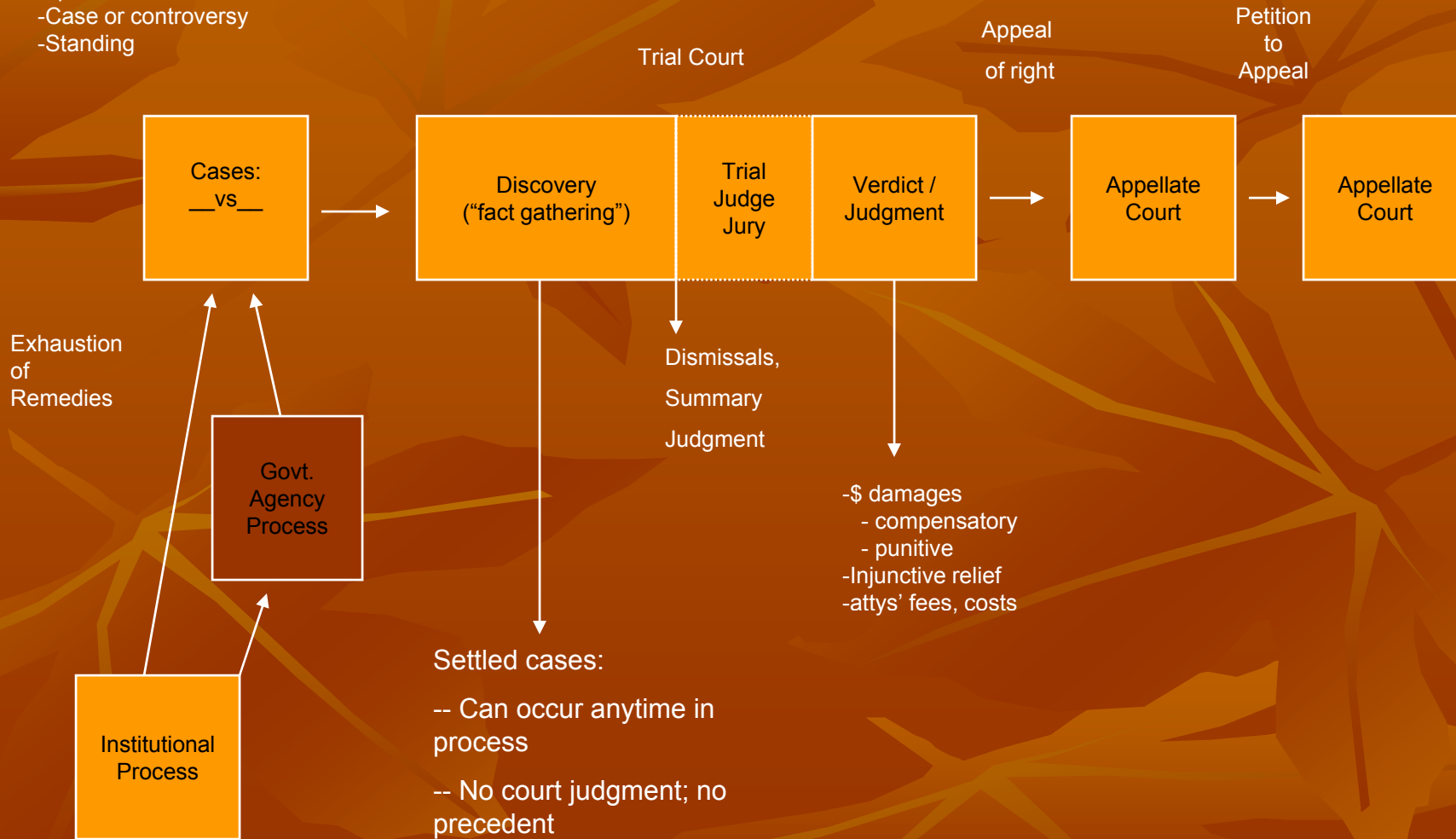
# Jurisdiction

- Personal jurisdiction (continued):
  - Parties to a contract can agree to:
    - submit to the personal jurisdiction of a court
    - bring all disputes related to the contract before a specific court (state, district, county, city)

# Law Applied in a Lawsuit

- Usually: the law of the state where the court is located
- Exceptions: Conflict of laws
- Parties to a contract can agree to have the law of a specific state apply to any lawsuit concerning the contract (courts will follow this agreement)

Prerequisites:  
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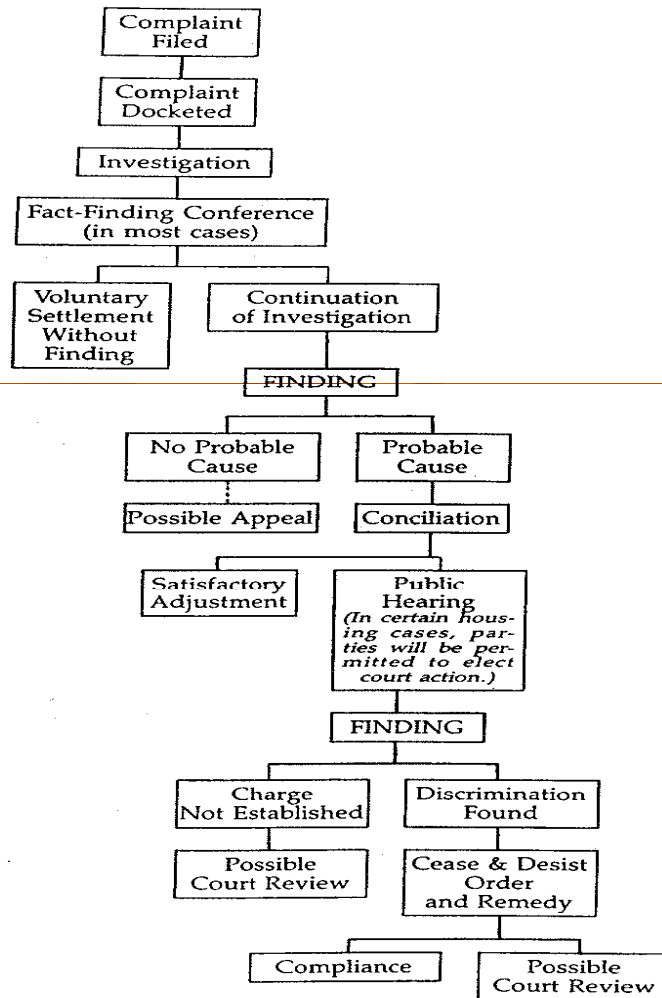


# Exhaustion of Remedies

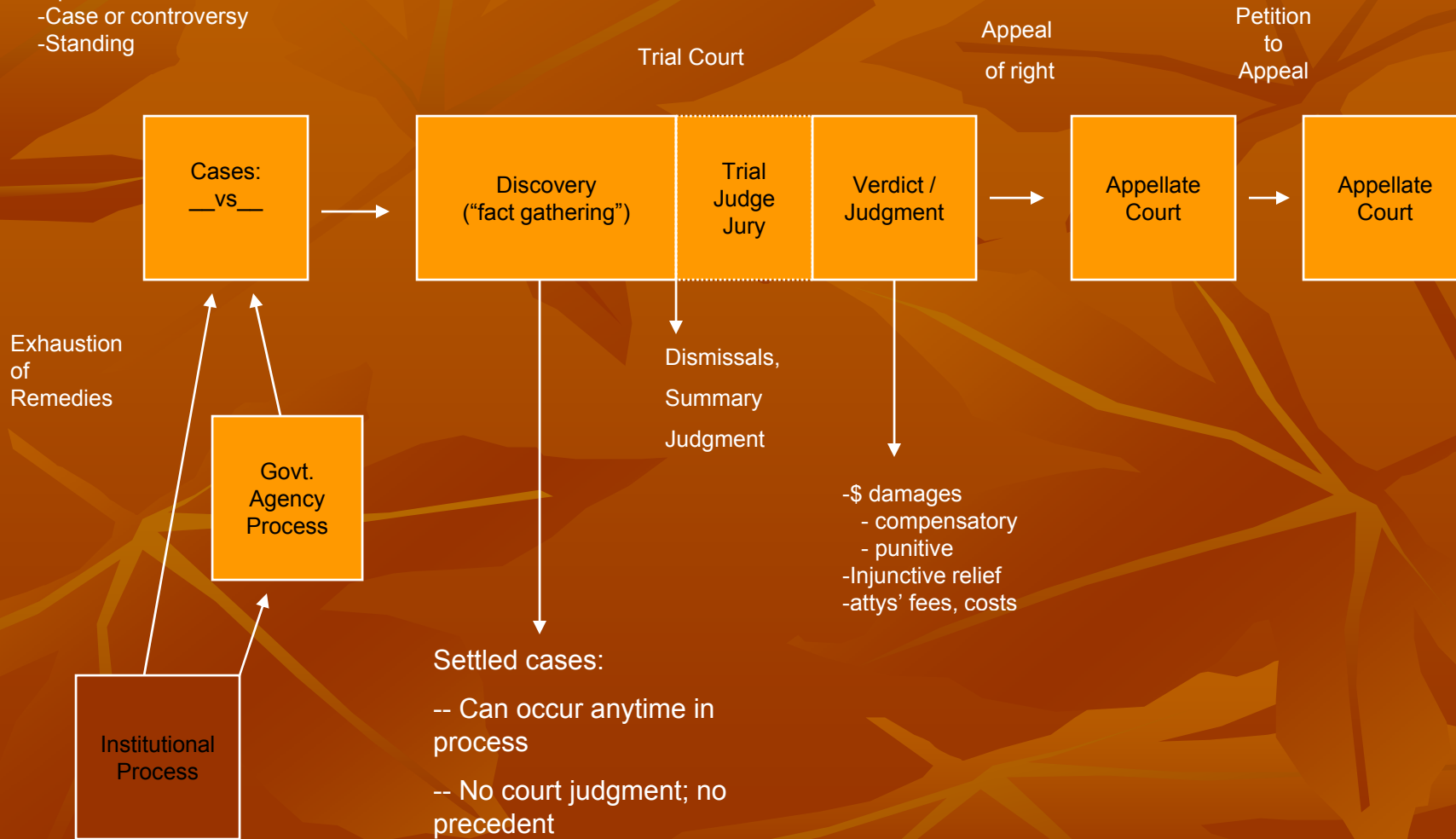
- Government Agency Process
  - Discrimination cases
    - Plaintiff must first file with federal (EEOC) or state (Pa.HRC) agency first
    - Plaintiff must obtain a “right to sue” letter from the agency



## THE PROCEDURE OF PROCESSING COMPLAINTS



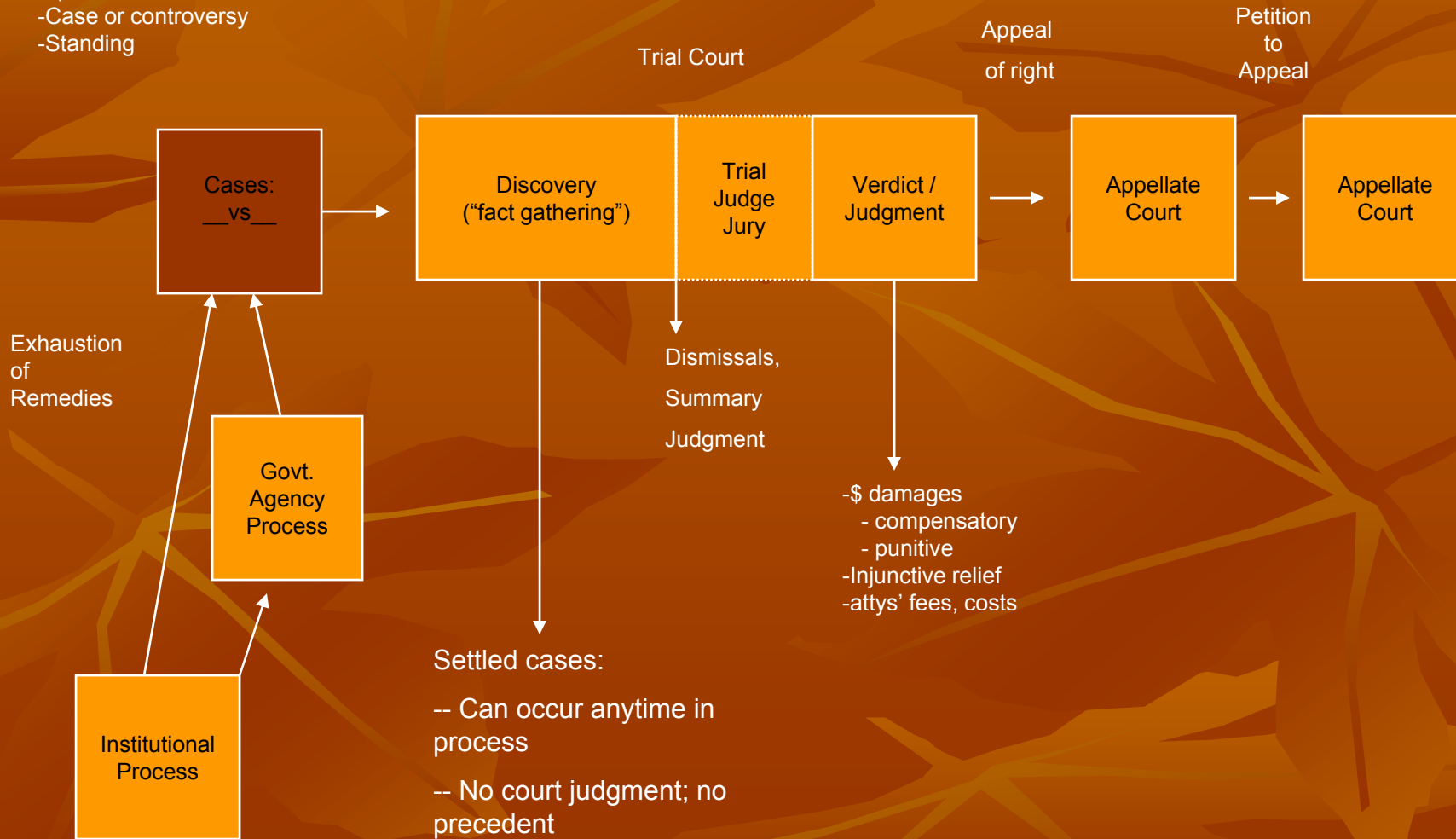
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# Exhaustion of Remedies

- Availability of an institutional dispute-resolution process can support dismissal of a lawsuit for failure to exhaust remedies
- Important for Lehigh to have fair, accessible, and effective internal processes for addressing disputes and complaints

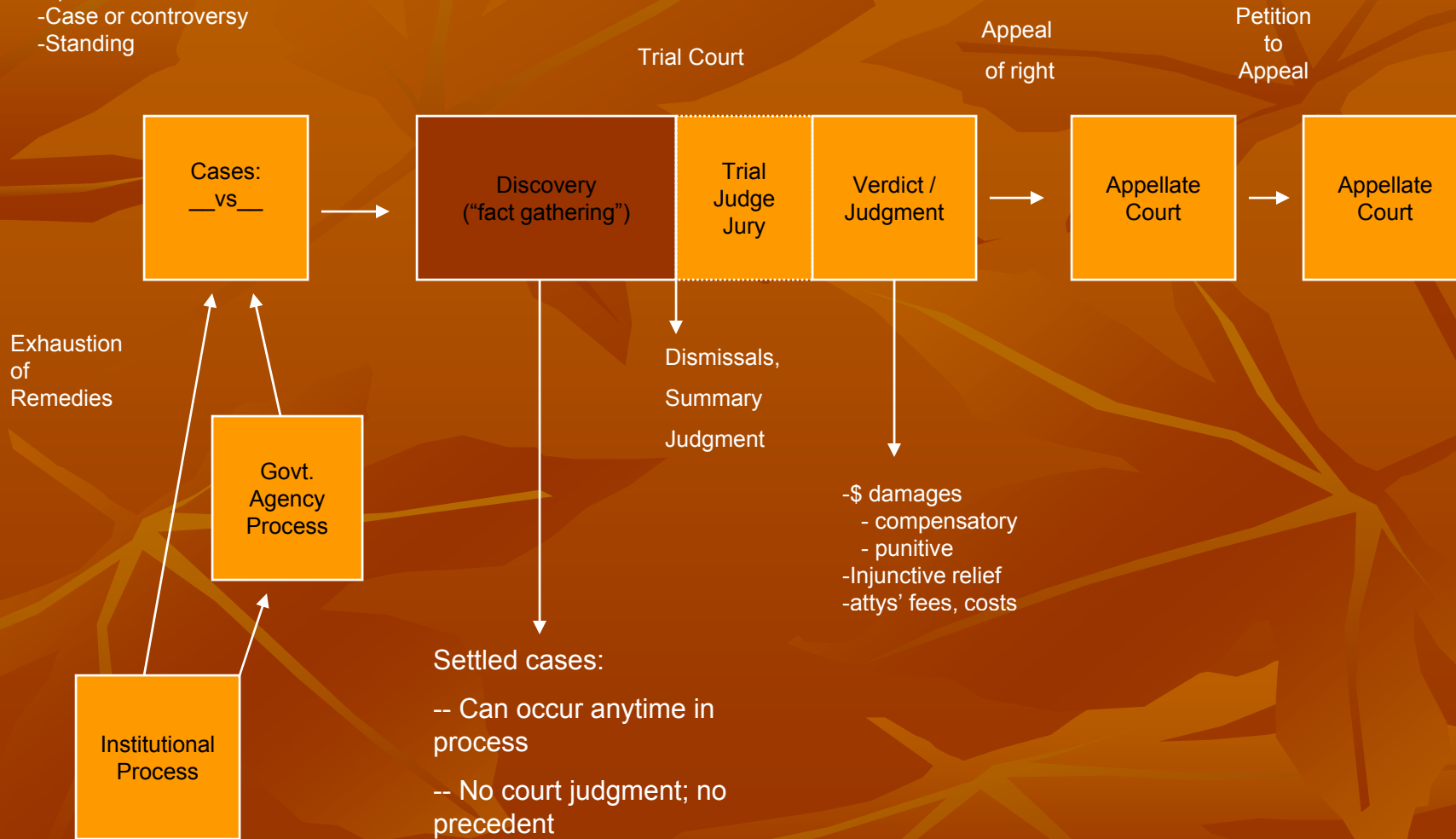
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# The 1<sup>st</sup> Step : How is a Lawsuit Started?

- Easiest / Cheapest : Writ of Summons
- 1<sup>st</sup> Pleading = Complaint
- Service of Process

Prerequisites:  
 -Jurisdiction  
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# Discovery

- A formal fact-finding investigation conducted by each party to a lawsuit before the trial
- Process can takes months or years depending upon the nature and complexity of the case
- Very labor-intensive & expensive

# Discovery -- 3 Major Purposes

- Preserve relevant information that might not be available at trial
- Determine/narrow the factual and legal issues in controversy
- Obtain information that may lead to admissible evidence on the disputed issues



## ..and 2 important uses of discovery

- Impeach a witness; or
- Discover insurance policy limits
  - In federal courts and many state courts, party can discover the monetary limits of the opponent's insurance policy
  - Rationale: disclosure encourages settlement

# Discovery Process

- Governed by either:
  - Federal Rules of Civil Procedure; or
  - Pennsylvania (or governing state's) Rules of Civil Procedure
- Trial judge usually has broad discretion in applying the rules

# Scope of Discovery

Under Federal Rule 26(b), a party can seek information regarding...

- Any matter, not privileged,
- that is relevant to the claim or defense of any party,
- whether or not the information sought will be admissible at trial,
- so long as it is reasonably calculated to lead to the discovery of admissible evidence.

# What is “Privileged” Information?

- Rules of evidence recognize certain relationships as “privileged”, such as:
  - Attorney-client;
  - Doctor-patient; and
  - Husband-wife.
- The courts place a higher value on confidentiality in these relationships than in full disclosure for litigation purposes

# Attorney-Client Privilege

- Originally designed to prevent a lawyer from being compelled to testify against his/her client
- Public purpose: lawyers can advise and represent their clients best if the clients can communicate openly and honestly without fear that their communications will be revealed to others
- Advice has to be predominantly legal in order for the privilege to apply

## Discovery Limitations: “Work Product” Doctrine

- Unless there is a showing of need, an opposing party to a lawsuit cannot “discover” information collected by an attorney in anticipation of litigation or trial (*Hickman v. Taylor (1947)*)
  - In other words, notes, memos, reports, etc. prepared by attorney are protected but not immune from discovery

# Judicial Discovery Limits

Judge may intervene & consider whether:

- Discovery is unreasonably cumulative or duplicative; or
- Information sought can be obtained from another more convenient, less burdensome, or less expensive source

# Types of Discovery

- Interrogatories
- Request for Production
- Requests for Admission
- Depositions
- Electronic



# Interrogatories

- A series of written questions posed by one party to a lawsuit to the other that must be answered under penalty of perjury and within a specified time period
- Answers to interrogatories can be used as evidence at trial

# Interrogatories – Advantages

- Relatively inexpensive way for parties to obtain information about the case;
- Should produce a greater range of information since the party responding has a duty to investigate the questions before answering

## ...and Disadvantages

- Carefully prepared by attorneys; not spontaneous
- Process is often abused by parties asking hundreds of detailed questions

# Sample Interrogatories – Definitions

- “You” or “your” shall mean the Plaintiff, his/her agents and representatives acting in any capacity, and all other persons or bodies acting or purporting to act on his/her behalf.
- “Document” shall include the original and any copies regardless of origin or location or by whatever means made, of any written, printed, recorded, typed or graphic matter of any kind or nature and whether or not now in existence.
- Identification of a person shall require you to state the name, present or last known address, and any affiliation or relationship with you.
- Identification of a document shall require you to state the type of document, its date, its author, and the recipient, in addition to the name and address of its custodian, location and description of general subject matter. If any such document was, but is no longer in your possession or subject to your control, identify it and state what its disposition is and the date of such disposition.
- “Person” when used herein shall mean any individual, partnership, firm, association, organization or other entity.

# Sample Interrogatories - Questions

- Identify all experts whom you intend to use at trial.
- Identify all opinions held and the basis for those opinions, by any expert you intend to call at trial.
- Identify the name, address, and telephone number of all witnesses you intend to call at trial.
- Identify all healthcare providers who have treated you as a result of the incidents described in your complaint by stating their name, address, telephone number, and their field of expertise.
- Identify all exhibits you intend to offer at trial.

# Request for Production of Documents

- Parties ask each other for documents that they believe are relevant to their case or will lead to admissible evidence
- Types of documents requested: personnel files; education records; financial documents; emails; policies/procedures

# Requests for Admission

- Requests for a party to admit or deny under oath specific disputed facts alleged by the opposing party; or to admit the genuineness of certain documents
- Tool for narrowing the issues in a case and finding out a party's true position on specific issues

# Requests for Admission (cont.)

- Useful tool for eliminating undisputed matters, not for gathering evidence
- Relatively inexpensive & direct
- Can save parties time & money



# Depositions

- Process for attorneys to confront and question any person, including a party, about the subject matter of the case
- Person deposed (deponent) is under oath
- Court reporter transcribes questions, answers and objections made by parties or witnesses

# Advantages of Depositions

- Attorney has opportunity to:
  - Observe the witness to determine how [s]he will appear if called to testify at trial
  - Get the witness to commit to the details of his/her observations
  - Ask additional questions depending upon how the witness answers the “prepared” questions

# Disadvantages of Depositions

- They are very expensive
  - Time of attorneys (from both sides) in preparing for and taking the deposition
  - Transcripts (written & video)
  - Witness fees/expenses
- Time consuming

# Electronic Discovery

- Involves securing and producing electronic documents and files from hard drives, backup tapes, servers, etc.
- Attorneys often engage outside firms to use computer forensics (tape restoration; data imaging) to discover digital evidence to support a lawsuit

# Litigation Hold

- “Once a party reasonably anticipates litigation, it must suspend its routine document retention/destruction policy and put in place a “litigation hold” to ensure the preservation of relevant documents.”

*Zubalake v. UBS Warburg (2004)*

# *Zubalake vs. UBS Warburg (2004)*

- Laura Zubalake sued UBS for gender discrimination and retaliation
- UBS attorneys failed to notify employees of the “litigation hold” and failed to follow through on the production of certain documents
- Court found UBS had deleted emails, some tapes were lost and several employees failed to produce their files (although asked to do so)

## Zubalake (cont.)

- As a sanction for failing to produce documents, court instructed the jury to infer that the documents withheld and tapes destroyed were harmful to UBS
- In April 2005, the jury awarded Zubalake \$9 million in general damages and \$20 million in punitive damages

# E-Discovery – Interesting Figures

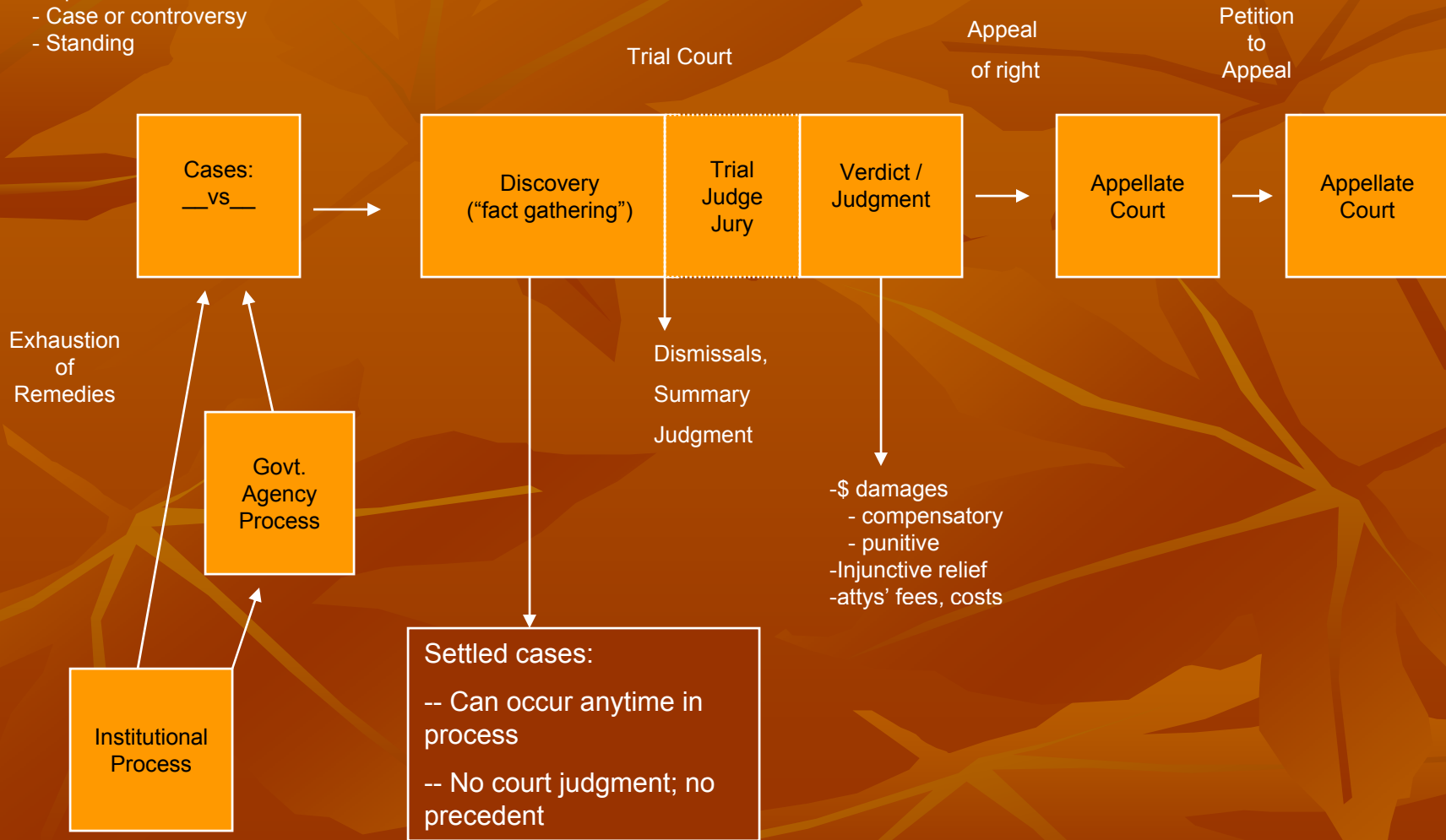
- 4.6 billion: amount in dollars that U.S. companies will spend internally in 2005 to analyze emails
- 50-100: percent of all evidence that is email
- 59: percent of companies in a survey that didn't have email retention policies
- 1.9 billion: projected amount that U.S. firms will spend in 2006 on outside e-discovery services

[*E-Discovery By the Numbers*, Corporate Counsel, October 12, 2005]



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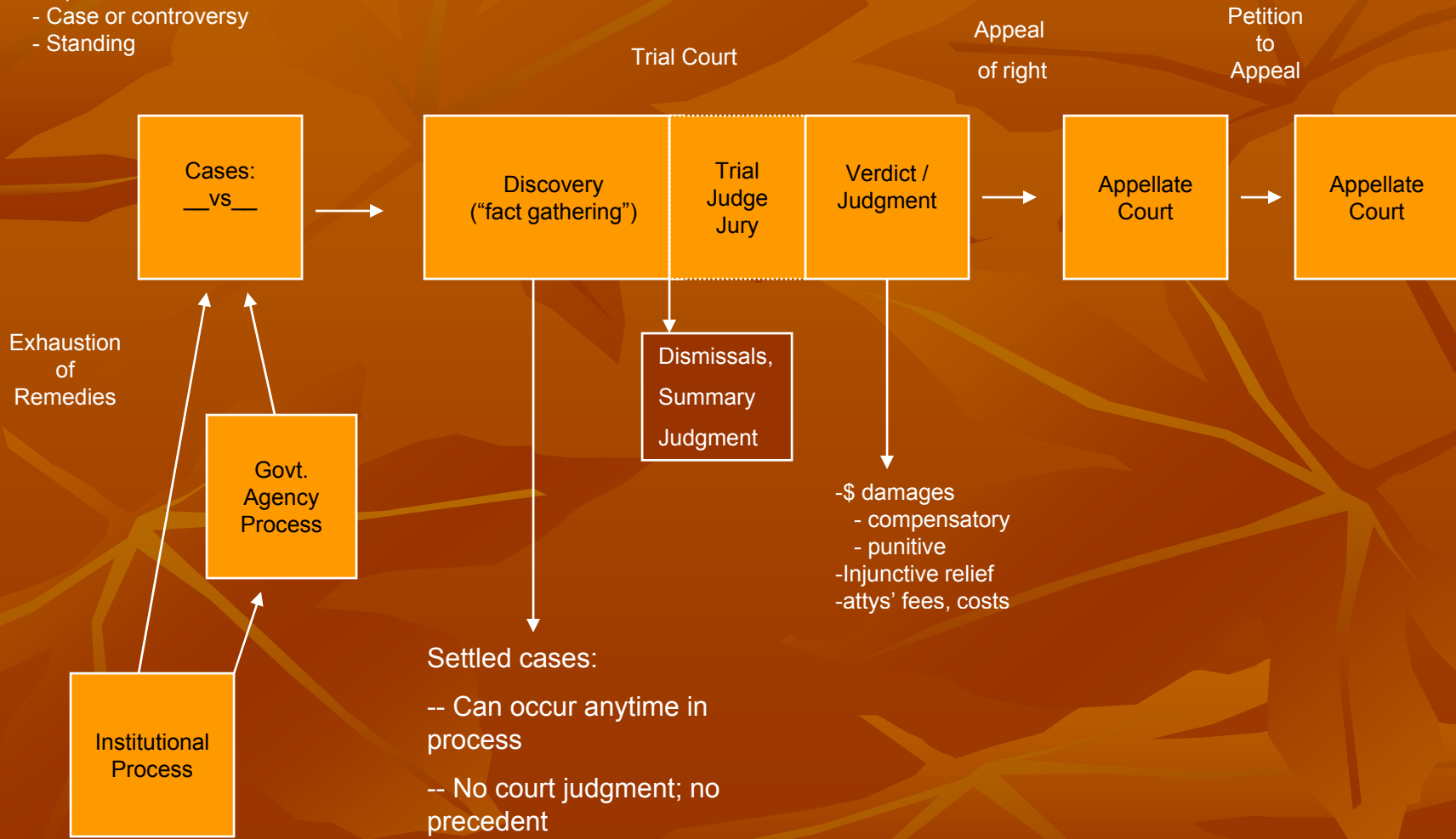


# Settlements

- Can occur at any time in the litigation process
- Results in no court judgment and no precedent for future cases
- Confidentiality is often an important term of settlement
- Often considerable pressure to settle at commencement of trial (on the “Courthouse steps”)

Prerequisites:

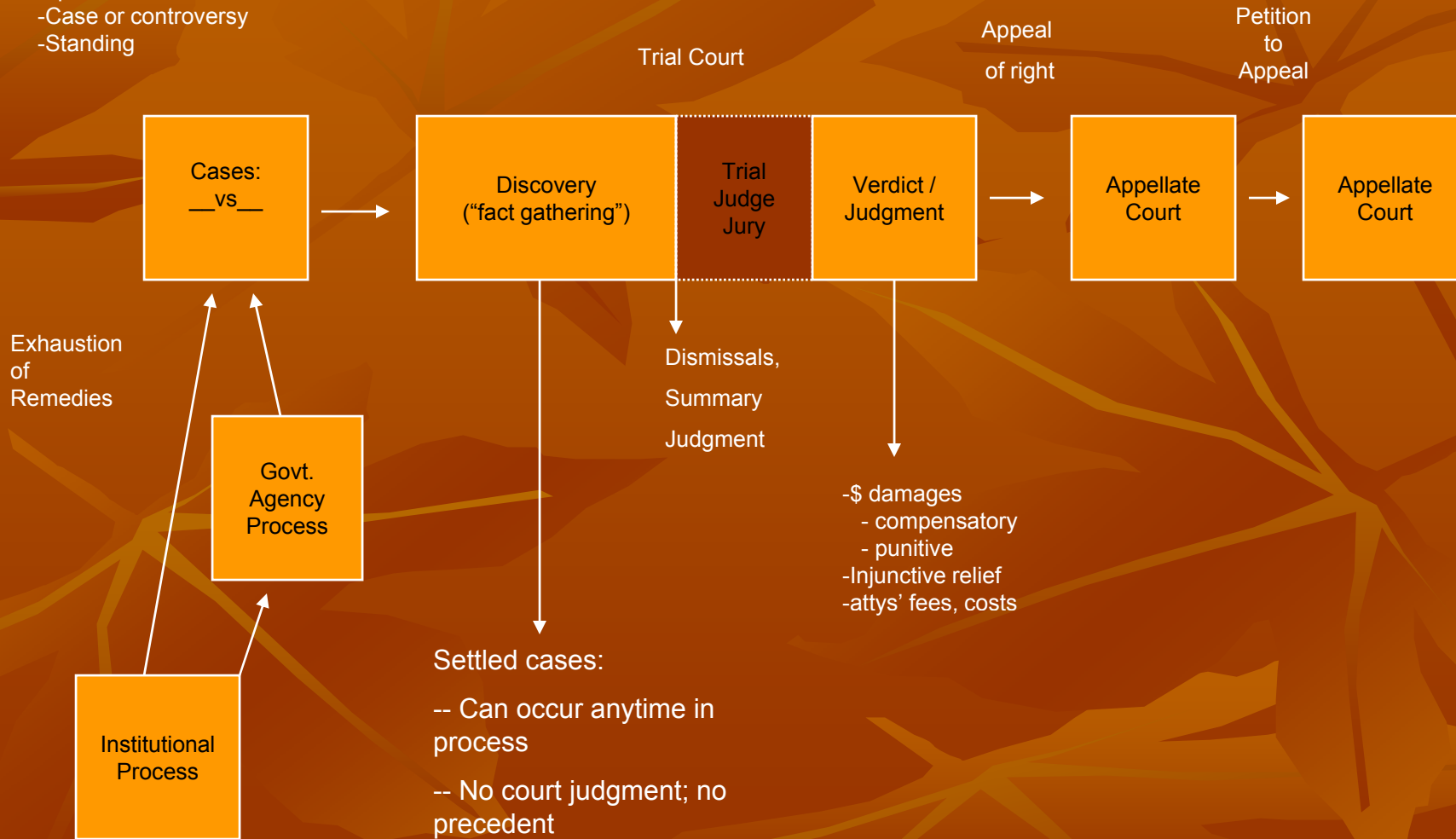
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# Dismissals

- Motion to dismiss on pleadings
- Summary judgment

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# What kinds of trials are there?

- 2 Forms of Trials
  - Jury Trial
  - Trial by Judge (also called “Bench Trial” or “Non-Jury Trial”)
- Constitutionally, there is generally a right to trial by jury, but it can be waived by the parties

# How is a Jury Selected?

- Voir dire (“to speak the truth”)
  - questioning possible jurors about bias
- Challenges:
  - Challenges for cause
  - Peremptory challenges

# On Trial

- Courtroom procedures, personnel and architecture reflects:
  - Solemnity and respect for tribunal
  - Hierarchy of participants
  - Procedural barriers based upon roles
  - AND.....



# The Adversarial System

- Principle behind the adversarial system:
  - Truth can be found and justice achieved when two opposing parties zealously present their cases to an impartial tribunal
- Key elements:
  - Confrontation of witnesses (compulsory process)
  - Cross-examination
  - Lawyers as zealous advocates

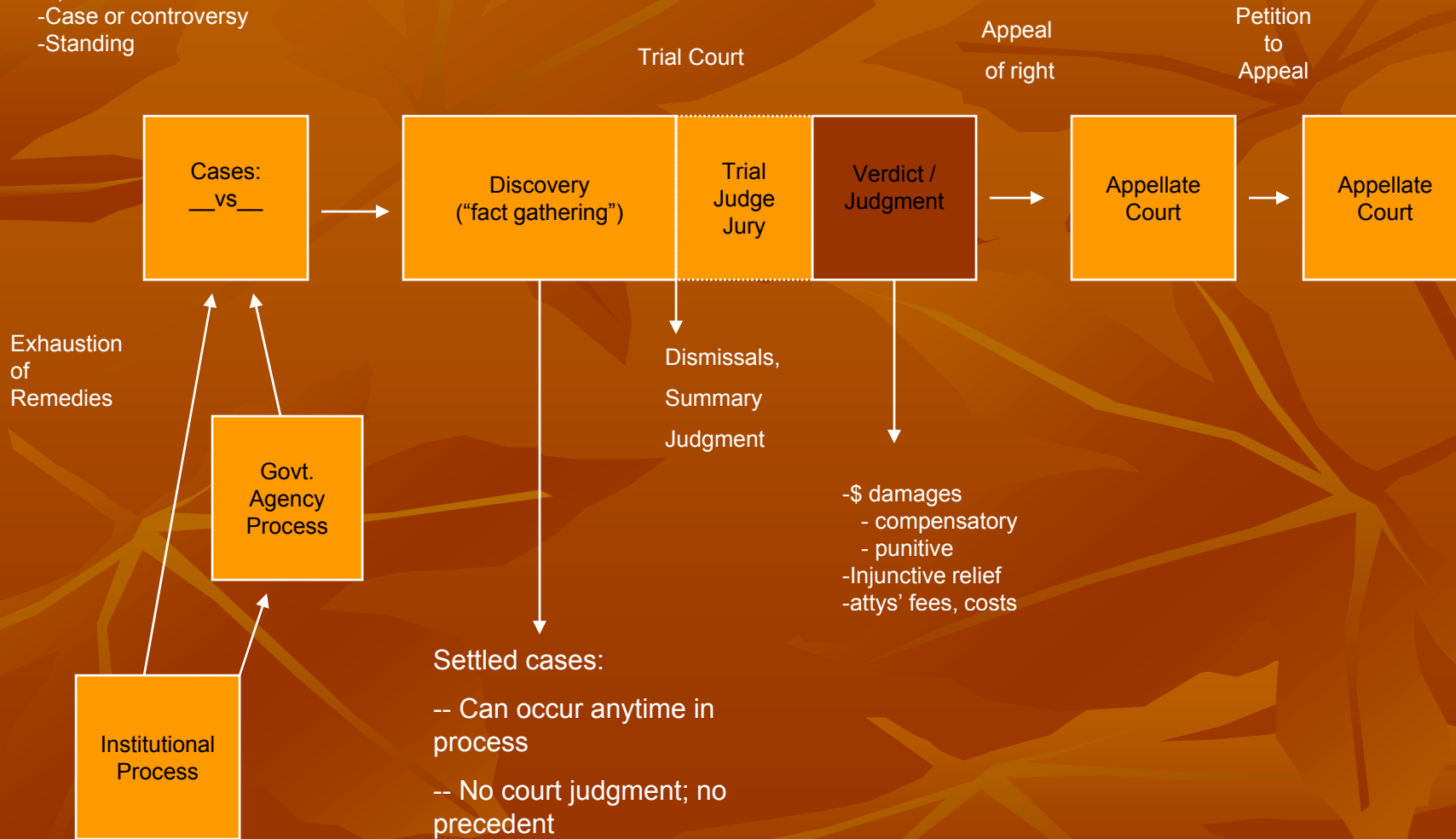
# Who Decides What at a Trial?

- Juries decide issues of fact and apply the law to the facts, based upon the Judge's instructions to the jury
- Only Judges can decide questions of law, procedure, and equitable relief (e.g., injunctions – decrees based on fairness, rather than money damages)

# Burden of Proof

- Civil litigation:  
Preponderance of the evidence
  - More likely than not
  - “50.0001% certainty”

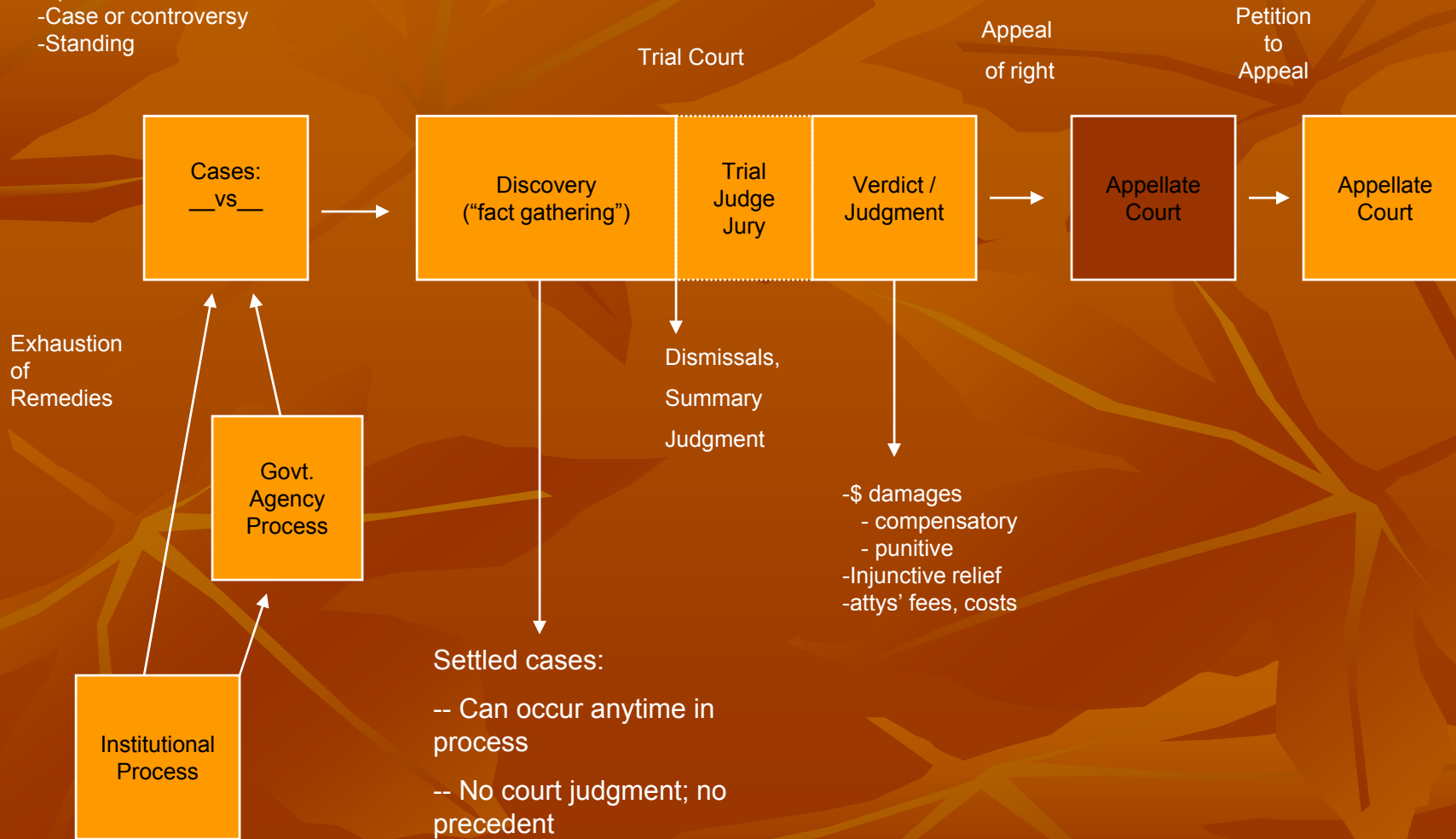
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# Verdict / Judgment

- Money damages
  - Compensatory damages
  - Punitive damages
- Equitable relief
  - Injunction
- Other
  - Attorneys' fees
  - Court costs
  - Interest on damages

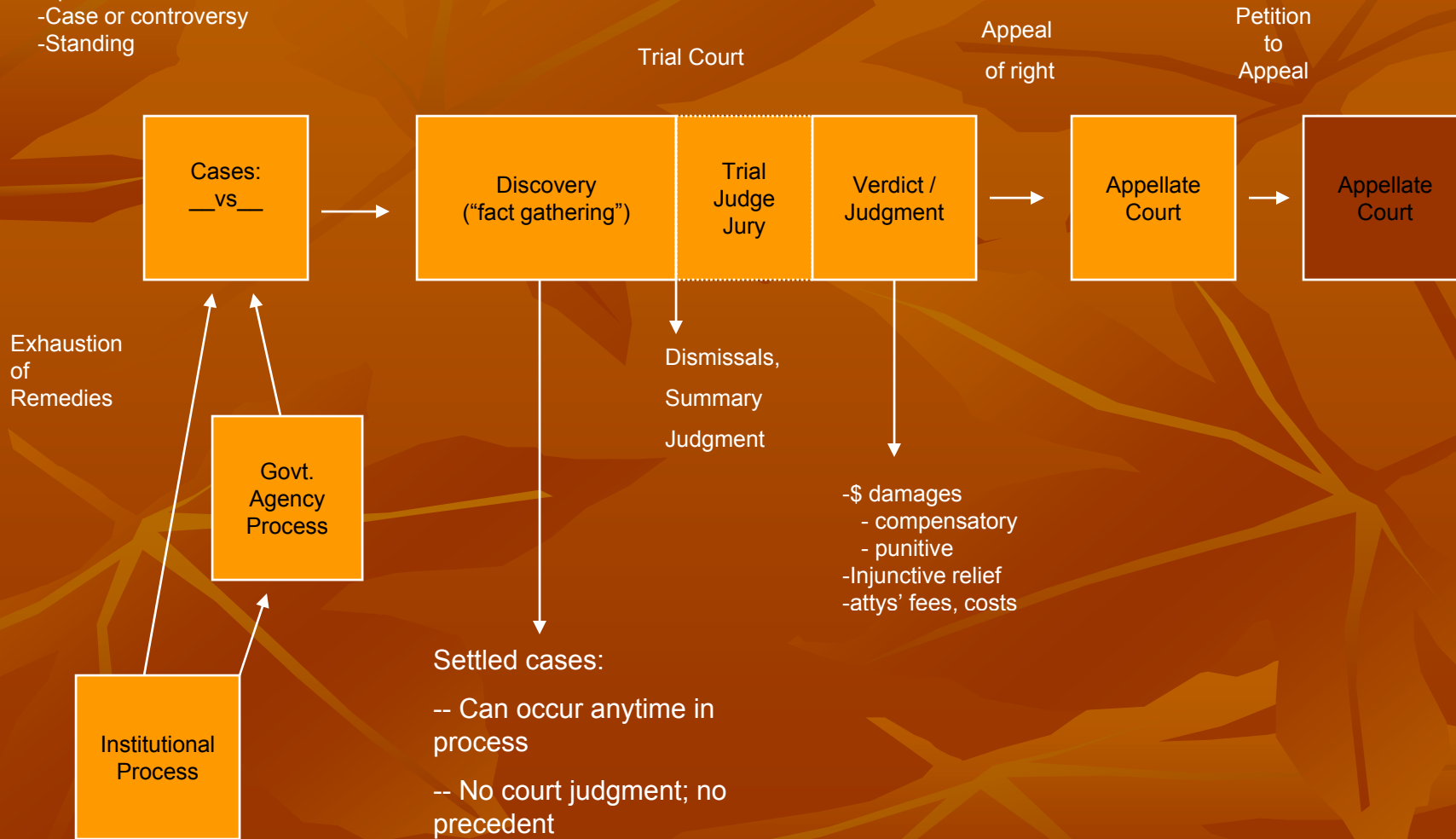
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# Appeal of Right

- 1<sup>st</sup> appeal (in Federal court or any state court) is always a matter of right – the losing party can appeal and the appellate court must hear the case
- Difficult to reverse trial court's ruling of law
- Very difficult to reverse judge's / jury's findings of fact

Prerequisites:  
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# Petition to Appeal

- The 2<sup>nd</sup> (and usually highest level) appeal is by petition – the losing party must ask the higher appellate court for permission to bring an appeal
- Called a “petition for a writ of certiorari” at the level of the U.S. Supreme Court
  - (The Supreme Court sends an order [a writ] to the lower appellate court instructing it to send the certified record of the case to the Supreme Court to review it for errors)

# Petition to Appeal

- U.S. Supreme Court rejects 90 to 95 % of all cases presented to it for appeal
  - Only hears 250 to 500 appeals from approximately 5,000 or more cases presented to it each year